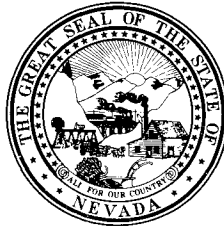


LEGISLATIVE COMMITTEE ON THE
CONSUMER'S ADVOCATE



Bulletin No. 83-12

LEGISLATIVE COMMITTEE TO REVIEW
THE PERFORMANCE OF THE OFFICE
OF CONSUMER'S ADVOCATE

December 1982

LEGISLATIVE COMMITTEE ON THE
CONSUMER'S ADVOCATE



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OF CONSUMER'S ADVOCATE

DECEMBER 1982

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Assembly Bill No. 473—Assemblymen Westall, Dini, Mello, Schofield, May, Prengaman, Redelsperger, Jeffrey, Polish, DuBois, Craddock, Nicholas, Vergiels, Thompson, Price, Foley, Horn, Kovacs, Barengo, Bremner, Hayes, Hickey, Bergevin, Sader, Stewart, Robinson, Marvel, Banner, Bennett, Beyer, Chaney, Coulter, Glover and Ham

CHAPTER 692

AN ACT relating to public utilities; creating the office of advocate for customers of public utilities within the office of the attorney general; defining his powers and duties; imposing an annual assessment upon public utilities for the support of his office; creating the fund for the consumer's advocate and transferring money to that fund; creating a legislative committee to review the performance of his office; providing for independent counsel for the public service commission; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 228 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this act.

SEC. 2. 1. *"Consumer's advocate" means the advocate for customers of public utilities.*

2. *"Cooperative utility" means a cooperative association or nonprofit corporation or association which supplies utility services for the use of its own members only.*

3. *"Public interest" means the interests or rights of the State of Nevada and of the citizens of the state, or a broad class of those citizens, which arise from the constitutions, court decisions and statutes of this state and of the United States and from the common law. As used in sections 2 to 12, inclusive, of this act, the term refers to those interests and rights as they relate to the regulation of public utilities.*

SEC. 3. *The office of advocate for customers of public utilities is hereby created within the office of the attorney general. The advocate for customers of public utilities may be known as the consumer's advocate.*

SEC. 4. 1. *The attorney general shall appoint the consumer's advocate for a term of 4 years. The consumer's advocate is in the unclassified service of the state. The person appointed:*

(a) *Must be knowledgeable in the various areas of the regulation of public utilities;*

(b) *Must be independent of and have no pecuniary interest in any utility or industry regulated by the public service commission;*

(c) *Shall devote all of his time to the business of his office and shall not pursue any other business or vocation or hold any other office of profit; and*

(d) *Must not be a member of any political convention or a member of any committee of any political party.*

2. *The attorney general may remove the consumer's advocate from office for inefficiency, neglect of duty or malfeasance in office.*

SEC. 5. *The consumer's advocate may:*

1. *Employ the staff necessary to carry out his duties and the functions of his office, in accordance with the personnel practices and procedures established within the attorney general's office. The staff shall include:*

(a) A person licensed to practice law in this state, who shall serve as staff counsel;

(b) A person knowledgeable in ratemaking and principles and policies of rate regulation;

(c) A specialist in public utilities knowledgeable in accounting or finance or economics or one or more related disciplines; and

(d) An administrative assistant, who must be in the unclassified service of the state. The consumer's advocate has sole discretion to employ and remove the members of his staff who are in the unclassified service.

2. Purchase necessary equipment.

3. Lease or make other suitable arrangements for office space, but any lease which extends beyond the term of 1 year must be reviewed and approved by a majority of the members of the state board of examiners.

4. Apply for an order or subpoena for the appearance of witnesses or the production of books, papers and documents in any proceeding in which he is a party or intervener, in the same manner as any other party or intervener, and make arrangements for and pay the fees or costs of any witnesses and consultants necessary to the proceeding. If any person ordered by the public service commission to appear before it as a witness pursuant to this subsection fails to obey the order, the commission shall apply for a subpoena commanding the attendance of the witness.

5. Perform such other functions and make such other arrangements as may be necessary to carry out his duties and the functions of his office.

SEC. 6. 1. The fund for the consumer's advocate is hereby created as a special revenue fund. All money collected for the use of the consumer's advocate must be deposited in the state treasury for credit to the fund.

2. Money in the fund may be used only to defray the costs of maintaining the office of the consumer's advocate and for carrying out the provisions of sections 2 to 12, inclusive, of this act.

3. All claims against the fund must be paid as other claims against the state are paid.

SEC. 7. All gifts or grants of money which the consumer's advocate is authorized to accept must be deposited with the state treasurer for credit to the fund for the consumer's advocate.

SEC. 8. The consumer's advocate may, with respect to all public utilities except railroads, common and contract motor carriers and cooperative utilities, and except as provided in section 10 of this act:

1. Conduct or contract for studies, surveys, research or expert testimony relating to matters affecting the public interest or the interests of utility customers.

2. Examine any books, accounts, minutes, records or other papers or property of any public utility subject to the regulatory authority of the public service commission in the same manner and to the same extent as authorized by law for members of the public service commission and its staff.

3. Petition for, request, initiate, appear or intervene in any proceeding concerning rates, charges, tariffs, modifications of service or any related matter before the public service commission or any court, regulatory body,

board, commission or agency having jurisdiction over any matter which the consumer's advocate may bring before or has brought before the public service commission or in which the public interest or the interests of any particular class of utility customers are involved. The consumer's advocate may represent the public interest or the interests of any particular class of utility customers in any such proceeding, and he is a real party in interest in the proceeding.

SEC. 9. All public utilities, except railroads, common and contract motor carriers and cooperative utilities, and except as provided in section 10 of this act, shall provide the consumer's advocate with copies of any proposed changes in rates or service, correspondence, legal papers and other documents which are served on or delivered or mailed to the public service commission.

SEC. 10. The powers of the consumer's advocate do not extend to matters directly relating to the consideration of tariffs requested by a telephone utility for products or equipment which the utility certifies under oath are subject to competition.

SEC. 11. 1. The consumer's advocate has sole discretion to represent or refrain from representing the public interest and any class of utility customers in any proceeding.

2. In exercising his discretion, the consumer's advocate shall consider the importance and extent of the public interest or the customers' interests involved and whether those interests would be adequately represented without his participation.

3. If the consumer's advocate determines that there would be a conflict between the public interest and any particular class of utility customers or any inconsistent interests among the classes of utility customers involved in a particular matter, he may choose to represent one of the interests, to represent no interest, or to represent one interest through his office and another or others through outside counsel engaged on a case basis.

SEC. 12. 1. There is hereby created an interim committee of the legislature to review the performance of the office of the consumer's advocate.

2. The committee consists of:

(a) Two members of the senate from the majority political party, designated by the majority leader of the senate;

(b) One member of the senate from the minority political party, designated by the minority leader of the senate;

(c) Three members of the assembly from the majority political party, designated by the speaker of the assembly; and

(d) Two members of the assembly from the minority political party, designated by the minority leader of the assembly.

3. The members from the assembly shall select a chairman from among their number to serve for the period ending with the convening of the 62d session of the legislature. The members from the senate shall select a chairman from among their number to serve during the next legislative interim, and the chairmanship shall continue to alternate between the houses of the legislature according to this pattern.

4. The committee exists only when the legislature is not in regular

or special session. The committee shall meet at the call of the chairman to review and evaluate the effectiveness and functioning of the office of the consumer's advocate. It may make recommendations to the consumer's advocate, the attorney general, the legislative commission, the interim finance committee and the legislature.

5. The director of the legislative counsel bureau shall provide a secretary for the committee. Each member of the committee is entitled to receive out of the legislative fund a salary for each day or portion of a day of attendance at a meeting of the committee, in an amount equal to the salary established for members of the legislative commission, and the per diem allowance and travel expenses provided by law.

SEC. 13. NRS 703.147 is hereby amended to read as follows:

703.147 1. The public service commission regulatory fund is hereby created as a special revenue fund. All money collected by the commission pursuant to law must be deposited in the state treasury for credit to the fund. Money collected for the use of the consumer's advocate must be transferred pursuant to the provisions of subsection 8 of NRS 704.035.

2. Money in the fund which belongs to the commission may be used only to defray the costs of:

(a) Maintaining staff and equipment to regulate adequately public utilities and other persons subject to the jurisdiction of the commission.

(b) Participating in all rate cases involving those persons.

(c) Audits, inspections, investigations, publication of notices, reports and retaining consultants connected with that regulation and participation.

(d) The salaries, travel expenses and subsistence allowances of the members of the commission.

3. All claims against the fund must be paid as other claims against the state are paid.

4. The commission must furnish upon request a statement showing the balance remaining in the fund as of the close of the preceding fiscal year.

SEC. 14. NRS 703.210 is hereby amended to read as follows:

703.210 1. The [attorney general] commission may employ, or retain on a contract basis, legal counsel who shall:

(a) Except as provided in subsection 2, be counsel and attorney for the commission in all actions, proceedings and hearings.

(b) Prosecute in the name of the [State] public service commission of Nevada all civil actions for the enforcement of chapters 704, 704A, 705, 706, 708, 711 and 712 of NRS and for the recovery of any penalty or forfeiture provided for therein.

(c) [If the district attorney fails or refuses to do so, prosecute all violations of the laws of this state by public utilities and motor carriers under the jurisdiction of the commission and their officers, agents and employees.

(d)] Generally aid the commission in the performance of its duties and the enforcement of chapters 704, 704A, 705, 706, 708, 711 and 712 of NRS.

2. Each district attorney shall:

(a) Prosecute any violation of chapters 704, 704A, 705, 706, 708,

711 or 712 of NRS for which a criminal penalty is provided and which occurs in his county.

(b) Aid in any investigation, prosecution, hearing or trial held under the provisions of chapters 704, 704A, 705, 706, 708, 711 or 712 of NRS and, at the request of the [attorney general or the] commission [.] or its legal counsel, act as counsel and attorney for the commission.

3. *The attorney general shall, if the district attorney fails or refuses to do so, prosecute all violations of the laws of this state by public utilities and motor carriers under the jurisdiction of the commission and their officers, agents and employees.*

4. *The attorney general is not precluded from appearing in or moving to intervene in any action and representing the interest of the State of Nevada in any action in which the commission is a party and is represented by independent counsel.*

SEC. 15. NRS 704.033 is hereby amended to read as follows:

704.033 1. The commission shall levy and collect an annual assessment from all public utilities subject to the jurisdiction of the commission.

2. [The] *Except as otherwise provided in subsection 3, the annual assessment [shall] must be [not more than 4 mills] :*

(a) *For the use of the commission, not more than 3.50 mills; and*

(b) *For the use of the consumers' advocate, 0.75 mills,*

on each dollar of gross operating revenue derived from the intrastate operations of such utilities in the State of Nevada, except that the minimum assessment in any 1 year [shall] *must be \$10. The total annual assessment must be not more than 4.25 mills.*

3. *For railroads the total annual assessment must be the amount levied for the use of the commission pursuant to paragraph (a) of subsection 2. The levy for the use of the consumer's advocate must not be assessed against railroads.*

4. The gross operating revenue of [such] the utilities [shall] *must be determined for the preceding calendar year. In the case of:*

(a) Telephone utilities, such revenue shall be deemed to be local service revenues plus intrastate toll revenues.

(b) Railroads [and airlines,] , such revenues shall be deemed to be revenue received only from freight and passenger intrastate movements.

(c) All public utilities, such revenue [shall] *does not include the proceeds of any commodity, energy or service furnished to another public utility for resale.*

SEC. 16. NRS 704.035 is hereby amended to read as follows:

704.035 1. On or before June 1 of each year, the commission shall mail revenue report forms to all public utilities under its jurisdiction, to the address of [such] those utilities on file with the commission. [Such] *The revenue report form [shall serve] serves as notice of the commission's intent to assess the utilities, but failure to notify any [such] utility [shall] does not invalidate the assessment with respect thereto.*

2. Each public utility subject to the provisions of NRS 704.033 shall complete the revenue report referred to in subsection 1, compute the assessment and return the completed revenue report to the commission accompanied by payment of the assessment and any penalty due, pursuant to the provisions of subsection 5.

3. The assessment [shall be] is due and payable on July 1 of each year, but may, at the option of the public utility, be paid quarterly on July 1, October 1, January 1 and April 1.

4. The assessment computed by the utility is subject to review and audit by the commission, and the amount of the assessment may be adjusted by the commission as a result of [such] the audit and review.

5. Any public utility failing to pay the assessment provided for in NRS 704.033 on or before August 1, or if paying quarterly, on or before August 1, October 1, January 1 or April 1, shall pay, in addition to such assessment a penalty of 1 percent of the total unpaid balance for each month or portion thereof that [said] the assessment is delinquent, or \$10, whichever is greater, but no penalty [shall] may exceed \$1,000 for each delinquent payment.

6. When a public utility sells, transfers or conveys substantially all of its assets or certificate of public convenience and necessity, the commission shall determine, levy and collect the accrued assessment for the current year not later than 30 days after [such] the sale, transfer or conveyance, unless the transferee has assumed liability for [such] the assessment. For purposes of this subsection the jurisdiction of the commission over the selling, transferring or conveying public utility [shall continue] continues until it has paid [such] the assessment.

7. The commission may bring an appropriate action in its own name for the collection of any assessment and penalty which is not paid as provided in this section.

8. *The commission shall, on a quarterly basis, transfer to the fund for the consumer's advocate that portion of the assessments collected which belongs to the consumer's advocate.*

SEC. 17. NRS 704.675 is hereby amended to read as follows:

704.675 Every cooperative association or nonprofit corporation or association and every other supplier of services described in this chapter supplying those services for the use of its own members only is hereby declared to be affected with a public interest, to be a public utility, and to be subject to the jurisdiction, control and regulation of the commission for the purposes of NRS 703.191, [704.033, 704.035,] 704.330, 704.-350 to 704.430, inclusive, but not to any other jurisdiction, control and regulation of the commission or to the provisions of any section not specifically mentioned in this section.

SEC. 18. NRS 705.360 is hereby amended to read as follows:

705.360 1. Every company, corporation lessee, manager or receiver, owning or operating a railroad in this state, shall equip, maintain, use and display at night upon each locomotive being operated in road service in this state an electric or other headlight of at least 1,500-candlepower, measured without the aid of a reflector. Any electric headlight which will pick up and distinguish a man dressed in dark clothes upon a dark, clear night at a distance of 1,000 feet is deemed the equivalent of a 1,500-candlepower headlight measured without the aid of a reflector.

2. This section does not apply to:

- (a) Locomotive engines regularly used in switching cars or trains.
- (b) Railroads not maintaining regular night train schedules.
- (c) Locomotives going to or returning from repair shops when ordered in for repairs.

3. Any railroad company, or the receiver or lessee thereof, which violates the provisions of this section is liable to the [State] *public service commission* of Nevada for a penalty of not more than \$1,000 for each [offense.] *violation*.

SEC. 19. NRS 705.370 is hereby amended to read as follows:

705.370 1. Each railroad company or corporation or its receiver, owning or operating any railroad within this state, shall equip and maintain in each of its passenger trains, cabooses, locomotives, motors or diesel engines used in the propelling of trains or switching of cars an emergency first aid kit whose contents must be those prescribed by the public service commission of Nevada. Each passenger train and each caboose must be equipped with at least one stretcher. All of the contents of the emergency first aid kits, except the stretchers, must be stored on each passenger train, caboose, locomotive, motor or diesel engine, in a clean, sanitary and sterile container and in an accessible place at all times, which places, including the storage places of stretchers, must be plainly designated.

2. The employee of any railroad company or corporation or its receiver, having charge of any passenger train, caboose, locomotive, motor or diesel engine, shall as soon as possible report in writing to the office or officer designated by the company, corporation or receiver for the purpose, whenever any of the emergency first aid kit has been used or has been found missing. The emergency first aid kit must only be used to render first medical or surgical aid to injured passengers, employees or other injured persons requiring first aid.

3. Any railroad company or corporation or its receiver, which refuses, neglects or fails to comply with the provisions of this section is liable for a penalty to the [State] *public service commission* of Nevada of \$25 for each failure to equip a passenger train, caboose, locomotive or motor or diesel engine with the emergency first aid kit specified in subsection 1.

4. Any person who removes, carries away from its proper place or uses any emergency first aid kit provided in this section, except for the purpose of administering first aid in the event of injury to any passenger, employee or other person is guilty of a misdemeanor and may be punished by a fine of not more than \$500.

SEC. 20. NRS 705.420 is hereby amended to read as follows:

705.420 Any railroad company or receiver of any railroad company, and any person, firm, company or corporation engaged in the business of common carrier doing business in the State of Nevada, which violates any of the provisions of NRS 705.390 to 705.410, inclusive, is liable to the [State] *public service commission* of Nevada for a penalty of \$500 for each [offense.] *violation*.

SEC. 21. The attorney general shall appoint the first consumer's advocate pursuant to section 4 of this act for a term ending December 31, 1984.

SEC. 22. 1. There is hereby transferred from the public service commission regulatory fund existing pursuant to the provisions of NRS 703.147 to the fund for the consumer's advocate created by section 6 of this act the sum of \$200,000.

2. On or before March 31, 1983, the consumer's advocate shall repay from the fund for the consumer's advocate to the public service commission regulatory fund the amount transferred pursuant to subsection 1.

SEC. 23. The office of the consumer's advocate is hereby authorized to expend from the fund for the consumer's advocate the sum of \$64,534 during the period commencing on the effective date of this act and ending on June 30, 1981.

SEC. 24. At the general election on November 2, 1982, the provisions of sections 1 to 22, inclusive, of this act must be submitted to the registered voters of this state, pursuant to section 2 of article XIX of the Nevada constitution, as a different measure enacted by the legislature on the same subject as the initiative petition presented to the legislature by the secretary of state on January 19, 1981.

SEC. 25. This act shall become effective upon passage and approval.

REPORT OF THE LEGISLATIVE COMMISSION

TO THE MEMBERS OF THE 62ND SESSION OF THE NEVADA LEGISLATURE:

This report is submitted in compliance with Assembly Bill No. 473 of the 1981 session which created an interim legislative committee to review the performance of the office of consumer's advocate. Appointed by the legislature to conduct the study were:

Assemblyman Peggy B. Westall, Chairman
Assemblyman David D. Nicholas, Vice Chairman
Senator Don W. Ashworth
Senator Virgil M. Getto
Senator Thomas R. C. Wilson
Assemblyman John B. DuBois
Assemblyman Edward J. Kovacs
Assemblyman Donald R. Mello

In this report, the committee has attempted to present its findings briefly and concisely. In addition to the information summarized in the report, a considerable amount of testimony was received by the committee. Much of this information became a part of the minutes of the committee, is on file in the research library of the legislative counsel bureau, and is available to any member for review.

This report is transmitted to the members of the 1983 legislature for its consideration and appropriate action.

Respectfully submitted,

Legislative Commission
Legislative Counsel Bureau
State of Nevada

Carson City, Nevada
December 1982

LEGISLATIVE COMMISSION

Assemblyman Robert R. Barengo, Chairman
Assemblyman Joseph E. Dini, Jr., Vice Chairman

Senator Keith Ashworth	Assemblyman Mike Malone
Senator Richard E. Blakemore	Assemblyman Paul W. May, Jr.
Senator Jean E. Ford	Assemblyman Kenneth K.
Senator Virgil M. Getto	Redelsperger
Senator Lawrence E. Jacobsen	Assemblyman Robert F. Rusk
Senator James N. Kosinski	

SUMMARY OF PROPOSALS

The following proposals were submitted to the legislative committee to review the performance of the office of consumer's advocate (OCA). Although bill drafts of these proposals have been requested by the committee, the committee has not included bill drafts in its report because of the lack of adequate time to review and receive comment on them before the 1983 legislature convenes.

1. Require the public service commission (PSC) to consider not only changes in expense items during the certification period, but also revenue items.
2. Allow the office of consumer's advocate to appeal public service commission decisions on rates directly to the supreme court of Nevada.
3. Prohibit the introduction of new or additional evidence during the process of appealing public service commission decisions.
4. Allow the office of consumer's advocate to petition the courts to assess civil penalties against parties which violate statutes, rules, regulations, or orders of the public service commission of Nevada.
5. Create a utility resource planning act to require electric utilities to explain and justify to the public service commission the quantity of energy they will need to produce in the future to adequately meet the demand of Nevada's electric customers and to demonstrate to the public service commission their resource plan for supplying the demand.

REPORT TO THE LEGISLATIVE COMMISSION OF THE LEGISLATIVE
COMMITTEE TO REVIEW THE PERFORMANCE OF THE
OFFICE OF CONSUMER'S ADVOCATE

I. INTRODUCTION

The 1981 Nevada legislature adopted Assembly Bill 473 which created the office of consumer's advocate. The bill also provided for an interim legislative committee to review the performance of the office of consumer's advocate. In particular, the committee is charged with reviewing and evaluating the effectiveness and functioning of the OCA. The committee may make recommendations directly to the consumer's advocate, the attorney general, the legislative commission, the interim finance committee, and the legislature. The committee has chosen to report to the legislative commission.

Appointed to conduct the study were:

Assemblyman Peggy B. Westall, Chairman
Assemblyman David D. Nicholas, Vice Chairman
Senator Don W. Ashworth
Senator Virgil M. Getto
Senator Thomas R. C. Wilson
Assemblyman John B. DuBois
Assemblyman Edward J. Kovacs
Assemblyman Donald R. Mello

At the first meeting of the committee, Assemblyman Peggy B. Westall was elected chairman of the committee pursuant to provisions in A.B. 473. Mrs. Westall subsequently appointed Assemblyman David D. Nicholas vice chairman.

The committee held four meetings. Two were in Las Vegas and two in Carson City. The committee received a progress report from the consumer's advocate regarding the activities of the OCA at each meeting. The committee also pursued several issues related to current public service commission policy and pending decisions. A major portion of the final meeting in Carson City was also devoted to considering potential legislative proposals.

Most of the testimony heard by the committee was from the consumer's advocate. Others who testified included utility representatives, consumer representatives, and private citizens.

II. COMMITTEE HEARINGS

A. SEPTEMBER 15, 1981

At its first meeting, the committee received a report of the activities of the OCA between June 15, 1981, and September 15, 1981. The major issues, decisions and actions in which the OCA was involved were:

1. A general rate increase request from Nevada Power Company (NPC);
2. A general rate increase request in electric, gas, and water services from Sierra Pacific Power Company (SPPC);
3. The retention in Southwest Gas Company's (SWGCO) common equity component of its capital structure investments in subsidiaries;
4. Public Utility Regulatory Policies Act of 1978 (PURPA) hearings on information to consumers, termination of service, advertising, master metering, and cogeneration and small power production; and
5. Consumer questions and complaints regarding utility service, rate increases, and regulations.

The consumer's advocate indicated that the OCA would continue to be involved in PURPA hearings, reviewing proposed amendments to public service commission rules 9 and 17 regarding line extension rules, intervening in Southwest Gas Corporation purchased gas adjustment decisions, and evaluating the PSC's proposed cost of service orders.

B. MARCH 3, 1982

The second report of the OCA outlining its activities in the 9 months since its establishment was received by the committee on March 3, 1982. The OCA had participated in over 15 rate and regulatory proceedings. The OCA's objective was to be constructive and insure that ratepayers benefit as a result of the OCA's activities. The OCA stressed the need for conservation, load management, responsible rate design, and the necessity of accurate load forecasting and integrated system planning. Implementation of these recommendations would help insure that rates do not rise faster than

absolutely necessary and that most cost effective methods are used to meet future loads. Although it may not be possible to assess the benefits associated with such activities in absolute dollars and cents, the OCA claimed direct responsibility for reducing requested rate increases by more than \$830,000. In addition, the OCA joined with other parties to encourage the adoption of recommendations by the PSC which resulted in \$13.7 million in shared savings. The OCA reiterated the need to amend Nevada Revised Statutes 704.540 to prohibit utilities and other parties from being able to introduce new evidence when appealing PCS decisions.

C. OCTOBER 29, 1982

By October 29, 1982, the OCA had participated in 60 rate and regulatory proceedings. In addition to stressing those policies and practices indicated in the previous report of the OCA, the OCA directly participated in hearings regarding the areas of load management, load forecasting and power pooling which resulted in PSC action beneficial to rate-payers.

Because of concerns raised by the OCA, the PSC determined that the econometric model employed by Sierra Pacific Power Company was based upon judgments and assumptions that consistently resulted in overforecasts for future electric demand. The company was ordered to use a forecasting model based in part upon the suggestions of the OCA. The SPPC was also ordered to aggressively pursue membership in two regional power pools in order to pick up available excess power in lieu of new generating facilities at the OCA's urging.

The OCA also presented data at PSC hearings which firmly established that load management is significantly cheaper for SPPC and NPC to meet future energy requirements through capital expenditures on conservation and load management programs than through the construction of new generating facilities.

As previously noted, immediate dollar savings are not always obvious. The OCA, nonetheless, claimed to be directly responsible for saving Nevada utility consumers more than \$3.7 million through October 29, 1982. In addition, the OCA

joined with other parties to encourage the adoption of recommendations by the PSC which resulted in \$30 million in shared savings.

Other involvement of the OCA had included intervention in two Federal Energy Regulatory Commission proceedings in an effort to minimize energy rates at the wholesale level. The OCA also submitted briefs and testimony to the Federal District Court in Washington, D.C., in response to the American Telephone & Telegraph (AT&T) divestiture urging that provisions be made to protect the Nevada telephone customers' rights to quality service at an affordable price. Finally, the OCA had filed four lawsuits against the PSC in Nevada Power Company, Southwest Gas Corporation, and Sierra Pacific Power Company decisions seeking to return to consumers rate increases totaling in excess of \$12 million.

The committee also passed a motion recommending support for the OCA and Question 11 on the November 2, 1982, ballot. The ballot question provided for approval of A.B. 473 by the voters of Nevada.

D. DECEMBER 2, 1982

At its final meeting, the committee heard the fourth update on the activities of the OCA and considered legislative proposals for consideration by the 1983 legislature. Since the last meeting of the committee, the PSC had agreed with the OCA's contention that Nevada Power Company had been improperly overcharging its customers by not prorating rate increases. The company was ordered to refund \$847,000. If the PSC follows the same line of reasoning when it issues its decision on SPPC, gas and electric customers could be refunded as much as \$3 million.

Other activities included suggesting more equitable rate design for consumers of relatively small amounts of natural gas provided to northern Nevada customers of Southwest Gas Corporation. The OCA was also responsible for direct savings of \$340,000 after the PSC disallowed various operating expenses and industry dues. Finally, the OCA assisted in the negotiations of a stipulation relating to service improvements to be provided by Group W Cable, Inc., in Reno, Nevada.

The OCA presented several legislative proposals which the committee considered. The committee called for bill drafts of these proposals. They are summarized on the following pages.

III. FINDINGS AND PROPOSALS

1. Require the public service commission to consider not only changes in expense items during the certification period, but also revenue items.

The Nevada Revised Statutes 704.110 (3) presently requires the PSC to consider a utility's actual recorded revenues, expenses, investments and cost of capital for the most recent 12-month period whenever an application for increased rates is filed. In addition, the PSC is required to consider evidence in support of such increased rates and charges based upon increased costs and expenses which are known and measurable at the time the application is filed and which will become effective within 6 months of the end of the 12-month test period. Thus, utilities have been authorized to certify to various increases in costs and expenses in order to justify a higher rate increase than can be supported if the determination were based upon the 12-month test period alone.

During the past several years, there has been considerable controversy regarding whether or not the PSC also has authority to consider increases in revenues which take place during the 6-month period subsequent to the test period. Though the PSC has recently adopted regulations indicating that it will consider increases in revenues that take place during the so-called certification period, the OCA is concerned that such action by the PSC may be subject to successful legal challenge by utilities or other parties. Therefore, amending the statute noted above would clearly indicate that the PSC can consider changes in revenues as well as expenses. The PSC's considering changes in both revenue and expense items during the certification period will achieve an appropriate match for ratemaking purposes.

2. Allow the office of consumer's advocate to appeal public service commission decisions on rates directly to the supreme court of Nevada.

Pursuant to present statutory requirements, appeals from decisions of the PSC are filed in the appropriate district court. Appeals from district court are then taken to the

supreme court of Nevada. This is a very time-consuming process and severely prejudices the rights of ratepayers when the appeal involves the reasonableness of the rates which have been authorized. Given the fact that appeals from PSC decisions involve legal determinations regarding whether or not the PSC's decision is supported by substantial evidence, and whether or not any constitutional or statutory prohibitions have been violated, such appeals should be taken directly to the supreme court of Nevada. This procedure is followed in at least 15 other jurisdictions.

Although a constitutional amendment may be required, the committee supports the recommendation.

3. Prohibit the introduction of new or additional evidence during the process of appealing public service commission decisions.

Present statutory provisions authorize the introduction of new evidence during the appeal of PSC orders. Such authorization is highly inappropriate. Judicial review should be restricted to determining whether or not the PSC made a proper decision based upon the evidence before the court. A party should not be allowed to, in effect, amend its application before the courts.

4. Allow the office of consumer's advocate to petition the courts to assess civil penalties against parties which violate statutes, rules, regulations, or orders of the public service commission of Nevada.

Nevada statute specifies various civil penalties that can be assessed against parties that violate statutes, rules, regulations, or orders of the PSC. Under the present statutory framework, only the PSC has authority to petition the courts to assess civil penalties against utility companies. In order to more effectively protect the consumer interest, the OCA should have such authority as well.

5. Create a utility resource planning act to require electric utilities to explain and justify to the public service commission the quantity of energy they will need to produce in the future to adequately meet the demand of Nevada's electric customers and to demonstrate to the public service commission their resource plan for supplying the demand.

Electric utilities should be required to explain and justify to the PSC the quantity of energy they will require in the future to adequately meet the needs of Nevada's electric customers. Further, those utilities should also be required to present to the PSC their resource plans for supplying those needs. It should then be the responsibility of the PSC to determine if the utility's future energy forecasts are reasonably accurate and if the utility's resource supply plans reasonably represent the least costs means to provide for the future electrical needs of Nevadans.

Such legislation is needed so that ratepayers are not unfairly burdened with the costs of an electric supply option, such as an electric generating plant, without adequate consideration of other supply options which could meet the utility customers' needs at a lesser cost. In this proposal, "supply options" include, in addition to conventional centralized generating facilities, such other alternatives as load management, conservation, power pooling and out-of-state power purchases, and decentralized energy generation or displacement either by cogeneration or sole utilization of fossil or renewable energy resources.

Under the current statutory scheme as set forth in the Utility Environmental Protection Act, NRS 704.820 et seq., a utility is only required to apply to the PSC for a permit to construct an electrical generating facility immediately prior to commencing to construct that facility. The purpose of the act, as its name implies, is primarily to protect the environment. The act was not intended to protect ratepayers economically. Thus, a utility may have made a substantial economic commitment to a specific electric supply option prior to any formal PSC review.

A "Utility Resource Planning Act" would generally provide that at least every 2 years every Class A electric utility (those with operating revenues in excess of \$2.5 million) would be required to submit to the PSC a "utility resource plan" which includes both its projected demand for electrical energy for the future (5, 10, and 20-year periods) and the mix of supply options that the utility proposes to use to meet those future demands. The PSC would then be required to hold a hearing on the plan and make a determination whether the plan's energy forecasts are reasonable and whether the mix of supply options proposed are likely to result in the lowest future rates for utility customers if implemented. Also, at the time a utility filed an application for a permit to construct a new generating facility under the Utility Environmental Protection Act, its utility resource plan would be subject to review.