

SENATE BILL NO. 455—COMMITTEE ON COMMERCE AND LABOR

MARCH 29, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing transactions between eligible customers and providers of new electric resources. (BDR 58-1317)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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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 energy; revising provisions governing transactions between eligible customers and providers of new electric resources; authorizing eligible customers to acquire energy, capacity and ancillary services from existing electric resources under certain circumstances; granting eligible customers a temporary exemption from excise taxes on employee wages under certain circumstances; changing the requirements that certain eligible customers must satisfy before entering into transactions with providers 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:

Section 1. Chapter 704B of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. *“Date of commencement” means the date on which an eligible customer begins purchasing energy, capacity or ancillary services from a provider of new electric resources and, if needed, energy, capacity or ancillary services from an existing electric resource pursuant to section 4 of this act.*

Sec. 3. *“Existing electric resource” means any energy, capacity or ancillary services made available pursuant to an*



1 *agreement described in section 4 of this act from an existing*
2 *generation asset which is owned by an electric utility or any other*
3 *entity and which is not a new electric resource.*

4 **Sec. 4.** *If an electric utility has offered or granted rights with*
5 *regard to its transmission system to an eligible customer for the*
6 *delivery of energy, capacity or ancillary services from a provider of*
7 *new electric resources, the eligible customer may enter into*
8 *agreements with the electric utility or other entities, or any*
9 *combination thereof, to be provided with energy, capacity or*
10 *ancillary services from existing electric resources for that amount*
11 *of energy, capacity or ancillary services which the eligible*
12 *customer needs in excess of the amount available from the*
13 *provider under the rights offered or granted with regard to the*
14 *transmission system of the electric utility.*

15 **Sec. 5. 1.** *If the Commission approves a proposed*
16 *transaction between an eligible customer and a provider of new*
17 *electric resources, the Commission shall determine whether the*
18 *eligible customer will experience any rate inequity as a result of*
19 *the proposed transaction with the provider.*

20 **2.** *If the Commission determines that the eligible customer*
21 *will experience rate inequity as a result of the proposed*
22 *transaction with the provider, the Commission shall calculate the*
23 *amount of the rate inequity and divide that amount by the number*
24 *of calendar quarters, or portions thereof, that will occur during*
25 *the period of 3 years immediately following the date of*
26 *commencement.*

27 **3.** *For each calendar quarter, or portion thereof, that occurs*
28 *during the period of 3 years immediately following the date of*
29 *commencement, the eligible customer is entitled to an exemption*
30 *from the excise tax imposed pursuant NRS 363B.110 in the*
31 *amount calculated by the Commission pursuant to subsection 2. If*
32 *the amount of the exemption exceeds the amount of the excise tax*
33 *imposed for any calendar quarter, the excess amount may be*
34 *carried forward to one or more of the following calendar quarters*
35 *until the amount of the exemption is exhausted.*

36 **4.** *The Commission shall report the amount of the exemption*
37 *to the Department of Taxation so the Department may carry out*
38 *the provisions of section 13 of this act.*

39 **5.** *The Commission shall adopt regulations to carry out the*
40 *provisions of this section, including, without limitation,*
41 *regulations:*

42 *(a) Defining the term "rate inequity"; and*

43 *(b) Establishing the methods for calculating the amount of the*
44 *rate inequity, if any, that an eligible customer will experience as a*
45 *result of a proposed transaction with a provider.*



Sec. 6. NRS 704B.010 is hereby amended to read as follows:

704B.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 704B.020 to 704B.140, inclusive, *and sections 2 and 3 of this act* have the meanings ascribed to them in those sections.

Sec. 7. NRS 704B.310 is hereby amended to read as follows:

704B.310 1. An eligible customer that is purchasing bundled electric service for all or any part of its load from an electric utility shall not purchase energy, capacity or ancillary services from a provider of new electric resources *and, if needed, energy, capacity or ancillary services from existing electric resources pursuant to section 4 of this act* unless:

(a) The eligible customer files an application with the Commission not later than 180 days before the date ~~for which the eligible customer intends to begin purchasing energy, capacity or ancillary services from the provider,~~ *of commencement*, except that the Commission may allow the eligible customer to file the application within any shorter period that the Commission deems appropriate; and

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

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

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

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

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

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

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

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

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



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

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

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

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

10 6. In determining whether the proposed transaction will be
11 contrary to the public interest, the Commission shall consider,
12 without limitation:

13 (a) Whether the electric utility that has been providing electric
14 service to the eligible customer will be burdened by increased costs
15 as a result of the proposed transaction or whether any remaining
16 customer of the electric utility will pay increased costs for electric
17 service as a result of the proposed transaction;

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

21 (c) ~~Whether~~ *With the exception of any energy, capacity or*
22 *ancillary services that the eligible customer may need from*
23 *existing electric resources pursuant to section 4 of this act,*
24 *whether* the proposed transaction will add energy, capacity or
25 ancillary services to the supply in this State.

26 7. If the Commission approves the application of the eligible
27 customer:

28 (a) The ~~eligible customer shall not begin purchasing energy,~~
29 ~~capacity or ancillary services from the provider pursuant to the~~
30 ~~proposed transaction~~ *date of commencement may not be* sooner
31 than 180 days after the date on which the application was filed,
32 unless the Commission allows ~~the eligible customer to begin~~
33 ~~purchasing energy, capacity or ancillary services from the provider~~
34 ~~at~~ *an earlier date* ~~of commencement~~; and

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

39 (1) Must be fair and nondiscriminatory as between the
40 eligible customer and the remaining customers of the electric utility;
41 and

42 (2) Must include, without limitation:

43 (I) Payment by the eligible customer to the electric utility
44 of the eligible customer's load-share portion of any unrecovered
45 balance in the deferred accounts of the electric utility; and



(II) Payment by the eligible customer of the annual assessment and any other tax, fee or assessment required by NRS 704B.360.

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

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

(b) The eligible customer may begin purchasing energy, capacity or ancillary services from the provider pursuant to the proposed transaction ~~[]~~ *and, if needed, energy, capacity or ancillary services from existing electric resources pursuant to section 4 of this act.*

Sec. 8. NRS 704B.320 is hereby amended to read as follows:

704B.320 1. ~~[For eligible customers whose loads are in the service territory of an electric utility that primarily serves densely populated counties, the aggregate amount of energy that all such eligible customers purchase from providers of new electric resources before July 1, 2003, must not exceed 50 percent of the difference between the existing supply of energy generated in this State that is available to the electric utility and the existing demand for energy in this State that is consumed by the customers of the electric utility, as determined by the Commission.~~

~~— 2. — An eligible customer that is a nongovernmental commercial or industrial end use customer whose load is in the service territory of an electric utility that primarily serves densely populated counties shall not purchase energy, capacity or ancillary services from a provider of new electric resources unless, as~~ *As part of [the] any proposed transaction [, the] between an eligible customer [agrees to:* ~~— (a) Contract with the] and a provider of new electric resources:~~

(a) The provider shall agree to participate in contract negotiations, if such negotiations are requested by the electric utility that has been providing electric service to the eligible customer, for the electric utility to purchase:

(1) An additional amount of energy *from the provider* which is equal to 10 percent of the total amount of energy that *the provider is providing to* the eligible customer ~~[is purchasing for its own use]~~ under the proposed transaction and which is purchased at the ~~[same price.]~~ *current prevailing price for such energy and under equivalent* terms and conditions as the energy purchased by the eligible customer ~~[for its own use;]~~ *from the provider;* and

(2) The capacity and ancillary services associated with the additional amount of energy at the ~~[same price.]~~ *current prevailing price for such capacity and ancillary services and under*



1 *equivalent* terms and conditions as the capacity and ancillary
2 services purchased by the eligible customer ~~for its own use; and~~

3 ~~—(b) Offers to assign the rights to the~~ *from the provider.*

4 *(b) If the electric utility believes that the purchase of the*
5 *additional amount of energy, capacity and ancillary services from*
6 *the provider is in the best interest of the remaining customers of*
7 *the electric utility, the provider shall offer a* contract to the electric
8 utility *for the additional amount of energy, capacity and ancillary*
9 *services* for use by the remaining customers of the electric utility.

10 ~~[3. If an eligible customer is subject to the provisions of~~
11 ~~subsection 2, the eligible customer shall include with its application~~
12 ~~filed pursuant to NRS 704B-310]~~

13 *2. If the electric utility is offered a contract pursuant to*
14 *subsection 1, the electric utility shall file with the Commission,*
15 *before the date of commencement,* all information concerning
16 the contract ~~offered to the electric utility~~ that is necessary for the
17 Commission to determine whether it is in the best interest of the
18 remaining customers of the electric utility for the electric utility to
19 ~~accept the rights to~~ *enter into* the contract. Such information must
20 include, without limitation, the amount of the energy and capacity to
21 be purchased under the contract, the price of the energy, capacity
22 and ancillary services and the duration of the contract.

23 ~~[4.]~~ *3.* Notwithstanding any specific statute to the contrary,
24 information concerning the price of the energy, capacity and
25 ancillary services and any other terms or conditions of the contract
26 that the Commission determines are commercially sensitive:

27 (a) Must not be disclosed by the Commission except to the
28 Regulatory Operations Staff of the Commission, the Consumer's
29 Advocate and his staff and the electric utility for the purposes of
30 carrying out the provisions of this section; and

31 (b) Shall be deemed to be confidential for all other purposes,
32 and the Commission shall take such actions as are necessary to
33 protect the confidentiality of such information.

34 ~~[5.]~~ *4.* If the Commission determines that the contract:

35 (a) Is not in the best interest of the remaining customers of the
36 electric utility, the electric utility shall not ~~accept the rights to the~~
37 ~~contract, and the eligible customer is entitled to all rights to~~ *enter*
38 *into* the contract.

39 (b) Is in the best interest of the remaining customers of the
40 electric utility, the electric utility shall ~~accept the rights to~~ *enter*
41 *into* the contract. ~~[and the eligible customer shall assign all rights to~~
42 ~~the contract to the electric utility.]~~ A contract that is ~~assigned to~~
43 *entered into by* the electric utility pursuant to this paragraph shall be
44 deemed to be an approved part of the resource plan of the electric
45 utility and a prudent investment, and the electric utility may recover



1 all costs for the energy, capacity and ancillary services acquired
2 pursuant to the contract. To the extent practicable, the Commission
3 shall take actions to ensure that the electric utility uses the energy,
4 capacity and ancillary services acquired pursuant to each such
5 contract only for the benefit of the remaining customers of the
6 electric utility that are not eligible customers, with a preference for
7 the remaining customers of the electric utility that are residential
8 customers with small loads.

9 ~~[6.]~~ 5. The provisions of this section do not exempt the electric
10 utility, in whole or in part, from the requirements imposed on the
11 electric utility pursuant to NRS 704.7801 to 704.7828, inclusive, to
12 comply with its portfolio standard for renewable energy and energy
13 from a qualified energy recovery process. The Commission shall not
14 take any actions pursuant to this section that conflict with or
15 diminish those requirements.

16 **Sec. 9.** NRS 704B.325 is hereby amended to read as follows:

17 704B.325 1. ~~[A.]~~ *If an* eligible customer ~~[that]~~ is purchasing
18 energy, capacity or ancillary services from a provider of new
19 electric resources *or, if needed, energy, capacity or ancillary*
20 *services from existing electric resources pursuant to section 4 of*
21 *this act, the eligible customer* may purchase energy, capacity or
22 ancillary services from an alternative provider without obtaining
23 the approval of the Commission if the terms and conditions of the
24 transaction with the alternative provider, other than the price of the
25 energy, capacity or ancillary services, conform to the terms and
26 conditions of the transaction that was originally approved by the
27 Commission with respect to the eligible customer.

28 2. If any terms and conditions of the transaction with the
29 alternative provider, other than the price of the energy, capacity or
30 ancillary services, do not conform to the terms and conditions of the
31 transaction that was originally approved by the Commission with
32 respect to the eligible customer, the eligible customer must obtain
33 approval from the Commission before those nonconforming terms
34 and conditions are enforceable.

35 3. If the eligible customer files a request with the Commission
36 for approval of any nonconforming terms and conditions, the
37 Commission shall review and make a determination concerning the
38 request on an expedited basis.

39 4. Notwithstanding any specific statute to the contrary,
40 information concerning any terms and conditions of the transaction
41 with the alternative provider that the Commission determines are
42 commercially sensitive:

43 (a) Must not be disclosed by the Commission except to the
44 Regulatory Operations Staff of the Commission, the Consumer's



1 Advocate and his staff and the affected electric utility for the
2 purposes of carrying out the provisions of this section; and

3 (b) Shall be deemed to be confidential for all other purposes,
4 and the Commission shall take such actions as are necessary to
5 protect the confidentiality of such information.

6 **Sec. 10.** NRS 704B.330 is hereby amended to read as follows:

7 704B.330 1. If an eligible customer is purchasing energy,
8 capacity or ancillary services from a provider of new electric
9 resources ~~or~~ *or, if needed, energy, capacity or ancillary services*
10 *from existing electric resources pursuant to section 4 of this act,*
11 the eligible customer may, pursuant to tariffs approved by the
12 Commission, replace some or all, but not less than all at a single
13 time-of-use meter, of the energy, capacity or ancillary services
14 purchased from the provider of new electric resources with energy,
15 capacity or ancillary services purchased from an electric utility.

16 2. The tariffs approved by the Commission pursuant to this
17 section must include, without limitation:

18 (a) Provisions requiring the eligible customer to pay any
19 incremental costs that are incurred by the electric utility to provide
20 energy to the eligible customer;

21 (b) Provisions requiring the eligible customer to provide
22 reasonable and adequate notice to the electric utility;

23 (c) Provisions establishing minimum terms during which the
24 eligible customer must continue to purchase energy from the electric
25 utility; and

26 (d) Any other provisions that the Commission determines are
27 necessary and reasonable to carry out and enforce the provisions of
28 this section.

29 **Sec. 11.** NRS 704B.350 is hereby amended to read as follows:

30 704B.350 1. An electric utility shall provide all transmission,
31 distribution, metering and other components of electric service that
32 are necessary for ~~and~~ :

33 (a) A provider of new electric resources to sell energy, capacity
34 ~~and~~ *or* ancillary services to an eligible customer pursuant to the
35 provisions of this chapter ~~and~~ ; and

36 (b) *An existing electric resource to deliver energy, capacity or*
37 *ancillary services to an eligible customer pursuant to the*
38 *provisions of this chapter.*

39 ➤ An electric utility shall provide each such component of electric
40 service pursuant to the tariffs and service agreements filed with and
41 approved by the appropriate regulatory authorities having
42 jurisdiction over each such component of electric service.

43 2. For each such component of electric service that is within
44 the jurisdiction of the Commission, the Commission shall establish
45 just, reasonable and nondiscriminatory rates.



3. The provisions of this chapter do not ~~enlarge or expand~~
*prevent an electric utility from lawfully extending to an eligible
customer expanded rights with regard to the transmission system
of the electric utility that are in addition to* any existing rights *the
eligible customer has* under federal law or ~~create~~ *from lawfully
creating* any other rights with regard to the transmission system of
the electric utility ~~in favor of an eligible customer.~~

4. When providing service pursuant to this chapter, an electric
utility is subject to all applicable statutes and regulations of this
State and the United States.

Sec. 12. NRS 704B.360 is hereby amended to read as follows:

704B.360 1. ~~HH~~ *Except as otherwise provided in section 5
of this act, if* the Commission approves an application that is filed
pursuant to NRS 704B.310 or a request that is filed pursuant to NRS
704B.325, the Commission shall order the eligible customer to:

(a) Pay its share of the annual assessment levied pursuant to
NRS 704.033 to the Commission and the Bureau of Consumer
Protection in the Office of the Attorney General;

(b) Pay any other tax, fee or assessment that would be due a
governmental entity had the eligible customer continued to purchase
energy, capacity or ancillary services from the electric utility; and

(c) Remit any tax, fee or assessment collected pursuant to
paragraph (b) to the applicable governmental entity.

2. Each person or entity that is responsible for billing an
eligible customer shall ensure that the amount which the eligible
customer must pay pursuant to paragraph (b) of subsection 1 is set
forth as a separate item or entry on each bill submitted to the eligible
customer.

3. If an eligible customer to whom an order is issued pursuant
to subsection 1 thereafter purchases energy, capacity or ancillary
services from an alternative provider pursuant to NRS 704B.325
without obtaining the approval of the Commission, the order issued
pursuant to subsection 1 continues to apply to the eligible customer.

4. Upon petition by a governmental entity to which a tax, fee or
assessment must be remitted pursuant to this section, the
Commission may limit, suspend or revoke any order issued to an
eligible customer by the Commission pursuant to NRS 704B.310
and 704B.320 if the Commission, after providing an appropriate
notice and hearing, determines that the eligible customer has failed to
pay the tax, fee or assessment.

Sec. 13. Chapter 363B of NRS is hereby amended by adding
thereto a new section to read as follows:

*If the Public Utilities Commission of Nevada has reported to
the Department pursuant to section 5 of this act that an eligible
customer is entitled to an exemption from the excise tax imposed*



- 1 *pursuant NRS 363B.110, the Department shall apply the reported*
- 2 *exemption, in the manner set forth in section 5 of this act, to the*
- 3 *amount of tax otherwise due from the eligible customer.*



