

**MINUTES OF THE SUBCOMMITTEE OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-third Session
March 23, 2005**

The subcommittee of the Senate Committee on Commerce and Labor was called to order by Chair Warren B. Hardy II at 9:20 a.m. on Wednesday, March 23, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Warren B. Hardy II, Chair
Senator Sandra Tiffany
Senator Randolph J. Townsend

STAFF MEMBERS PRESENT:

Kevin Powers, Committee Counsel
Donna Winter, Committee Secretary
Scott Young, Committee Policy Analyst
Jeanine Wittenberg, Committee Secretary

OTHERS PRESENT:

Thelma Clark, Silver Senator, Clark County Senatorial District 10, Nevada Silver
Haired Legislative Forum
Don Soderberg, Chairman, Public Utilities Commission of Nevada
Barry Gold, American Association of Retired Persons, Nevada

CHAIR HARDY:

I now open the hearing on Senate Bill (S.B.) 171. Ms. Clark, as I recall, your primary concern involves cases that the chairman of the Public Utilities Commission of Nevada (PUCN) was sending to the hearing officers. Is that correct?

SENATE BILL 171: Increases number of Commissioners who serve on Public Utilities Commission of Nevada. (BDR 58-625)

Subcommittee of the Senate Committee on Commerce and Labor
March 23, 2005
Page 2

THELMA CLARK (Silver Senator, Clark County Senatorial District 10, Nevada Silver Haired Legislative Forum):

The reason the Nevada Silver Haired Legislative Forum (NSHLF) requested this bill was because we could not find anything else in law that could be changed to address our issues for consumers. There is a real public perception that the power companies automatically get rate increases from the PUCN. The consumers do not understand that the PUCN has to ensure that the power companies remain fiscally solvent while keeping the consumers' best interests in mind. I have a hard time explaining this to consumers and there remains a negative public perception.

CHAIR HARDY:

What about your concern on the usage of hearing officers by the PUCN?

MS. CLARK:

I think that a commissioner is more capable than a hearing officer. The usage of hearing officers is negative public perception. If you could find a way to educate the public, it might help to change that perception.

In 2000-2001, when the high rate increases occurred, there were 50 to 75 people in attendance at each location for each hearing. Now you only have a few members of the public in attendance because the perception is that it will not make a difference.

CHAIR HARDY:

A number of people have had discussions with the chairman of the PUCN about the issue of the hearings and I think that may be resolved with a conversation between the two of you.

MS. CLARK:

I do not believe that the chairman is doing anything wrong, but the negative public perception is still there.

SENATOR TOWNSEND:

Perhaps we should look at this proposed bill from a different angle. If the people on the NSHLF are not going to take your word for the fact that it is the responsibility of the PUCN to be balanced and weigh the interests between consumers and shareholders and the health of the utility, perhaps the Office of the Attorney General, Bureau of Consumer Protection (BCP), should address any

of your senior groups you deem appropriate, and hold a workshop to help them understand the issues more appropriately.

Let us assume that this bill passed and the PUCN became a five-member commission. The next PUCN ruling that gives the utility an increase will make them question why, with the additional commissioners, a rate increase was granted. That is the problem with public perception. We need to help people better understand the tremendous complexity of the issues before the PUCN.

CHAIR HARDY:

I would recommend the full Committee send a letter to the BCP requesting public workshops and education.

MS. CLARK:

I have a concern that if this bill does not pass, then the public perception will be that the Legislature would not work for them.

SENATOR TOWNSEND:

There are times when perception matches reality and times when it does not. This is not a time when perception matches reality. There are many extenuating circumstances surrounding the PUCN and the utilities. If we get lucky enough with regard to the issue before the Federal Energy Regulatory Commission (FERC) and they rule in the Nevada Power Company's favor with what we believe to be appropriate, consumers will benefit. The PUCN has no control of the FERC and the Enron Corporation issues. I am not sure there is much more we can do to maintain a viable regulatory atmosphere. I would suggest you speak with Fred Schmidt because of his background and expertise with utilities. As a former utility commissioner in another state, he can provide insight on what it was like to have a bankrupt utility. A bankrupt utility is the worst thing that can happen to the public and consumers. Our Governor, while in the private sector, watched a Tucson, Arizona, utility go bankrupt. It was a nightmare to consumers.

We owe it to the public and consumers to educate them enough so they understand all of the issues to broaden their perceptions.

CHAIR HARDY:

I think we have established that aside from public perception, there is not a lot that changing to a five-member commission would accomplish.

MS. CLARK:

The NSHLF also has an issue with the hearing-officer mechanism within the PUCN for a rate hearing. They feel it is more appropriate for a commissioner to preside over the hearing.

DON SODERBERG (Chairman, Public Utilities Commission of Nevada):

In any regulatory system, whether it is utilities on the state or federal level or other industries where you have some level of a voting body that performs regulation and you need a quasi-judicial proceeding, hearing officers are employed. They conduct those proceedings, typically, because they have a legal background and are professionals. The actual draft decision is then brought before the appointed or elected regulators to make the decision. In Nevada and other smaller populated states, we have typically had a hybrid method where the appointed commissioners actually do conduct a majority of the hearings and some hearings are designated to a hearing officer based on some level of criteria. In Nevada, we had done that in some areas for quite a while. As some of the areas which we regulated contracted with federal preemption, for budgetary reasons, those hearing-officer positions were eliminated. Then there became a feeling from people a few Legislative Sessions ago who practiced before us and the industry that we should bring the hearing-officer mechanism back on certain levels of cases. We did so and proceeded cautiously. We took about three years to refine regulations to make sure it was a controlled situation. By statute, there are certain cases that under no circumstances are to be heard by a hearing officer. Those are generally large electric rate cases or cases over certain thresholds. Hearing officers are appointed the types of cases that are low on policy ramifications or typically things that are time-consuming that would take the sitting commissioners away from working on the larger energy cases and dealing with public-policy priorities. The types of cases that I assign to a hearing officer at the PUCN are generally smaller cases, a few hundred customers or less; these cases involve areas that are time-consuming to attend such as electric, gas and telecommunication cases that are generally uncontested or contested over a minute or detailed issue. Things that have to do with larger public-policy issues are not assigned to a hearing officer because there is a general consensus that those should be heard from the ground up by a commissioner who is appointed by an elected official.

CHAIR HARDY:

Even in the cases where the hearing officer would hear or adjudicate, are the policy issues always dealt with by the appointed commissioner?

Subcommittee of the Senate Committee on Commerce and Labor
March 23, 2005
Page 5

MR. SODERBERG:

That is correct. A hearing officer has no authority to make any decision except to rule on an evidentiary procedural matter. The actual decision of the case is voted upon by the commission.

MS. CLARK:

Could you eliminate the hearing-officer mechanism even if you did not go to a five-member commission?

MR. SODERBERG:

I would not recommend it. The limited use of hearing officers is working well and has allowed for consistency and focus within the PUCN.

CHAIR HARDY:

Public outreach from the BCP and the PUCN would be valuable and I recommend a formal letter be drafted to the Chairman of the PUCN and the Consumer Advocate for the BCP.

SENATOR TOWNSEND:

I think that is an excellent recommendation and the letter should be very specific to address the concerns that were brought to us today. Any concerns that the NSHLF, American Association of Retired Persons (AARP) or any other group can bring forward to the agencies to address the perception issues should be included.

CHAIR HARDY:

Ms. Clark, we will have them coordinate meeting times and places with you.

BARRY GOLD (American Association of Retired Persons, Nevada):

The AARP echoes the issues that Ms. Clark stated on public perception. Having an extra commissioner would tremendously help public perception. The AARP supports S.B. 171.

SENATOR TOWNSEND:

I appreciate the concern you reiterated with Ms. Clark's concern on public perception. If it was as easy as you make it out to be, the Committee may consider it. Given the associated cost of \$1.7 million, would all of the people who have a bad perception of the PUCN want to pick up the tab for the amount this bill will cost? The reality is that you do not get two additional

Subcommittee of the Senate Committee on Commerce and Labor
March 23, 2005
Page 6

commissioners for free. Public utility commissioners are highly trained, highly skilled individuals that do not grow on trees. I understand your perception problem, but \$1.7 million is a lot of money that probably will not fix that problem.

MR. GOLD:

I understand the complexity of the situation and all the things with which you have to deal.

CHAIR HARDY:

The meeting is now adjourned 9:47a.m.

RESPECTFULLY SUBMITTED:

Jeanine M. Wittenberg,
Committee Secretary

APPROVED BY:

Senator Warren B. Hardy II, Chair

DATE: _____