

SENATE BILL NO. 438—COMMITTEE ON COMMERCE AND LABOR

MARCH 15, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes related to electric restructuring. (BDR 58-861)

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 utilities; providing for the appointment of administrative law judges to hear contested cases before the public utilities commission of Nevada and defining their duties; revising the provisions governing recoverable costs; providing for the provision of basic electric services during the period of transition to a competitive market; providing for an auction of the right to provide such electric services; making various changes related to the provision of electricity in a competitive market; extending the statutory deadline by which customers may begin obtaining potentially competitive services; repealing provisions relating to deferred accounting; authorizing the use of the name or logo of a provider of a noncompetitive service by an affiliate of a provider of electric services or a provider of natural gas; and providing other matters properly relating thereto.

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

1   **Section 1.** Chapter 703 of NRS is hereby amended by adding thereto  
2   the provisions set forth as sections 2 and 3 of this act.

3   **Sec. 2. 1.** *The governor may appoint administrative law judges to*  
4   *preside over contested matters involving the regulation of utilities subject*  
5   *to the jurisdiction of the commission. An administrative law judge*  
6   *appointed by the governor in accordance with this section shall not act as*  
7   *an administrative law judge for any other governmental entity and shall*  
8   *hear cases as assigned by the commission. Such an administrative law*  
9   *judge serves at the pleasure of the governor.*

10   **2.** *An administrative law judge may administer oaths, examine*  
11   *witnesses, issue subpoenas and receive evidence, pursuant to rules*  
12   *adopted by the commission.*

1     **Sec. 3.** *After hearing a contested matter, an administrative law judge*  
2 *shall prepare and file with the commission an opinion setting forth his*  
3 *recommendations, findings and conclusions. The opinion of the*  
4 *administrative law judge is the proposed decision for the matter and must*  
5 *be made a part of the public record in the proceedings. The proposed*  
6 *decision must be filed with the commission and served on all parties to*  
7 *the action or proceedings not later than 45 days after the conclusion of*  
8 *the hearing. Not later than 30 days after the date on which the proposed*  
9 *decision is filed with the commission, the commission shall approve,*  
10 *modify or reject the proposed decision. The ruling of the commission*  
11 *must be based on the record and the contents of the proposed decision,*  
12 *except that the commission may allow the parties to submit briefs and*  
13 *may hold oral argument on the matter.*

14     **Sec. 4.** NRS 703.320 is hereby amended to read as follows:

15     703.320   1. When, in any matter pending before the commission, a  
16 hearing is required by law, or is normally required by the commission, the  
17 commission shall give notice of the pendency of the matter to all persons  
18 entitled to notice of the hearing. The commission shall by regulation  
19 specify:

20     (a) The manner of giving notice; and

21     (b) Where not specified by law, the persons entitled to notice in each  
22 type of proceeding.

23     2. Unless, within 10 days after the date of the notice of pendency, a  
24 person entitled to notice of the hearing files with the commission a request  
25 that the hearing be held, the commission may dispense with a hearing and  
26 act upon the matter pending.

27     3. If a request for a hearing is filed, the commission shall give at least  
28 10 days' notice of the hearing ~~to~~ *and assign the matter to an*  
29 *administrative law judge.*

30     **Sec. 5.** NRS 703.330 is hereby amended to read as follows:

31     703.330   1. A complete record must be kept of all hearings , ~~before~~  
32 ~~the commission,~~ and all testimony must be taken down by ~~the~~ *a*  
33 stenographer appointed by the commission, or, under the direction of any  
34 competent person appointed by the commission, reported by sound  
35 recording equipment in the manner authorized for reporting testimony in  
36 district courts. The testimony reported by ~~the~~ *the* stenographer must be  
37 transcribed, and the transcript filed with the record in the matter. The  
38 commission may by regulation provide for the transcription or safekeeping  
39 of sound recordings. ~~Cost~~ *The costs* of recording and transcribing  
40 testimony at any hearing, except those hearings ordered pursuant to NRS  
41 703.310 , must be paid by the applicant. If a complaint is made pursuant to  
42 NRS 703.310 by a customer or by a political subdivision of the state or  
43 municipal organization, the complainant is not liable for any costs.

1 Otherwise, if there are several applicants or parties to any hearing, the  
2 commission may apportion the costs among them in its discretion.

3 2. Whenever any complaint is served upon the commission as provided  
4 in NRS 703.373 for the bringing of an action against the commission,  
5 before the action is reached for trial, the commission shall file a certified  
6 copy of all proceedings and testimony taken with the clerk of the court in  
7 which the action is pending.

8 3. A copy of the proceedings and testimony must be furnished to any  
9 party, on payment of a reasonable amount, to be fixed by the commission,  
10 and the amount must be the same for all parties.

11 4. The provisions of this section do not prohibit the commission *or an*  
12 *administrative law judge, as appropriate*, from restricting access to the  
13 records and transcripts of a hearing pursuant to paragraph (a) of subsection  
14 3 of NRS 703.196.

15 **Sec. 6.** NRS 703.340 is hereby amended to read as follows:

16 703.340 1. Either party is entitled to an order by the commission *or*  
17 *an administrative law judge, as appropriate*, for the appearance of  
18 witnesses or the production of books, papers and documents containing  
19 material testimony.

20 2. Witnesses appearing upon the order of the commission *or an*  
21 *administrative law judge, as appropriate*, are entitled to the same fees and  
22 mileage as witnesses in civil actions in the courts of the state, and the fees  
23 and mileage must be paid out of the state treasury in the same manner as  
24 other claims against the state are paid. No fees or mileage may be allowed  
25 unless the chairman of the commission certifies the correctness of the  
26 claim.

27 **Sec. 7.** NRS 703.350 is hereby amended to read as follows:

28 703.350 The commission *or an administrative law judge, as*  
29 *appropriate*, may require, by order to be served on any person regulated by  
30 the commission in the same manner as a subpoena in a civil action, the  
31 production at a time and place designated by the commission *or*  
32 *administrative law judge* of any books, accounts, papers or records kept by  
33 the person in any office or place outside this state, or verified copies in lieu  
34 thereof ~~[ ]~~ if the commission *or administrative law judge* so directs, so that  
35 an examination may be made by *or under the direction of* the commission  
36 *or administrative law judge*, or ~~[under its direction, or]~~ for use as  
37 testimony.

38 **Sec. 8.** NRS 703.360 is hereby amended to read as follows:

39 703.360 1. If any person ordered to appear before the commission *or*  
40 *an administrative law judge* as a witness fails to obey the order, the  
41 commission or any commissioner, ~~[or]~~ the secretary of the commission *or*  
42 *the administrative law judge, as appropriate*, may apply to the clerk of the

1 nearest district court for a subpoena commanding the attendance of the  
2 witness before the commission ~~H~~ **or administrative law judge.**

3 2. The clerk shall issue the subpoena, and a peace officer shall serve it.

4 3. Disobedience to a subpoena ~~is a~~ **constitutes** contempt of court and  
5 must be punished accordingly.

6 **Sec. 9.** NRS 703.370 is hereby amended to read as follows:

7 703.370 1. The district court for the county in which any  
8 investigation or hearing is being conducted by the commission **or an**  
9 **administrative law judge** pursuant to the provisions of this Title may  
10 compel the attendance of witnesses, the giving of testimony , and the  
11 production of books and papers as required by any subpoena issued by the  
12 commission ~~H~~ **or administrative law judge.**

13 2. If any witness refuses to attend or testify or produce any **books or**  
14 **papers** required by a subpoena , the commission **or administrative law**  
15 **judge** may report to the district court for the county in which the  
16 investigation or hearing is pending by petition, setting forth:

17 (a) That due notice has been given of the time and place of attendance of  
18 the witness or the production of the books and papers;

19 (b) That the witness has been subpoenaed in the manner prescribed in  
20 this chapter; and

21 (c) That the witness has failed and refused to attend or produce the  
22 **books or** papers required by subpoena before the commission **or**  
23 **administrative law judge** in the investigation or hearing named in the  
24 subpoena, or has refused to answer questions propounded to him in the  
25 course of the investigation or hearing,  
26 and asking an order of the court compelling the witness to attend and testify  
27 or produce the books or papers before the commission ~~H~~ **or administrative**  
28 **law judge.**

29 3. The court, upon petition of the commission, shall enter an order  
30 directing the witness to appear before the court at a time and place to be  
31 fixed by the court in its order, not more than 10 days ~~from~~ **after** the date  
32 of the order, and show cause why he has not attended or testified or  
33 produced the books or papers before the commission ~~H~~ **or administrative**  
34 **law judge.** A certified copy of the order must be served upon the witness. If  
35 it appears to the court that the subpoena was regularly issued by the  
36 commission ~~H~~ **or administrative law judge**, the court shall thereupon enter  
37 an order that the witness appear before the commission **or administrative**  
38 **law judge** at the time and place fixed in the order and testify or produce the  
39 required books or papers, and upon failure to obey the order , the witness  
40 must be dealt with as if in contempt of court.

1     **Sec. 10.** NRS 703.377 is hereby amended to read as follows:

2     703.377 1. No certificate of public convenience and necessity, permit  
3 or license issued in accordance with the terms of NRS 704.005 to 704.751,  
4 inclusive, is either a franchise or irrevocable.

5     2. Upon receipt of a written complaint or on its own motion, the  
6 commission may, after investigation, and ~~a~~ hearing ~~by an~~  
7 *administrative law judge*, revoke any certificate, permit or license, but as  
8 to a public utility only if the commission has arranged for another public  
9 utility to provide the service for which the certificate was granted.

10    3. The proceedings thereafter are governed by the provisions of NRS  
11 703.373 to 703.376, inclusive ~~by~~, *and sections 2 and 3 of this act.*

12    **Sec. 11.** Chapter 704 of NRS is hereby amended by adding thereto the  
13 provisions set forth as sections 12, 13 and 14 of this act.

14    **Sec. 12.** *A vertically integrated electric utility and its successor*  
15 *electric distribution utility shall act in accordance with existing contract*  
16 *terms relating to obligations for the purchase of power. A vertically*  
17 *integrated electric utility and its successor electric distribution utility*  
18 *seeking to recover costs associated with an obligation for the purchase of*  
19 *power which are documented in the accounting records of the utility and*  
20 *which are allocable to a particular potentially competitive service must:*

21     1. *Demonstrate that the utility has made reasonable efforts to reduce*  
22 *the cost or increase the value of the obligation, including, without*  
23 *limitation, by:*

24       (a) *Evaluating the costs and benefits of renegotiating the obligation;*

25       (b) *Initiating a good faith attempt to renegotiate the obligation with*  
26 *the provider of the purchased power;*

27       (c) *Responding in good faith to any attempt initiated by the provider*  
28 *of the purchased power to renegotiate the obligation; and*

29       (d) *Exercising all existing contract terms relating to the obligation to*  
30 *mitigate the cost of the obligation;*

31     2. *If the utility was legally required to incur the obligation by a state*  
32 *or federal agency or authority, provide all information, including actions*  
33 *and statements by the commission, if any, demonstrating that fact;*

34     3. *If the utility had discretion whether to incur or mitigate the cost,*  
35 *provide all information demonstrating the conduct of the utility with*  
36 *respect to the costs of the obligation, as compared to other utilities with*  
37 *similar obligations; and*

38     4. *Provide all information indicating the extent to which the rates*  
39 *previously established by the commission have compensated shareholders*  
40 *for the risk of not recovering the costs of the obligations.*

41    **Sec. 13.** 1. *Notwithstanding the provisions of subsection 5 of NRS*  
42 *704.982 to the contrary, the commission shall, for each class of*  
43 *customers of electric service in this state, establish a total rate for electric*

1 *services that are necessary to provide basic electric service to customers*  
2 *in this state. The rates may not vary from the rates for each class of*  
3 *customers of electric service in this state which are in effect on the*  
4 *effective date of this section, except that the commission may modify the*  
5 *rates to account for the effects of any cases filed with the commission*  
6 *before October 1, 1999, which involve the use of deferred accounting.*  
7 *The rates established by the commission pursuant to this subsection*  
8 *remain in effect until March 1, 2003.*

9 *2. Notwithstanding the provisions of subsection 4 of NRS 704.982 to*  
10 *the contrary, during the period that the rates are in effect pursuant to*  
11 *subsection 1, services subject to the rates, including generation services*  
12 *owned by a vertically integrated electric utility which may be subject to*  
13 *divestiture, must be provided by a vertically integrated electric utility or*  
14 *its successor electric distribution utility, which is a provider of last resort.*

15 *3. If a utility repurchases generation services to meet its obligation*  
16 *pursuant to this section from a generation unit that the utility has*  
17 *divested, the commission, in determining recoverable costs pursuant to*  
18 *NRS 704.983, shall not impute a value to the generation unit other than*  
19 *the sales price of the unit.*

20 *4. To the extent that the rate established pursuant to subsection 1 for*  
21 *any class of customers does not reflect the costs incurred by a utility to*  
22 *provide the services to that class of customers, the utility may accumulate*  
23 *any shortfall through March 1, 2003. Such a shortfall may be recovered*  
24 *only from the gain, if any, from the sale by the utility of its generation*  
25 *assets.*

26 *5. During the period that the rates are in effect pursuant to*  
27 *subsection 1, the commission shall not subject an electric distribution*  
28 *utility or its successor electric distribution utility to any review of*  
29 *earnings, the rate base of the utility, or the rate of return of the utility.*

30 **Sec. 14. 1.** *At any time after July 1, 2001, a licensed alternative*  
31 *seller may submit to the commission a bid to provide a potentially*  
32 *competitive service that is being provided by an electric distribution utility*  
33 *in accordance with section 13 of this act. The bid must:*

34 *(a) Request to serve at least 10 percent of the market for a specific*  
35 *geographical region of this state;*

36 *(b) Provide that the service will be provided by the alternative seller to*  
37 *more than one class of customers; and*

38 *(c) Provide that there will be a discount of 5 percent off the rate*  
39 *established by the commission pursuant to section 13 of this act.*

40 *2. Upon the receipt of such a bid, the commission may conduct an*  
41 *auction if the commission determines that it is in the public interest to*  
42 *conduct such an auction. If the commission determines that such an*  
43 *auction is in the public interest, the commission shall conduct the*

1 *auction as soon as practicable. The commission shall determine the*  
2 *terms and conditions for continued service by the successful bidder at the*  
3 *auction. Any licensed alternative seller or affiliate of an electric*  
4 *distribution utility may submit a bid. Bidding must be done by sealed bid.*  
5 *Each bid by an alternative seller must be not less than 10 percent of the*  
6 *load, as measured in megawatts or megawatt hours, for the geographical*  
7 *region for which the bid is being made.*

8 *3. The commission shall review the bids. If the successful bidder is*  
9 *an alternative seller or an affiliate of an electric distribution utility other*  
10 *than the electric distribution utility that provided the service before the*  
11 *auction, the successful bidder becomes the provider of the service for the*  
12 *percentage of the load as indicated in its bid. For the percentage of the*  
13 *market that is not awarded to a successful bidder, the affiliate of the*  
14 *electric distribution utility which provided service to the customers before*  
15 *the auction remains the provider of the service, and that service must*  
16 *continue to be provided under the same terms and conditions as existed*  
17 *for the provision of that service by the affiliate of the electric distribution*  
18 *utility immediately before the auction.*

19 **Sec. 15.** NRS 704.110 is hereby amended to read as follows:

20 704.110 Except as otherwise provided in NRS 704.075 or as otherwise  
21 provided by the commission pursuant to NRS 704.095 or 704.097:

22 1. Whenever there is filed with the commission any schedule stating a  
23 new or revised individual or joint rate or charge, or any new or revised  
24 individual or joint regulation or practice affecting any rate or charge, or any  
25 schedule resulting in a discontinuance, modification or restriction of  
26 service, the commission may, upon complaint or upon its own motion  
27 without complaint, at once, without answer or formal pleading by the  
28 interested utility, investigate or, upon reasonable notice, conduct a hearing  
29 concerning the propriety of the rate, charge, classification, regulation,  
30 discontinuance, modification, restriction or practice.

31 2. Pending the investigation or hearing and the decision thereon, the  
32 commission, upon delivering to the utility affected thereby a statement in  
33 writing of its reasons for the suspension, may suspend the operation of the  
34 schedule and defer the use of the rate, charge, classification, regulation,  
35 discontinuance, modification, restriction or practice, but not for more than  
36 150 days beyond the time when the rate, charge, classification, regulation,  
37 discontinuance, modification, restriction or practice would otherwise go  
38 into effect.

39 3. Whenever there is filed with the commission any schedule stating an  
40 increased individual or joint rate or charge for service or equipment, the  
41 public utility shall submit with its application a statement showing the  
42 recorded results of revenues, expenses, investments and costs of capital for  
43 its most recent 12 months for which data were available when the

1 application was prepared. During any hearing concerning the increased  
2 rates or charges determined by the commission to be necessary, the  
3 commission shall consider evidence in support of the increased rates or  
4 charges based upon actual recorded results of operations for the same 12  
5 months, adjusted for increased revenues, any increased investment in  
6 facilities, increased expenses for depreciation, certain other operating  
7 expenses as approved by the commission and changes in the costs of  
8 securities which are known and are measurable with reasonable accuracy at  
9 the time of filing and which will become effective within 6 months after the  
10 last month of those 12 months, but no new rates or charges may be placed  
11 into effect until the changes have been experienced and certified by the  
12 utility to the commission. The commission shall also consider evidence  
13 supporting expenses for depreciation, calculated on an annual basis,  
14 applicable to major components of the public utility's plant placed into  
15 service during the recorded test period or the period for certification as set  
16 forth in the application. Adjustments to revenues, operating expenses and  
17 costs of securities must be calculated on an annual basis. Within 90 days  
18 after the filing with the commission of the certification required in this  
19 subsection, or before the expiration of any period of suspension ordered  
20 pursuant to subsection 2, whichever time is longer, the commission shall  
21 make such order in reference to those rates or charges as is required by this  
22 chapter.

23 4. After full investigation or hearing, whether completed before or after  
24 the date upon which the rate, charge, classification, regulation,  
25 discontinuance, modification, restriction or practice is to go into effect, the  
26 commission may make such order in reference to the rate, charge,  
27 classification, regulation, discontinuance, modification, restriction or  
28 practice as would be proper in a proceeding initiated after the rate, charge,  
29 classification, regulation, discontinuance, modification, restriction or  
30 practice has become effective.

31 ~~5. Whenever an application is filed by a public utility for an increase~~  
32 ~~in any rate or charge based upon increased costs in the purchase of fuel or~~  
33 ~~power, and the public utility has elected to use deferred accounting for~~  
34 ~~costs of the purchase of fuel or power in accordance with the commission's~~  
35 ~~regulations, the commission, by appropriate order after a public hearing,~~  
36 ~~shall allow the public utility to clear the deferred account not more often~~  
37 ~~than every 6 months by refunding any credit balance or recovering any~~  
38 ~~debit balance over a period not to exceed 1 year as determined by the~~  
39 ~~commission. The commission shall not allow a recovery of a debit balance~~  
40 ~~or any portion thereof in an amount which would result in a rate of return in~~  
41 ~~excess of the rate of return most recently granted the public utility.~~

42 ~~—6.]~~ Except as otherwise provided in subsection ~~[7.]~~ 6, whenever a  
43 general rate application for an increased rate or charge for, or classification,

1 regulation, discontinuance, modification, restriction or practice involving  
2 service or equipment has been filed with the commission, a public utility  
3 shall not submit another general rate application until all pending general  
4 rate applications for increases in rates submitted by that public utility have  
5 been decided unless, after application and hearing, the commission  
6 determines that a substantial financial emergency would exist if the other  
7 application is not permitted to be submitted sooner.

8 ~~[7-]~~ 6. A public utility may not file an application to recover the  
9 increased cost of purchased fuel, purchased power, or natural gas  
10 purchased for resale more often than once every 30 days.

11 ~~[8-]~~ 7. A utility facility identified in a 3-year plan submitted pursuant to  
12 NRS 704.741 and accepted by the commission for acquisition or  
13 construction pursuant to NRS 704.751 and the regulations adopted pursuant  
14 thereto shall be deemed to be a prudent investment. The utility may recover  
15 all just and reasonable costs of planning and constructing such a facility.

16 **Sec. 15.5.** NRS 704.185 is hereby amended to read as follows:

17 704.185 1. A public utility which purchases ~~[fuel, including]~~ natural  
18 gas for resale ~~[, or power]~~ may record upon its books and records all cost  
19 increases or decreases in ~~[fuels or purchased power]~~ **the natural gas**  
20 **purchased for resale** in deferred accounts. Any public utility which utilizes  
21 deferred accounting to reflect changes in costs of ~~[fuels and purchased~~  
22 ~~power]~~ **natural gas purchased for resale** shall include in its annual report  
23 to the commission a statement showing the allocated rate of return for each  
24 of its operating departments in Nevada which uses deferred accounting.  
25 2. If the rate of return for any department using deferred accounting is  
26 greater than the rate of return allowed by the commission in the last rate  
27 proceeding, the commission shall order the utility which recovered any  
28 ~~[deferred fuel and purchased power]~~ costs **of natural gas purchased for**  
29 **resale** through rates during the reported period to transfer to the next  
30 energy adjustment period that portion of such recovered amounts which  
31 exceeds the authorized rate of return.

32 **Sec. 16.** NRS 704.285 is hereby amended to read as follows:

33 704.285 1. The commission, upon its own information or knowledge  
34 or upon a complaint by any person, firm, partnership or corporation that  
35 any public utility is acting in violation of the provisions of NRS 179.410 to  
36 179.515, inclusive, or ~~[NRS]~~ 200.610 to 200.690, inclusive, or is  
37 knowingly allowing another person to violate those provisions, shall  
38 proceed without notice to make an investigation of the information or  
39 complaint.

40 2. If, after its investigation, the commission determines that there is  
41 probable cause to believe that the utility is acting in violation of the  
42 provisions of NRS 179.410 to 179.515, inclusive, or ~~[NRS]~~ 200.610 to  
43 200.690, inclusive, or allowing another to act in violation of those

1 provisions, the commission shall forthwith issue a cease and desist order to  
2 the utility. The order is permanent unless the utility, within 20 days after  
3 receipt of the order, files a written request for a hearing with the  
4 commission.

5 3. When a written request for a hearing is filed pursuant to subsection  
6 2, the ~~commission shall conduct the~~ hearing *must be conducted* pursuant  
7 to the provisions of NRS 703.320 to 703.370, inclusive ~~and~~, *and sections 2*  
8 *and 3 of this act.*

9 4. If, as the result of a hearing, it is determined that the utility is acting  
10 in violation of the provisions of NRS 179.410 to 179.515, inclusive, or  
11 ~~NRS~~ 200.610 to 200.690, inclusive, or allowing another to act in  
12 violation of those provisions, the commission shall issue a permanent cease  
13 and desist order and notify the district attorney of the county where the  
14 violation occurred of its determination.

15 5. This section is applicable whether or not the utility involved is  
16 required to have a certificate of public convenience and necessity from the  
17 commission.

18 **Sec. 17.** NRS 704.965 is hereby amended to read as follows:

19 704.965 As used in NRS 704.965 to 704.990, inclusive, *and sections*  
20 *12, 13 and 14 of this act*, unless the context otherwise requires, the words  
21 and terms defined in NRS 704.966 to 704.975, inclusive, have the  
22 meanings ascribed to them in those sections.

23 **Sec. 18.** NRS 704.970 is hereby amended to read as follows:

24 704.970 “Electric distribution utility” means a utility that is in the  
25 business of supplying noncompetitive electric distribution or transmission  
26 service, or both, or a noncompetitive service pursuant to NRS 704.982, on  
27 or after ~~July 1, 1999, or~~ the date on which alternative sellers are  
28 authorized to provide potentially competitive services to customers in this  
29 state ~~. as appropriate.~~

30 **Sec. 19.** NRS 704.975 is hereby amended to read as follows:

31 704.975 1. “Vertically integrated electric utility” means any public  
32 utility in the business of supplying electricity or its successor in interest  
33 that, as of December 31, 1996:

34 (a) Held a certificate of public convenience and necessity issued  
35 pursuant to NRS 704.005 to 704.731, inclusive; and

36 (b) Had an annual operating revenue of \$250,000,000 or more ~~and~~ *in*  
37 *Nevada.*

38 2. The term does not include a cooperative association or nonprofit  
39 corporation or association or other provider of electric service, which is  
40 declared to be a public utility pursuant to NRS 704.673 and provides  
41 service only to its members.

1     **Sec. 20.** NRS 704.976 is hereby amended to read as follows:

2     704.976 1. The date upon which customers may begin obtaining  
3 generation, aggregation , *metering, billing* and any other potentially  
4 competitive services from an alternative seller must be no later than  
5 ~~[December 31, 1999,]~~ *March 1, 2000*, unless the commission determines  
6 that a different date is necessary to protect the public interest. ~~[If the~~  
7 ~~commission determines that a different date is necessary, the commission~~  
8 ~~shall provide a report to the director of the legislative counsel bureau for~~  
9 ~~transmittal to the legislature by February 1, 1999, which:~~

10 ~~—(a) Explains the reason that the commission has not granted such an~~  
11 ~~authorization; and~~

12 ~~—(b) States whether the commission will grant such an authorization by~~  
13 ~~December 31, 1999.]~~

14 2. The commission may:

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

17 (b) Authorize, in gradual phases, the right *of customers* to buy from  
18 alternative sellers.

19 3. The commission shall determine that an electric service is a  
20 potentially competitive service if provision of the service by alternative  
21 sellers:

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

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

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

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

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

32 4. If the commission determines that a market for a potentially  
33 competitive service does not have effective competition, the commission  
34 shall, by regulation, establish the method for determining prices for the  
35 service and the terms and conditions for providing the service. The  
36 regulations must ensure that the pricing method, terms and conditions are  
37 just and reasonable and not unduly discriminatory. The regulations may  
38 include pricing alternatives which authorize the seller to reduce prices  
39 below maximum pricing levels specified by the commission or any other  
40 form of alternative pricing which the commission determines to be  
41 consistent with the provisions of this subsection. In determining whether a  
42 market for an electric service has effective competition, the commission  
43 shall:

- 1 (a) Identify the relevant market;
- 2 (b) Identify, where feasible, the alternative sellers that participate and
- 3 are reasonably expected to participate in the relevant market; and
- 4 (c) Calculate, where feasible, the market share of each participant in the
- 5 market and evaluate the significance of each share.

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

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

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

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

18 ~~[7.]~~ 6. The commission may reconsider any determination made  
19 pursuant to this section upon its own motion or upon a showing of good  
20 cause by a party requesting a reconsideration. Upon a finding by the  
21 commission that the market for a service previously found not to have  
22 effective competition has become effectively competitive, the commission  
23 shall repeal the regulations which established the pricing methods and the  
24 terms and conditions for providing that service. The commission shall  
25 conduct any proceedings for the reconsideration of any such determination  
26 as expeditiously as practicable considering the current work load of the  
27 commission and the need to protect the public interest.

28 ~~[8.]~~ 7. A vertically integrated electric utility shall not provide a  
29 potentially competitive service except through an affiliate:

30 (a) On or after ~~December 31, 1999;~~ *March 1, 2000;* or

31 (b) The date on which the commission determines that the service is  
32 potentially competitive,  
33 whichever is later.

34 **Sec. 21.** NRS 704.977 is hereby amended to read as follows:

35 704.977 1. It is unlawful for an alternative seller to sell any electric  
36 service to a customer for consumption within this state without having first  
37 obtained a license from the commission to do so. *A licensed alternative*  
38 *seller or a vertically integrated utility may negotiate with a customer for*  
39 *the provision of electric service before March 1, 2000, but no such*  
40 *contract is effective before March 1, 2000.*

41 2. ~~[Not later than January 1, 1999, or any different date as determined~~  
42 ~~by the commission pursuant to NRS 704.976, as appropriate, the] The~~

43 commission shall by regulation set forth the procedures and conditions that

1 alternative sellers must satisfy to obtain a license to sell any electric  
2 services to a customer in this state, including, but not limited to, procedures  
3 and conditions relating to:

- 4 (a) Safety and reliability of service;
- 5 (b) Financial and operational fitness; and
- 6 (c) Billing practices and customer service, including the initiation and  
7 termination of service.

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

11 4. The commission may deny the application of an applicant for a  
12 license to operate as an alternative seller and may limit, suspend or revoke  
13 a license issued to an alternative seller if the action is necessary to protect  
14 the interests of the public or to enforce the provisions of NRS 704.965 to  
15 704.990, inclusive, **and sections 12, 13 and 14 of this act**, or a regulation  
16 of the commission.

17 5. In determining whether an applicant is qualified for a license,  
18 whether to deny an application for a license to operate as an alternative  
19 seller or whether to limit, suspend or revoke a license issued to an  
20 alternative seller, the commission may consider whether the applicant for or  
21 holder of the license, or any affiliate thereof, has engaged in any activities  
22 which are inconsistent with effective competition.

23 6. A city, county or other local governmental entity or a public utility,  
24 or any affiliate thereof, which is authorized to provide electric service  
25 within the State of Nevada and which has an annual operating revenue of  
26 less than \$250,000,000, ~~is~~ **becomes** subject to the provisions of NRS  
27 704.965 to 704.990, inclusive, **and sections 12, 13 and 14 of this act**, and  
28 any regulations adopted ~~[by the commission that are in effect]~~ **pursuant**  
29 **thereto**, on the date on which the city, county or other local governmental  
30 entity or a public utility, or an affiliate thereof:

- 31 (a) Applies to obtain a license as an alternative seller; or
- 32 (b) Directly or indirectly attempts to provide, or act on behalf of an  
33 alternative seller in the provision of, electric service in the territory served  
34 by another city, county or other local governmental entity or public utility,  
35 or an affiliate thereof, unless the city, county or other local governmental  
36 entity or public utility, or an affiliate thereof, is otherwise required or  
37 permitted by specific statute to provide such service.

38 7. Notwithstanding the provisions of subsection 6, a city, county or  
39 other local governmental entity or a public utility, or any affiliate thereof,  
40 does not become subject to the provisions of NRS 704.965 to 704.990,  
41 inclusive, **and sections 12, 13 and 14 of this act**, or any regulations  
42 adopted pursuant thereto, solely because the city, county or other local  
43 governmental entity or a public utility, or any affiliate thereof, provides

1 transmission or distribution services to an alternative seller pursuant to a  
2 contract, tariff or requirement of any state or federal law, except that the  
3 city, county or other local governmental entity or public utility, or an  
4 affiliate thereof, shall provide such transmission and distribution services  
5 on an open and nondiscriminatory basis to alternative sellers in accordance  
6 with such standards as the commission may establish by regulation for the  
7 provision of transmission and distribution services in accordance with this  
8 subsection.

9 8. Regulations adopted pursuant to subsection 2:

10 (a) Must not be unduly burdensome;

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

13 (c) May establish different requirements for licensing alternative sellers  
14 of:

15 (1) Different services; or

16 (2) Similar services to different classes of customers,  
17 whenever such different requirements are appropriate to carry out the  
18 provisions of NRS 704.965 to 704.990, inclusive ~~H~~, *and sections 12, 13*  
19 *and 14 of this act.*

20 **Sec. 22.** NRS 704.978 is hereby amended to read as follows:

21 704.978 1. The commission shall prohibit a provider of a  
22 noncompetitive service from providing a potentially competitive service,  
23 except through an affiliate of the provider.

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

28 *3. In providing a potentially competitive service, an affiliate of a*  
29 *provider of a noncompetitive service may use the name or logo, or both,*  
30 *of the provider of noncompetitive service.*

31 **Sec. 23.** NRS 704.982 is hereby amended to read as follows:

32 704.982 1. The commission shall designate a vertically integrated  
33 electric utility *, or its successor electric distribution utility,* to provide  
34 electric service to customers who are unable to obtain electric service from  
35 an alternative seller or who fail to select an alternative seller. The provider  
36 so designated by the commission is obligated to provide electric service to  
37 the customers. Electric service provided by the utility pursuant to this  
38 section shall be deemed to be a noncompetitive service for which the utility  
39 may recover its costs pursuant to NRS 704.001 to 704.655, inclusive,  
40 704.701 to 704.751, inclusive, and 704.800 to 704.900, inclusive.

41 2. Upon a finding by the commission that the public interest will be  
42 promoted, the commission may prescribe alternate methods for providing  
43 electric service to those customers described in subsection 1. The alternate

1 methods may include, but are not limited to, the direct assignment of  
2 customers to alternative sellers or electric distribution utilities or a process  
3 of competitive bidding for the right to provide electric service to the  
4 designated customers. *Any alternative methods prescribed by the*  
5 *commission pursuant to this subsection may not go into effect before*  
6 *July 1, 2001.*

7 3. The commission shall establish minimum terms and conditions  
8 under which electric service must be provided pursuant to this section,  
9 including a minimum period during which a customer must be obligated to  
10 pay for the electric service from the assigned provider. The price charged  
11 for electric service for a particular group of customers must reflect the  
12 incremental cost of serving the group.

13 4. If the designated provider of the electric service is a vertically  
14 integrated electric utility, the utility shall provide the electric service  
15 through an affiliate whose sole business activity is the provision of electric  
16 service.

17 5. Except as otherwise provided in this subsection and subsection 6,  
18 the rate charged for residential service provided pursuant to subsection 1  
19 must not exceed the rate charged for that service on July 1, 1997. The  
20 limitation set forth in this subsection is effective until 2 years after the date  
21 upon which, in accordance with NRS 704.976, the commission repeals the  
22 regulations which established the pricing method for that service and the  
23 terms and conditions for providing that service.

24 6. The commission may, in accordance with NRS 704.110, 704.120  
25 and 704.130, approve an increase in the rate charged for residential service  
26 provided pursuant to subsection 1 in an amount that does not exceed the  
27 increase necessitated, if any, to ensure the recovery by the vertically  
28 integrated electric utility, *or its successor electric distribution utility*, of its  
29 just and reasonable costs. The provisions of this section do not limit or  
30 prohibit in any manner the operation of any order issued by the commission  
31 before July 1, 1997.

32 **Sec. 24.** NRS 704.983 is hereby amended to read as follows:

33 704.983 1. The commission shall determine the recoverable costs  
34 associated with assets and obligations that are documented in the  
35 accounting records of a vertically integrated electric utility *and its*  
36 *successor electric distribution utility* and that are properly allocable to a  
37 particular potentially competitive service as of the date on which alternative  
38 sellers of similar potentially competitive services begin providing such  
39 service to customers in this state. Shareholders of the vertically integrated  
40 electric utility must be compensated fully for all such costs determined by  
41 the commission. In determining the recoverable costs, the commission shall  
42 take into account:

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

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

6 (c) The effectiveness of the efforts of the utility to increase the market  
7 value and realize the market value of any assets, and to decrease the costs  
8 of any obligations, associated with the provision of potentially competitive  
9 services;

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

13 (e) The effects of the difference between the market value and the cost,  
14 including, without limitation, tax considerations, for the assets and  
15 obligations; and

16 (f) If the utility had the discretion to determine whether to incur or  
17 mitigate the costs, the conduct of the utility with respect to the costs of the  
18 assets and obligations when compared to other utilities with similar  
19 obligations to serve the public.

20 2. For the purposes of this section, the commission may impose a  
21 procedure for the direct and unavoidable recovery from ratepayers of the  
22 portion of the past costs which are determined by the commission to be  
23 owed by the ratepayers. The procedure must include a determination of the  
24 period over which the recovery may occur and include the authority for the  
25 commission to assess charges on those customers on whose behalf the  
26 vertically integrated electric utility incurred costs who are no longer  
27 receiving transmission or distribution service, or both, from the vertically  
28 integrated electric utility. Such determinations and procedures must not  
29 discriminate against a participant in the market.

30 ***3. Failure by a utility to minimize, in a reasonable and prudent***  
31 ***manner, federal taxes resulting from the offsetting of gains and losses of***  
32 ***assets and obligations properly allocable to a potentially competitive***  
33 ***service must be considered by the commission in determining the***  
34 ***recoverable costs for the utility.***

35 **Sec. 25.** NRS 704.997 is hereby amended to read as follows:

36 704.997 1. Upon the receipt of a specific request for an exemption by  
37 a public utility that supplies natural gas, the commission may, to the extent  
38 it deems necessary, exempt any service offered by the public utility from  
39 the strict application of one or more provisions of this chapter. Such an  
40 exemption may be made only upon a determination by the commission,  
41 after notice and an opportunity for a hearing, that the service is competitive,  
42 discretionary or potentially competitive.

1     2. The commission shall adopt regulations necessary to establish an  
2 alternative plan of regulation of a public utility that supplies natural gas and  
3 that is otherwise subject to regulation pursuant to the provisions of this  
4 chapter. The alternative plan may include, but is not limited to, provisions  
5 that:

6     (a) Allow adjustment of the rates charged by the public utility during the  
7 period in which the utility elects the alternative plan of regulation.

8     (b) Specify the provisions of this chapter that do not apply to a public  
9 utility which elects to be regulated under the alternative plan.

10    (c) Provide for flexibility of pricing for services that are discretionary,  
11 competitive or potentially competitive.

12    3. A public utility that elects to be regulated under the alternative plan  
13 established pursuant to this section is not subject to the remaining  
14 provisions of this chapter to the extent specified pursuant to this section.

15    4. *In providing a potentially competitive service, an affiliate of a*  
16 *provider of a noncompetitive service may use the name or logo, or both,*  
17 *of the provider of noncompetitive service.*

18    5. It is unlawful for an alternative seller to sell any service relating to  
19 the supply of natural gas to a customer for his consumption within this state  
20 without first having obtained a license from the commission to do so.

21    **Sec. 26.** If, in accordance with NRS 704.976, the public utilities  
22 commission of Nevada determines that a date other than March 1, 2000, on  
23 which customers may begin obtaining generation, aggregation, metering,  
24 billing and other potentially competitive services from alternative sellers, is  
25 necessary to protect the public interest, the commission shall, not later than  
26 December 1, 1999, provide a report to the director of the legislative  
27 counsel bureau for transmittal to the legislature, or the legislative  
28 commission if the legislature is not in session. The report must contain the  
29 reasons for the commission's determination that the different date is  
30 necessary and a new proposed date on which the commission believes that  
31 it would be appropriate for customers to begin obtaining generation,  
32 aggregation, metering, billing and other potentially competitive services.

33    **Sec. 27.** 1. This section and sections 1 to 14, inclusive, 16 to 26,  
34 inclusive, 28 and 29 of this act become effective upon passage and  
35 approval.

36    2. Sections 15 and 15.5 of this act become effective on October 1,  
37 1999.

38    **Sec. 28.** If the pending merger between Sierra Pacific Resources and  
39 Nevada Power Company, referred to in the records of the Public Utilities  
40 Commission of Nevada as Docket No. 98-7023, is terminated for any  
41 reason before the completion of the merger, this act expires by limitation on  
42 the date on which the pending merger is terminated.

1     **Sec. 29.** Except as otherwise provided in section 28 of this act,  
2 sections 13 and 14 of this act expire by limitation on March 1, 2003.

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