

ASSEMBLY BILL NO. 139—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF THE PUBLIC UTILITIES COMMISSION)

FEBRUARY 14, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes concerning certain providers of utility service. (BDR 58-494)

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; making various changes concerning certain providers of utility service; exempting from the jurisdiction of the Public Utilities Commission of Nevada certain persons who are engaged in the business of furnishing water or services for the disposal of sewage in certain large counties; increasing the time allowed for entry of a final order for an application relating to the sale of energy, capacity or ancillary services by a provider of new electric resources; 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 704.030 is hereby amended to read as follows:
2 704.030 “Public utility” or “utility” does not include:
3 1. Persons engaged in the production and sale of natural gas,
4 other than sales to the public, or engaged in the transmission of
5 natural gas , other than as a common carrier transmission or
6 distribution line or system.
7 2. Persons engaged in the business of furnishing, for
8 compensation, water or services for the disposal of sewage, or both,
9 to persons within this state if:
10 (a) They serve 25 persons or less; and



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1 (b) Their gross sales for water or services for the disposal of
2 sewage, or both, amounted to \$5,000 or less during the immediately
3 preceding 12 months.

4 3. *Persons engaged in the business of furnishing, for*
5 *compensation, water or services for the disposal of sewage, or*
6 *both, to persons within this state if:*

7 (a) *They serve 15 persons or less; and*

8 (b) *They operate in a county whose population is 400,000 or*
9 *more.*

10 4. Persons not otherwise engaged in the business of furnishing,
11 producing or selling water or services for the disposal of sewage, or
12 both, but who sell or furnish water or services for the disposal of
13 sewage, or both, as an accommodation in an area where water or
14 services for the disposal of sewage, or both, are not available from a
15 public utility, cooperative corporations and associations, or political
16 subdivisions engaged in the business of furnishing water or services
17 for the disposal of sewage, or both, for compensation, to persons
18 within the political subdivision.

19 ~~[4.]~~ 5. Persons who are engaged in the production and sale of
20 energy, including electricity, to public utilities, cities, counties or
21 other entities which are reselling the energy to the public.

22 ~~[5.]~~ 6. Persons who are subject to the provisions of NRS
23 590.465 to 590.645, inclusive.

24 ~~[6.]~~ 7. Persons who are engaged in the sale or use of special
25 fuel as defined in NRS 366.060.

26 ~~[7.]~~ 8. Persons who provide water from water storage,
27 transmission and treatment facilities if those facilities are for the
28 storage, transmission or treatment of water from mining operations.

29 **Sec. 2.** NRS 704.669 is hereby amended to read as follows:

30 704.669 1. Except as otherwise provided in subsection 2,
31 every corporation or other person who sells geothermal energy to
32 the public is affected with a public interest, is a public utility, and is
33 subject to the jurisdiction and control of the Commission. The
34 authority of the Commission to regulate such persons is limited to
35 the authority granted by this section and NRS 704.033 and 704.035.

36 2. This section does not apply to any corporation or other
37 person described in subsection ~~[4.]~~ 5 of NRS 704.030 or to any
38 political subdivision of the State authorized to sell energy to the
39 public.

40 3. The Commission shall adopt just and reasonable regulations
41 governing the sale of energy from geothermal resources to the
42 public. The regulations must provide for a system of operating
43 permits which:

44 (a) May not be denied because the area which the applicant
45 proposes to serve is already being served by a gas or electric utility.



1 (b) May not convey an exclusive right to supply geothermal
2 energy in the area which the applicant proposes to serve.

3 (c) Specify in each case the geographic area in which the
4 applicant reasonably can provide the services authorized in the
5 permit.

6 (d) Require the applicant to enter into a contract with each
7 customer served by the utility. The form and scope of the contract
8 must be subject to review and approval of the Commission. The
9 contract must specify at least:

10 (1) The period of time during which service will be provided.
11 The contract must provide for a period of at least 3 years unless such
12 a provision is expressly waived by the customer.

13 (2) The rates or the formula for determining rates to be
14 charged during the term of the contract.

15 (3) That the utility will submit to binding arbitration,
16 pursuant to chapter 38 of NRS, matters relating to damages suffered
17 by the customer as a result of a disruption in service and that in any
18 such arbitration, the utility is liable for damages unless it establishes
19 that the disruption was caused by circumstances beyond its control,
20 or another affirmative defense, or establishes that it was not
21 negligent.

22 4. Before issuing an operating permit , the Commission must
23 find that:

24 (a) The applicant is fit, willing and able to provide the services
25 authorized in the permit.

26 (b) The applicant has tested the geothermal reservoir to
27 determine whether it appears to be capable of providing sufficient
28 energy to supply the intended uses.

29 (c) The system which the applicant intends to use to produce
30 and distribute the heat meets appropriate standards.

31 5. The Commission has continuing authority to regulate the
32 utilities described in this section to ensure that each utility adheres
33 to the conditions set forth in its operating permit and that the utility
34 provides adequate services.

35 **Sec. 3.** NRS 704B.310 is hereby amended to read as follows:

36 704B.310 1. An eligible customer that is purchasing electric
37 service from an electric utility shall not purchase energy, capacity or
38 ancillary services from a provider of new electric resources and an
39 eligible customer that is purchasing energy, capacity or ancillary
40 services from a provider of new electric resources shall not purchase
41 energy, capacity or ancillary services from another provider unless:

42 (a) The eligible customer files an application with the
43 Commission not later than 180 days before the date on which the
44 eligible customer intends to begin purchasing energy, capacity or
45 ancillary services from the provider; and



1 (b) The Commission approves the application by a written order
2 issued in accordance with the provisions of this section and
3 NRS 704B.320.

4 The date on which the eligible customer intends to begin purchasing
5 energy, capacity or ancillary services from the provider must not be
6 sooner than the date on which the provider is authorized by NRS
7 704B.300 to begin selling energy, capacity or ancillary services to
8 the eligible customer.

9 2. Except as otherwise provided in subsection 3, each
10 application filed pursuant to this section must include:

11 (a) Information demonstrating that the person filing the
12 application is an eligible customer;

13 (b) Information demonstrating that the proposed provider will
14 provide energy, capacity or ancillary services from a new electric
15 resource;

16 (c) Information concerning the terms and conditions of the
17 proposed transaction that is necessary for the Commission to
18 evaluate the impact of the proposed transaction on customers and
19 the public interest, including, without limitation, information
20 concerning the duration of the proposed transaction and the amount
21 of energy, capacity or ancillary services to be purchased from the
22 provider; and

23 (d) Any other information required pursuant to the regulations
24 adopted by the Commission.

25 3. Except as otherwise provided in NRS 704B.320, the
26 Commission shall not require the eligible customer or provider to
27 disclose:

28 (a) The price that is being paid by the eligible customer to
29 purchase energy, capacity or ancillary services from the provider; or

30 (b) Any other terms or conditions of the proposed transaction
31 that the Commission determines are commercially sensitive.

32 4. The Commission shall provide public notice of the
33 application of the eligible customer and an opportunity for a hearing
34 on the application in a manner that is consistent with the provisions
35 of NRS 703.320 and the regulations adopted by the Commission.

36 5. The Commission shall approve the application of the eligible
37 customer unless the Commission finds that the proposed transaction:

38 (a) Will be contrary to the public interest; or

39 (b) Does not comply with the provisions of NRS 704B.320, if
40 those provisions apply to the proposed transaction.

41 6. In determining whether the proposed transaction will be
42 contrary to the public interest, the Commission shall consider,
43 without limitation:

44 (a) Whether the electric utility that has been providing electric
45 service to the eligible customer will be burdened by increased costs



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1 as a result of the proposed transaction or whether any remaining
2 customer of the electric utility will pay increased costs for electric
3 service as a result of the proposed transaction;

4 (b) Whether the proposed transaction will impair system
5 reliability or the ability of the electric utility to provide electric
6 service to its remaining customers; and

7 (c) Whether the proposed transaction will add energy, capacity
8 or ancillary services to the supply in this state.

9 7. If the Commission approves the application of the eligible
10 customer:

11 (a) The eligible customer shall not begin purchasing energy,
12 capacity or ancillary services from the provider pursuant to the
13 proposed transaction sooner than 180 days after the date on which
14 the application was filed; and

15 (b) The Commission shall order such terms, conditions and
16 payments as the Commission deems necessary and appropriate to
17 ensure that the proposed transaction will not be contrary to the
18 public interest. Such terms, conditions and payments:

19 (1) Must be fair and nondiscriminatory as between the
20 eligible customer and the remaining customers of the electric utility;
21 and

22 (2) Must include, without limitation, payment by the eligible
23 customer to the electric utility of the eligible customer's load-share
24 portion of any unrecovered balance in the deferred accounts of the
25 electric utility.

26 8. If the Commission does not enter a final order on the
27 application of the eligible customer within ~~90~~ 150 days after the
28 date on which the application was filed with the Commission:

29 (a) The application shall be deemed to be approved by the
30 Commission; and

31 (b) The eligible customer shall not begin purchasing energy,
32 capacity or ancillary services from the provider pursuant to the
33 proposed transaction sooner than 180 days after the date on which
34 the application was filed.

35 **Sec. 4.** NRS 459A.010 is hereby amended to read as follows:

36 459A.010 As used in this chapter, "public utility" means any
37 person who furnishes electricity to other persons. The term includes
38 municipal utilities , but does not include persons who furnish
39 electricity only in emergencies or persons described in subsection
40 ~~4~~ 5 of NRS 704.030.

41 **Sec. 5.** 1. If, on the effective date of this act, a person:

42 (a) Is engaged in the business of furnishing, for compensation,
43 water or services for the disposal of sewage, or both, to persons
44 within this state;



1 (b) Holds a certificate of public convenience and necessity
2 issued by the Commission; and

3 (c) Is not included in the definition of a "public utility" or
4 "utility" pursuant to subsection 3 of NRS 704.030, as amended by
5 this act,

6 the person shall surrender the person's certificate of public
7 convenience and necessity to the Commission in accordance with
8 the provisions of this section.

9 2. To surrender the person's certificate of public convenience
10 and necessity to the Commission, the person shall file with the
11 Commission:

12 (a) The certificate of public convenience and necessity;

13 (b) A notification of the surrender; and

14 (c) A report of revenues for the immediately preceding 12
15 months certifying that the person is not included in the definition of
16 a "public utility" or "utility" pursuant to subsection 3 of NRS
17 704.030, as amended by this act.

18 3. Not later than 5 days after the person makes the filing with
19 the Commission as required by subsection 2, the person shall send
20 to each customer a notification that the person has surrendered the
21 person's certificate of public convenience and necessity to the
22 Commission in accordance with the provisions of this section. Upon
23 sending the notification to each customer, the person is not subject
24 to any of the provisions of chapters 703 and 704 of NRS.

25 4. As used in this section, "Commission" means the Public
26 Utilities Commission of Nevada.

27 **Sec. 6.** This act becomes effective upon passage and approval.

