

SENATE BILL NO. 253—COMMITTEE ON COMMERCE AND LABOR

FEBRUARY 27, 2001

Referred to Committee on Commerce and Labor

SUMMARY—Prevents certain electric utilities from disposing of certain generation assets for a limited period and places restrictions on disposal of such assets after that period. (BDR 58-1122)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: 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; preventing certain electric utilities from disposing of certain generation assets for a limited period; placing restrictions on the disposal of such assets after that period; repealing the prospective conditional expiration by limitation of certain provisions that govern changes to the regulation of electric utilities; requiring the public utilities commission of Nevada to take certain actions to carry out the provisions of this act; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 704 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 7, inclusive, of this act.
3 **Sec. 2.** *As used in sections 2 to 7, inclusive, of this act, unless the*
4 *context otherwise requires, the words and terms defined in sections 3 to*
5 *6, inclusive, of this act have the meanings ascribed to them in those*
6 *sections.*
7 **Sec. 3. 1. “Dispose of a generation asset” means to:**
8 **(a)** *Sell, lease, assign, transfer or divest an interest in a generation*
9 *asset, in whole or in part, to another person;*
10 **(b)** *Execute a contract or agreement to sell, lease, assign, transfer or*
11 *divest an interest in a generation asset, in whole or in part, to another*
12 *person; or*
13 **(c)** *Perform any promise, covenant or obligation to sell, lease, assign,*
14 *transfer or divest an interest in a generation asset, in whole or in part, to*
15 *another person pursuant to the terms of a contract or agreement unless:*
16 **(1)** *The electric utility executed the contract or agreement before*
17 *January 1, 2001;*



- 1 (2) *The commission approved the contract or agreement before*
2 *January 1, 2001, if such approval was required; and*
- 3 (3) *The electric utility fully performed the promise, covenant or*
4 *obligation to sell, lease, assign, transfer or divest the interest before the*
5 *effective date of this act.*
- 6 2. *The term does not include a transaction approved pursuant to*
7 *NRS 704.329 or a transfer authorized pursuant to NRS 704.410, except*
8 *that any person who assumes or has assumed ownership, possession,*
9 *control, operation, administration or maintenance of a generation asset*
10 *pursuant to such a transaction or transfer is subject to the provisions of*
11 *section 7 of this act.*
- 12 **Sec. 4.** *“Electric utility” means:*
- 13 1. *A vertically integrated electric utility, as defined in NRS 704.975;*
14 2. *A subsidiary or affiliate of such a vertically integrated electric*
15 *utility;*
- 16 3. *A holding company or other person that holds a controlling*
17 *interest in such a vertically integrated electric utility; and*
- 18 4. *A successor in interest to any utility, subsidiary, affiliate, holding*
19 *company or person described in subsection 1, 2 or 3.*
- 20 **Sec. 5.** 1. *“Generation asset” means any plant, facility, equipment*
21 *or system that:*
- 22 (a) *Converts other forms of energy into electricity or otherwise*
23 *produces electricity;*
- 24 (b) *Is located within this state;*
- 25 (c) *Is or was owned, possessed, controlled, leased, operated,*
26 *administered, maintained, acquired or placed into service by an electric*
27 *utility on or after January 1, 2001;*
- 28 (d) *Is subject, in whole or in part, to regulation by the commission;*
29 *and*
- 30 (e) *Is used and useful for the convenience of the public, as determined*
31 *by the commission.*
- 32 2. *The term does not include:*
- 33 (a) *Any hydroelectric plant, facility, equipment or system that has a*
34 *generating capacity of not more than 3 megawatts; and*
- 35 (b) *Any net metering system, as defined in NRS 704.771.*
- 36 **Sec. 6.** 1. *“Person” means:*
- 37 (a) *A natural person;*
- 38 (b) *Any form of business or social organization and any other*
39 *nongovernmental legal entity, including, without limitation, a*
40 *corporation, partnership, association, trust or unincorporated*
41 *organization; and*
- 42 (c) *A government, a political subdivision of a government or an*
43 *agency or instrumentality of a government or a political subdivision of a*
44 *government.*
- 45 2. *The term does not include the State of Nevada or an agency or*
46 *instrumentality of the State of Nevada.*
- 47 **Sec. 7.** 1. *An electric utility shall not dispose of a generation asset*
48 *unless, before the disposal, the commission approves the disposal by a*
49 *written order issued in accordance with the provisions of this section.*



1 2. Except as otherwise provided in subsection 4, not sooner than
2 January 1, 2003, an electric utility may apply to the commission for
3 approval to dispose of a generation asset on or after July 1, 2003. If an
4 electric utility applies to the commission for approval pursuant to this
5 subsection, the commission may approve the application upon the terms
6 of the application as filed or upon such terms, conditions or
7 modifications as the commission deems appropriate, if the commission
8 finds that:

9 (a) Disposal of the generation asset will be in the public interest, will
10 not adversely affect customers in this state and will not impair the
11 development of effective competition, as defined in NRS 704.969; and

12 (b) The electric utility has:

13 (1) Demonstrated that the total cost to provide electric service after
14 disposal of the generation asset is likely to be less than the total cost to
15 provide electric service if the electric utility were to retain the generation
16 asset over its remaining life; or

17 (2) Replaced the entire generating capacity of the generation asset
18 with:

19 (I) One or more other generation assets; or

20 (II) One or more obligations for the purchase of power that, in
21 the aggregate, are effective for a period of at least 15 years and provide
22 power over that period for a total cost that does not exceed the total cost
23 that would have been incurred by the electric utility to generate the same
24 amount of power using the generation asset at its present operating cost.

25 3. If the commission approves an application pursuant to subsection
26 2 before July 1, 2003, the order of the commission approving the
27 application:

28 (a) May not become effective sooner than July 1, 2003;

29 (b) Does not create any vested rights before the effective date of the
30 order; and

31 (c) For the purposes of NRS 703.373, shall be deemed a final decision
32 on the date on which the order is issued by the commission.

33 4. If the governor establishes a date on which customers may begin
34 obtaining one or more potentially competitive services from an
35 alternative seller pursuant to NRS 704.976, not sooner than 6 months
36 before that date, an electric utility may apply to the commission for
37 approval to dispose of a generation asset. If an electric utility applies to
38 the commission for approval pursuant to this subsection, the commission
39 may approve the application upon the terms of the application as filed or
40 upon such terms, conditions or modifications as the commission deems
41 appropriate, if the commission finds that disposal of the generation asset:

42 (a) Will promote effective competition, as defined in NRS 704.969,
43 and will further the purposes of NRS 704.965 to 704.990, inclusive; and

44 (b) Will be in the public interest.

45 5. If the commission approves an application pursuant to subsection
46 4 before the date on which customers may begin obtaining one or more
47 potentially competitive services from an alternative seller, the order of the
48 commission approving the application:



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1 (a) May not become effective sooner than the date on which
2 customers may begin obtaining one or more potentially competitive
3 services from an alternative seller;

4 (b) Does not create any vested rights before the effective date of the
5 order; and

6 (c) For the purposes of NRS 703.373, shall be deemed a final decision
7 on the date on which the order is issued by the commission.

8 6. If an electric utility disposes of a generation asset in violation of
9 this section, the disposal is void and unenforceable and is not valid for
10 any purpose.

11 **Sec. 8.** NRS 704.979 is hereby amended to read as follows:

12 704.979 1. The commission shall monitor the markets for electric
13 services affected by NRS 704.965 to 704.990, inclusive, to identify and
14 prevent activities that are inconsistent with the goals of NRS 704.965 to
15 704.990, inclusive. The commission shall:

16 (a) Establish standards of conduct related to activities that are
17 inconsistent with the goals of NRS 704.965 to 704.990, inclusive, and
18 establish penalties for such activities and procedures for imposing such
19 penalties; and

20 (b) ~~Establish~~ Except as otherwise provided in section 7 of this act,
21 establish conditions and limitations on the ownership, operation and
22 control of the assets of a provider of an electric service to:

23 (1) Prevent activities that are inconsistent with the goals of NRS
24 704.965 to 704.990, inclusive; and

25 (2) Ensure the development of effective competition for electric
26 services.

27 ~~Such~~ Except as otherwise provided in section 7 of this act, such
28 conditions and limitations may include, but are not limited to, limitations
29 on the ownership, operation and control of transmission facilities and any
30 generation necessary to the reliable and economic operation of such
31 transmission facilities. In establishing such conditions and limitations, the
32 commission shall take into consideration any financial obligations that a
33 provider of an electric service incurred, as of the date on which customers
34 may begin obtaining potentially competitive services from alternative
35 sellers, to carry out a statutory obligation of a utility.

36 2. Upon a showing of good cause by a party requesting an
37 investigation or upon motion of the commission, the commission shall
38 conduct an investigation of the operation of the relevant markets for any
39 electric service in this state to determine whether those markets are
40 functioning in a manner consistent with the provisions of NRS 704.965 to
41 704.990, inclusive. The investigation must include, without limitation, the
42 effect on the market of:

43 (a) Mergers, consolidations or acquisitions of the assets or the securities
44 of providers of electric services;

45 (b) The disposition of ownership, operation or control of the assets of
46 providers of electric services;

47 (c) Transmission congestion or constraints; and

48 (d) Anticompetitive or discriminatory conduct.



1 3. The commission may require an alternative seller, an electric
2 distribution utility or a vertically integrated electric utility to provide
3 information directly related to the provision of electric services by the
4 alternative seller, electric distribution utility or vertically integrated electric
5 utility in this state, including, but not limited to, documents and testimony,
6 in accordance with the regulations of the commission relating to the
7 discovery of information for a provider of electric service.

8 4. If evidence is presented to the commission that anticompetitive or
9 discriminatory conduct, including, but not limited to, the unlawful exercise
10 of market power, is denying customers the benefits of effective
11 competition in a market for electric services, the commission shall:

12 (a) Consult with, and transmit such evidence to, the attorney general;
13 and

14 (b) If appropriate, inform, and transmit such evidence to, the United
15 States Department of Justice and any appropriate federal agency.

16 5. NRS 704.965 to 704.990, inclusive, must not be construed as
17 exempting alternative sellers and affiliates from any other applicable
18 statute of this state or the United States, relating to consumer and antitrust
19 protections. The exemption provided in paragraph (c) of subsection 3 of
20 NRS 598A.040 does not apply to conduct of or actions taken by an
21 alternative seller pursuant to NRS 704.965 to 704.990, inclusive.

22 6. Nothing in NRS 704.965 to 704.990, inclusive, requires any person
23 who is or has been aggrieved by the conduct of an alternative seller to seek
24 relief first before the commission.

25 **Sec. 9.** NRS 704.9826 is hereby amended to read as follows:

26 704.9826 1. ~~{The provider of electric service designated pursuant to~~
27 ~~subsection 1 of NRS 704.982}~~ *If, before July 2, 2003, a designated*
28 *provider receives approval to dispose of all of its generation assets*
29 *pursuant to section 7 of this act, the designated provider* is entitled to
30 recover only from the gain, if any, from the ~~{sale}~~ *disposal* by the
31 *designated* provider of *all of* its generation assets any shortfall during the
32 period commencing on March 1, 2000, or such other date that is
33 determined to be in the public interest by the governor pursuant to NRS
34 704.976, and ending on March 1, 2003, that results from the netting of any
35 difference between:

36 (a) The revenues generated by the total rates charged to all classes of
37 customers pursuant to NRS 704.9823; and

38 (b) The total cost incurred by the *designated* provider to provide that
39 service to all classes of customers.

40 2. ~~{Upon}~~ *If the provisions of subsection 1 apply to a designated*
41 *provider, upon* approval of the amount of the net shortfall, if any, the
42 commission shall authorize the designated provider to recover that amount
43 from the gain , if any, on the ~~{sale}~~ *disposal* of *all of* its generation assets,
44 after the deduction of any taxes.

45 3. *If, before July 2, 2003, a designated provider has not received*
46 *approval to dispose of all of its generation assets pursuant to section 7 of*
47 *this act, the commission shall authorize the designated provider to*
48 *recover any shortfall described in subsection 1 from:*



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1 (a) The gain, if any, on the disposal of the generation assets, if any,
2 for which the designated provider received approval before July 2, 2003,
3 after the deduction of any taxes; and

4 (b) Any just and reasonable charges allowed pursuant to subsection 4.

5 4. If the provisions of subsection 3 apply to a designated provider
6 and the commission determines that the amount recovered by the
7 designated provider pursuant to paragraph (a) of subsection 3 is less
8 than the amount that the designated provider most likely would have
9 recovered if the designated provider had received approval before July 2,
10 2003, to dispose of all of its generation assets, the commission shall
11 authorize the designated provider to assess just and reasonable charges
12 to recover the difference between such amounts.

13 5. If the commission authorizes a designated provider to assess just
14 and reasonable charges pursuant to subsection 4, the commission shall
15 adopt by regulation procedures to provide for the direct and unavoidable
16 assessment of those charges on customers. The procedures must include
17 a determination of the period over which the charges will be assessed on
18 customers and include the authority for the commission to assess the
19 charges on those customers who are no longer receiving transmission or
20 distribution service, or both, from the designated provider. Such
21 determinations and procedures must not discriminate against a
22 participant in the market.

23 6. As used in this section ~~1, "total"~~:

24 (a) "Designated provider" means a provider of electric service
25 designated pursuant to subsection 1 of NRS 704.982.

26 (b) "Dispose of a generation asset" has the meaning ascribed to it in
27 section 3 of this act.

28 (c) "Generation asset" has the meaning ascribed to it in section 5 of
29 this act.

30 (d) "Total cost incurred by the *designated* provider" means the total
31 revenues generated by all classes by the rates in effect on July 1, 1999, as
32 adjusted to account for the effects of any decision of the commission
33 relating to any cases filed with the commission before October 1, 1999,
34 which involve the use of deferred accounting.

35 **Sec. 10.** NRS 704.986 is hereby amended to read as follows:

36 704.986 1. Each vertically integrated electric utility shall submit to
37 the commission, pursuant to a schedule established by the commission, a
38 plan for compliance with the requirements set forth in NRS 704.965 to
39 704.990, inclusive, and the applicable regulations. The vertically integrated
40 electric utility shall include with the plan any information the commission
41 needs to:

42 (a) Set rates for electric services, including, but not limited to:

43 (1) A statement of the costs of the vertically integrated electric utility
44 to provide the service.

45 (2) The amount of revenue required by the vertically integrated
46 electric utility.

47 (b) Allocate among customers the costs of service and the requirements
48 for revenues for noncompetitive services.



1 (c) Adopt regulations for potentially competitive services if a market is
2 not sufficiently competitive.

3 2. The commission may exempt a vertically integrated electric utility
4 or an alternative seller from the strict application of any provision of this
5 chapter, other than the provisions of *sections 2 to 7, inclusive, of this act*
6 *and* NRS 704.965 to 704.990, inclusive, upon a determination by the
7 commission that the exemption is necessary to achieve effective
8 competition within the electric industry.

9 **Sec. 11.** Section 26 of chapter 600, Statutes of Nevada 1999, at page
10 3272, is hereby repealed.

11 **Sec. 12.** 1. The public utilities commission of Nevada shall:

12 (a) Amend, modify, supplement, annul or vacate any order or directive
13 issued by the commission before the effective date of this act that
14 authorizes or requires an electric utility to dispose of any generation asset,
15 if such disposal would violate the provisions of this act;

16 (b) Take all appropriate action to request that the Federal Energy
17 Regulatory Commission and any other officer, agency or department of the
18 Federal Government:

19 (1) Not issue any order or directive that authorizes or requires an
20 electric utility to dispose of any generation asset, if such an order or
21 directive could be interpreted as being in conflict with or preempting the
22 provisions of this act; and

23 (2) Amend, modify, supplement, annul or vacate any order or
24 directive issued before, on or after the effective date of this act that
25 authorizes or requires an electric utility to dispose of any generation asset,
26 if such an order or directive could be interpreted as being in conflict with
27 or preempting the provisions of this act;

28 (c) If any action taken pursuant to paragraph (b) is unsuccessful, take all
29 appropriate legal action to challenge any order or directive issued by the
30 Federal Energy Regulatory Commission or any other officer, agency or
31 department of the Federal Government that authorizes or requires an
32 electric utility to dispose of any generation asset, if such an order or
33 directive could be interpreted as being in conflict with or preempting the
34 provisions of this act; and

35 (d) Take any other action or issue any other orders necessary to carry
36 out the provisions of this act.

37 2. Notwithstanding any other provision of law, the public utilities
38 commission of Nevada is hereby empowered and authorized to take any
39 action or to issue any orders necessary to carry out the provisions of this
40 act.

41 **Sec. 13.** This act becomes effective upon passage and approval.



TEXT OF REPEALED SECTION

Section 26 of chapter 600, Statutes of Nevada 1999:

Sec. 26. If the pending merger between Sierra Pacific Resources and Nevada Power Company, referred to in the records of the Public Utilities Commission of Nevada as Docket No. 98-7023, is terminated for any reason before the completion of the merger, this act expires by limitation on the date on which the pending merger is terminated.

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