
SENATE BILL NO. 226—SENATORS AMODEI, SCHNEIDER, MATHEWS, O’CONNELL,
SHAFFER AND CARLTON

FEBRUARY 19, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Revises various provisions relating to competitive provision of electric service.
(BDR 58-721)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~{omitted material}~~ is material to be omitted.

AN ACT relating to electric service; extending the statutory deadline by which customers may begin obtaining potentially competitive services; requiring legislative approval for a determination of whether an electric service is potentially competitive or its market has effective competition; authorizing the use of the name or logo of a provider of a noncompetitive service by its affiliate; revising the provisions governing the switching of providers of electric services; revising the provisions governing recoverable costs; 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.** NRS 704.970 is hereby amended to read as follows:
2 704.970 “Electric distribution utility” means a utility that is in the
3 business of supplying noncompetitive electric distribution or transmission
4 service, or both, or a noncompetitive service pursuant to NRS 704.982, on
5 or after ~~{July 1, 1999, or}~~ the date on which alternative sellers are
6 authorized to provide potentially competitive services to customers in this
7 state . ~~{, as appropriate.}~~
8 **Sec. 2.** NRS 704.973 is hereby amended to read as follows:
9 704.973 “Noncompetitive service” means any electric service
10 ~~{determined}~~ ***deemed*** by ***specific*** statute , or ~~{by the commission}~~
11 ***determined*** pursuant to NRS 704.976 , to be unsuitable for purchase by
12 customers from alternative sellers.

1 **Sec. 3.** NRS 704.974 is hereby amended to read as follows:

2 704.974 "Potentially competitive service" means a component of
3 electric service determined ~~{by the commission}~~ **pursuant to NRS 704.976**
4 to be suitable for purchase by customers from alternative sellers. The term
5 includes any potentially competitive electric service that is deemed to be
6 competitive pursuant to subsection 5 of NRS 704.976.

7 **Sec. 4.** NRS 704.976 is hereby amended to read as follows:

8 704.976 1. The date upon which customers may begin obtaining
9 generation, aggregation and any other potentially competitive services from
10 an alternative seller must be no later than December 31, ~~{1999,}~~ **2000,**
11 unless the commission determines , **and the legislature, or the legislative**
12 **commission if the legislature is not in session, approves,** that a different
13 date is necessary to protect the public interest. If the commission
14 determines that a different date is necessary, the commission shall provide a
15 report to the director of the legislative counsel bureau for transmittal to the
16 legislature ~~{by February 1, 1999, which:~~

17 ~~—(a) Explains the reason that the commission has not granted such an~~
18 ~~authorization; and~~
19 ~~—(b) States whether the commission will grant such an authorization by~~
20 ~~December 31, 1999.}~~ **or legislative commission, as appropriate, which**
21 **states the reasons why the commission has determined that a different**
22 **date is necessary.**

23 2. The commission may ~~{;}~~ , **with the approval of the legislature or**
24 **legislative commission, as appropriate:**

25 (a) Establish different dates for the provision of different services by
26 alternative sellers in different geographic areas; and

27 (b) Authorize, in gradual phases, the right to buy from alternative
28 sellers.

29 3. The commission shall ~~{determine}~~ **submit a recommendation** that
30 an electric service is a potentially competitive service **to the legislature or**
31 **legislative commission, as appropriate, if the commission determines that**
32 **the** provision of the service by alternative sellers:

33 (a) Will not harm any class of customers;

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

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

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

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

4. If the commission determines , **and the legislature or legislative commission, as appropriate, approves**, 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 an electric service has effective competition, the commission shall:

(a) Identify the relevant market;

(b) Identify, where feasible, the alternative sellers that participate and are reasonably expected to participate in the relevant market; and

(c) Calculate, where feasible, the market share of each participant in the market and evaluate the significance of each share.

5. ~~On [or before October 1, 2000, the commission shall submit to the director of the legislative counsel bureau for transmittal to the appropriate legislative committee a report which:~~

~~—(a) Evaluates the effectiveness of competition in the market for each service which customers have the right to purchase from alternative sellers; and~~

~~—(b) Recommends actions which the legislature should take to increase the effectiveness of competition in the markets for all potentially competitive services.~~

~~6. On or before] October 1, 2001, an electric service that has been found **on or before that date** to be potentially competitive shall be deemed to be competitive.~~

~~[7.]~~ 6. 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. ~~[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 methods and the terms and conditions for providing that service.]~~ The commission shall conduct any proceedings for the reconsideration of any such determination as expeditiously as practicable considering the current work load of the commission and the need to protect the public interest. **If the commission determines that the market for a service previously determined not to have effective competition has become effectively competitive, the commission shall submit its finding to the legislature or legislative**

1 *commission, as appropriate. If the legislature or legislative commission,*
2 *as appropriate, agrees with the finding of the commission, the*
3 *commission shall repeal the regulations adopted pursuant to this section*
4 *that established the pricing methods and the terms and conditions for*
5 *providing that service.*

6 ~~{8.}~~ 7. A vertically integrated electric utility shall not provide a
7 potentially competitive service except through an affiliate:

8 (a) On or after December 31, ~~{1999;}~~ 2000; or

9 (b) The date on which *the legislature or legislative commission, as*
10 *appropriate, approves the determination of* the commission ~~{determines}~~
11 that the service is potentially competitive,
12 whichever is later.

13 **Sec. 5.** NRS 704.977 is hereby amended to read as follows:

14 704.977 1. It is unlawful for an alternative seller to sell any electric
15 service to a customer for consumption within this state without having first
16 obtained a license from the commission to do so.

17 2. Not later than January 1, ~~{1999;}~~ 2000, or any different date ~~{as}~~
18 determined by the commission ~~{pursuant to NRS 704.976,}~~ *and approved*
19 *by the legislature, or legislative commission if the legislature is not in*
20 *session, as being* appropriate, the commission shall by regulation set forth
21 the procedures and conditions that alternative sellers must satisfy to obtain
22 a license to sell any electric services to a customer in this state, including,
23 but not limited to, procedures and conditions relating to:

24 (a) Safety and reliability of service;

25 (b) Financial and operational fitness; and

26 (c) Billing practices and customer service, including the initiation and
27 termination of service.

28 3. If, after reviewing the application of an alternative seller for a
29 license, the commission finds that the applicant is qualified to be an
30 alternative seller, the commission shall issue a license to the applicant.

31 4. The commission may deny the application of an applicant for a
32 license to operate as an alternative seller and may limit, suspend or revoke
33 a license issued to an alternative seller if the action is necessary to protect
34 the interests of the public or to enforce the provisions of NRS 704.965 to
35 704.990, inclusive, or a regulation of the commission.

36 5. In determining whether an applicant is qualified for a license,
37 whether to deny an application for a license to operate as an alternative
38 seller or whether to limit, suspend or revoke a license issued to an
39 alternative seller, the commission may consider whether the applicant for or
40 holder of the license, or any affiliate thereof, has engaged in any activities
41 which are inconsistent with effective competition.

1 6. A city, county or other local governmental entity or a public utility,
2 or any affiliate thereof, which is authorized to provide electric service
3 within the State of Nevada and which has an annual operating revenue of
4 less than \$250,000,000, is subject to the provisions of NRS 704.965 to
5 704.990, inclusive, and any regulations adopted by the commission that are
6 in effect on the date on which the city, county or other local governmental
7 entity or a public utility, or an affiliate thereof:

8 (a) Applies to obtain a license as an alternative seller; or

9 (b) Directly or indirectly attempts to provide, or act on behalf of an
10 alternative seller in the provision of, electric service in the territory served
11 by another city, county or other local governmental entity or public utility,
12 or an affiliate thereof, unless the city, county or other local governmental
13 entity or public utility, or an affiliate thereof, is otherwise required or
14 permitted by specific statute to provide such service.

15 7. Notwithstanding the provisions of subsection 6, a city, county or
16 other local governmental entity or a public utility, or any affiliate thereof,
17 does not become subject to the provisions of NRS 704.965 to 704.990,
18 inclusive, or any regulations adopted pursuant thereto, solely because the
19 city, county or other local governmental entity or a public utility, or any
20 affiliate thereof, provides transmission or distribution services to an
21 alternative seller pursuant to a contract, tariff or requirement of any state or
22 federal law, except that the city, county or other local governmental entity
23 or public utility, or an affiliate thereof, shall provide such transmission and
24 distribution services on an open and nondiscriminatory basis to alternative
25 sellers in accordance with such standards as the commission may establish
26 by regulation for the provision of transmission and distribution services in
27 accordance with this subsection.

28 8. Regulations adopted pursuant to subsection 2:

29 (a) Must not be unduly burdensome;

30 (b) Must not unnecessarily delay or inhibit the initiation and
31 development of competition for any service in any market; and

32 (c) May establish different requirements for licensing alternative sellers
33 of:

34 (1) Different services; or

35 (2) Similar services to different classes of customers,
36 whenever such different requirements are appropriate to carry out the
37 provisions of NRS 704.965 to 704.990, inclusive.

38 **Sec. 6.** NRS 704.978 is hereby amended to read as follows:

39 704.978 1. The commission shall prohibit a provider of a
40 noncompetitive service from providing a potentially competitive service,
41 except through an affiliate of the provider.

1 2. The commission shall require each provider of a noncompetitive
2 service that is necessary to the provision of a potentially competitive
3 service to make its facilities or services available to all alternative sellers on
4 equal and nondiscriminatory terms and conditions.

5 **3. In providing a potentially competitive service, an affiliate of a**
6 **provider of a noncompetitive service that is providing a competitive**
7 **service may use the name or logo, or both, of the provider of the**
8 **noncompetitive service.**

9 **Sec. 7.** NRS 704.982 is hereby amended to read as follows:

10 704.982 1. The commission shall designate a vertically integrated
11 electric utility to provide electric service to customers who are unable to
12 obtain electric service from an alternative seller . ~~for who fail to select an~~
13 ~~alternative seller.~~ The provider so designated by the commission is
14 obligated to provide electric service to the customers. Electric service
15 provided by the utility pursuant to this section shall be deemed to be a
16 noncompetitive service for which the utility may recover its costs pursuant
17 to NRS 704.001 to 704.655, inclusive, 704.701 to 704.751, inclusive, and
18 704.800 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 electric distribution utilities or a process
24 of competitive bidding for the right to provide electric service to the
25 designated customers.

26 3. The commission shall establish minimum terms and conditions
27 under which electric service must be provided pursuant to this section,
28 including a minimum period during which a customer must be obligated to
29 pay for the electric service from the assigned provider. The price charged
30 for electric service for a particular group of customers must reflect the
31 incremental cost of serving the group.

32 4. If the designated provider of the electric service is a vertically
33 integrated electric utility, the utility shall provide the electric service
34 through an affiliate whose sole business activity is the provision of electric
35 service.

36 5. Except as otherwise provided in this subsection and subsection 6,
37 the rate charged for residential service provided pursuant to subsection 1
38 must not exceed the rate charged for that service on July 1, 1997. The
39 limitation set forth in this subsection is effective until 2 years after the date
40 upon which, in accordance with NRS 704.976, the commission repeals the
41 regulations which established the pricing method for that service and the
42 terms and conditions for providing that service.

1 6. The commission may, in accordance with NRS 704.110, 704.120
2 and 704.130, approve an increase in the rate charged for residential service
3 provided pursuant to subsection 1 in an amount that does not exceed the
4 increase necessitated, if any, to ensure the recovery by the vertically
5 integrated electric utility of its just and reasonable costs. The provisions of
6 this section do not limit or prohibit in any manner the operation of any
7 order issued by the commission before July 1, 1997.

8 **Sec. 8.** NRS 704.983 is hereby amended to read as follows:

9 704.983 1. The commission shall determine the recoverable costs
10 associated with assets and obligations that are documented in the
11 accounting records of a vertically integrated electric utility and that are
12 properly allocable to a particular potentially competitive service as of the
13 date on which alternative sellers of similar potentially competitive services
14 begin providing such service to customers in this state. Shareholders of the
15 vertically integrated electric utility must be compensated fully for all such
16 costs determined by the commission. In determining the recoverable costs,
17 the commission shall take into account:

18 (a) The extent to which the utility was legally required to incur the costs
19 of the assets and obligations;

20 (b) The extent to which the market value of the assets and obligations of
21 the utility, relating to the provision of potentially competitive services,
22 exceeds the costs of the assets and obligations;

23 (c) The effectiveness of the efforts of the utility to increase the market
24 value and realize the market value of any assets, and to decrease the costs
25 of any obligations, associated with the provision of potentially competitive
26 services;

27 (d) The extent to which the rates previously established by the
28 commission have compensated shareholders for the risk of not recovering
29 the costs of the assets and obligations;

30 (e) The effects of the difference between the market value and the cost,
31 including, without limitation, tax considerations, for the assets and
32 obligations; and

33 (f) If the utility had the discretion to determine whether to incur or
34 mitigate the costs, the conduct of the utility with respect to the costs of the
35 assets and obligations when compared to other utilities with similar
36 obligations to serve the public.

37 2. For the purposes of this section, the commission may impose a
38 procedure for the direct and unavoidable recovery from ratepayers of the
39 portion of the past costs which are determined by the commission to be
40 owed by the ratepayers. The procedure must include a determination of the
41 period over which the recovery may occur and include the authority for the
42 commission to assess charges on those customers on whose behalf the

1 vertically integrated electric utility incurred costs who are no longer
2 receiving transmission or distribution service, or both, from the vertically
3 integrated electric utility. Such determinations and procedures must not
4 discriminate against a participant in the market.

5 **3. Notwithstanding the provisions of any specific statute to the**
6 **contrary, an electric utility that is subject to an existing contract with a**
7 **qualified facility on October 1, 1999, shall continue to honor that**
8 **obligation. Nothing in NRS 704.965 to 704.990, inclusive, shall be**
9 **deemed to authorize the commission to reopen, force the renegotiation**
10 **of, or interfere with the enforcement of any such existing contract with a**
11 **qualified facility. Nothing in this section requires an electric utility and a**
12 **qualified facility to modify any contract that was in existence on October**
13 **1, 1999, between the electric utility and the qualified facility. As used in**
14 **this subsection:**

15 **(a) "Contract" means an executed power purchase agreement**
16 **between an electric utility and a qualified facility.**

17 **(b) "Qualified facility" means a cogeneration facility or small power**
18 **production facility that meets the criteria of and is certified as a qualified**
19 **facility pursuant to Subpart B of Part 292 of Title 18 of the Code of**
20 **Federal Regulations, as that subpart existed on January 1, 1999.**

21 **Sec. 9.** NRS 704.985 is hereby amended to read as follows:

22 704.985 1. The commission shall establish procedures to ensure that
23 a customer of **a vertically integrated electric utility, an electric**
24 **distribution utility or** an alternative seller is not switched to another
25 **vertically integrated electric utility, electric distribution utility or**
26 alternative seller without a reliable confirmation of the customer's intent to
27 make such a change and approval of the specific details of the change.

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

34 (a) Must not be unduly burdensome;

35 (b) Must not unnecessarily delay or inhibit the initiation and
36 development of competition for any service in any market; and

37 (c) May establish different requirements for disclosures, explanations or
38 sales information relating to:

39 (1) Different services; or

40 (2) Similar services to different classes of customers,
41 whenever such different requirements are appropriate to carry out the
42 provisions of NRS 704.965 to 704.990, inclusive.

1 3. The commission, before the commencement of direct access to
2 alternative sellers for an electric service, shall carry out an educational
3 program for customers to:

4 (a) Inform customers of the changes in the provision of electric service,
5 including, but not limited to, the availability of alternative sellers of electric
6 service;

7 (b) Inform customers of the requirements relating to disclosures,
8 explanations or sales information for sellers of competitive services; and

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

12 **Sec. 10.** On or before October 1, 2000, the public utilities commission
13 of Nevada shall submit to the director of the legislative counsel bureau for
14 transmittal to the appropriate legislative committee a report which:

15 1. Evaluates the effectiveness of competition in the market for each
16 service which customers have the right to purchase from alternative sellers;
17 and

18 2. Recommends actions which the legislature should take to increase
19 the effectiveness of competition in the markets for all potentially
20 competitive services.