# MINUTES OF THE
# SENATE COMMITTEE ON ENERGY, INFRASTRUCTURE AND TRANSPORTATION

## Seventy-fifth Session
## May 13, 2009

The Senate Committee on Energy, Infrastructure and Transportation was called to order by Chair Michael A. Schneider at 8:41 a.m. on Wednesday, May 13, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Michael A. Schneider, Chair
Senator Maggie Carlton, Vice Chair
Senator John J. Lee
Senator Shirley A. Breeden
Senator Randolph Townsend
Senator Barbara K. Cegavske
Senator Dennis Nolan

**GUEST LEGISLATORS PRESENT:**

Assemblyman Marcus Conklin, Assembly District No. 37

**STAFF MEMBERS PRESENT:**

Matt Nichols, Committee Counsel
Scott Young, Committee Policy Analyst
Patricia Devereux, Committee Secretary

**OTHERS PRESENT:**

Joe Johnson, Sierra Club
Judy Stokey, Director, Governmental Affairs, NV Energy, Inc.
Dr. Hatice Gecol, Ph.D., Director, State Office of Energy, Office of the Governor

CHAIR SCHNEIDER:
We will open the hearing on Assembly Bill (A.B.) 387. We have a presenter, Assemblyman Marcus Conklin, here to discuss the mock-up of his proposed amendment, and we will take up the bill again on May 15.

**ASSEMBLY BILL 387 (1st Reprint)**: Makes various changes to provisions concerning energy resources. (BDR 58-223)

ASSEMBLYMAN MARCUS CONKLIN (Assembly District No. 37):
I will discuss the significant changes I have proposed for A.B. 387 (Exhibit C, original is on file in the Research Library). Most of the substantive changes are in *Nevada Revised Statutes* (NRS) 704B, on page 2 of the mock-up. The Public Utilities Commission of Nevada (PUCN) had concerns that there was no incentive for customers to leave the electrical grid by complying with NRS 704B and the renewable-portfolio standard (RPS).

The original bill said that when customers left the grid, they would have to honor a flat RPS-compliance-rate schedule in perpetuity, based on the RPS at that time. If you left and the rate was 9 percent of the load, it would stay at that. If in five years you said you wanted to double your capacity, the old capacity would meet the new RPS, but remain flat. If you came back in 10 years and the RPS was 15, when you applied for doubled capacity, the entire load had to comply with the 15 percent. That gave a certain amount of assurance to people developing power in small amounts that their investment was secure.

The proposed amendment also deals with competition between utilities and those who are not utilities in buying renewable-energy credits (RECs). That competition may drive up the price of RECs, which is not necessarily advantageous to ratepayers.

As per the PUCN, we have changed this to say people leaving the grid must comply with the existing RPS-compliance schedule, which currently caps out at 15 percent by 2015. If a new RPS schedule is passed this Session, that will become the new standard. This addresses the PUCN's issue, because if anyone leaves the grid after this, his RPS-compliance cap will be significantly increased.

The PUCN is comfortable with the proposed language. The deletions are merely to delineate the flat-line cap sections. Starting on page 2, line 35, the

amendment says, “Except as otherwise provided in subsection 2, the portfolio standard must require the provider of new electric resources to generate, acquire or save electricity from portfolio energy systems or efficiency measures in an amount that is ...”—then on page 3, line 19—“consistent with the renewable portfolio standard schedule that is in effect at the time of the Commission’s order pursuant to NRS 704B.310 or 704B.325.” That is the order to leave or be a new provider of electric resources.

SENATOR CARLTON:
The original proposal was if a customer leaves the grid for five years then wants to change his load, he has to comply with his initial load schedule. What is the difference between that and your new proposal?

ASSEMBLYMAN CONKLIN:
In this version, if a customer leaves and the RPS schedule is 10 percent, if he comes back on the grid in 2 years and the RPS is 12, he must comply with 12.

SENATOR CARLTON:
Are we not allowing the RPS to stay stable?

ASSEMBLYMAN CONKLIN:
Correct, customers have to grow with it. However, the certainty customers do have is the RPS schedule will not change, even though the Legislature is apt to eventually change the RPS. Private renewables customers must comply with the existing RPS just like any other utility. Small purchasers of electricity have the certainty that their near-term investments will be protected.

SENATOR CARLTON:
Different people will leave the grid at different points, and different regulatory schemes may apply to each group. The original provision was more logical, in that if a customer comes back to the grid, he knows the RPS schedule exactly. Now, depending upon when a customer leaves over the next ten years, there will be different RPS schedules for everyone.

ASSEMBLYMAN CONKLIN:
Yes, except there would be a different number for all customers who leave. The intent of the amendment is to make it less attractive for people to leave; that costs retail ratepayers who cannot leave the grid more every time someone leaves it. We need to create very specific reasons for the need to leave the grid;

otherwise, there is no point in having a monopoly market or ratepayer protection through the PUCN, and we should just deregulate the energy free market. When we did the latter before, it was not successful.

SENATOR CARLTON:
At one time we were trying to incentivize customers to leave the grid so there would be more power for everyone else. We wanted the more sophisticated buyers off the grid.

ASSEMBLYMAN CONKLIN:
State Office of Energy Director Dr. Hatice Gecol asked me to make some language changes to the amendment on page 4, lines 37 to 39; and page 5, lines 26 and 27. Fred Schmidt's amendment is on page 8, lines 9 to 30. The RPS schedule on page 9 for 2020 to 2024 was changed to 22 percent. On page 9, lines 30 to 33, we added some conforming language on the RPS.

On page 12, lines 40 to 45, and on page 13, lines 1 to 7, are substantive changes outlining the authority of the PUCN to carry forward excess RECs and deficiencies. This is permissive in the sense a deficiency can be carried forward and/or a penalty applied. This may be unpopular, but the flexibility is necessary. The RPS should mean something, and the fact that you can carry a deficiency forward can also be a form of penalty. The deletions beginning on page 14 regarding NRS 704B correspond to the changes I covered at the beginning of this hearing.

One other change may appear to be confusing. On page 11, lines 26 to 27, is a "drafter's choice" which says, "The provisions of this section do not apply to a provider of new electric resources as defined in NRS 704B.130," which is the RPS. This is a flip-flop of the language on grid-leaving compliance. We have taken that out of NRS 704, then in NRS 704B clearly state the provisions of NRS 704 must be complied with when customers leave the grid. The PUCN prefers this language.

CHAIR SCHNEIDER:
Mr. Nichols, does the new language mean this?

MATT NICHOLS (Committee Counsel):
> I'm not going to contradict the [Assembly Committee on Commerce and Labor] Chairman [Conklin]. I'll have to take a look

at it. I mean, I would hope that the original language was vetted by our office before it went out and was consistent with the Chairman's intent in crafting the bill. So, I think his interpretation's correct.

SENATOR TOWNSEND:

I have a question regarding your language of the original bill on page 2. What is your thinking with regard to having the PUC[N] do this, establish this portfolio standard schedule on line 32, as opposed to the Legislature putting it in statute, as we have for those that remain? Is there a particular reason to do that?

ASSEMBLYMAN CONKLIN:

Mr. Chairman, again, just drafting, this should be very clear and ... understand also that this is a mock-up, so I'm sure Legal [the Legislative Counsel Bureau, Legal Division] is going to get a chance to re-vet this. But in one of our discussions last night, I proposed that either on line 32 or lines 19 through 21, that there's a link back to [NRS] 704 and the renewable-portfolio standard in [NRS] 704 at the time of departure. They are not establishing a new schedule; what they are doing is establishing that the schedule exists at that time is the schedule that you will follow.

SENATOR TOWNSEND:

"I think you understand the purpose of my question: I want to make sure that there's no—"

ASSEMBLYMAN CONKLIN:

"It seems to be clear."

SENATOR TOWNSEND:

—there's no wriggle room for those who may want to leave or have left on what the intent of the Legislature is. It was important when we did that initially; it's become more important now as we try to extricate ourselves from a terrible economic situation. And this is an opportunity to create that economy that's been talked about at great length, so ...

The second question I have for you has to do with ... I thought you made a very clear point on page[s] ... 12 and 13 with regard to if the ... on page 12, if the provider complies with the portfolio standard for any calendar year, you're going to allow the excess to be carried forward. And then you've gone on to say that you can carry forward a deficiency.

The question I have—it may be more semantics than anything—I want to make sure I fully understand your intent. On line 6, it says, "... and may impose." Now, I don't know whether that's intended to be like a double penalty? The problem that those individuals have is that we've found over time you can't meet it every year on the button. Because in many cases, whether it's an institutional-sized event that comes on in one year then there's nothing in the second year. So, we looked at, I believe, a rolling average of three years or something like that.

There's also the other problem of the smaller projects may not add up in one year, but may add up in two years to meet a standard. So, we didn't want to penalize a provider who's in good faith—and I think you made the statement through—that they're making a good-faith effort, they're marching towards the goal, but they may not meet it on a yearly basis. They may meet it at the end of a two-year, three-year period.

So, I don't know—and we've tried to do that because the PUC[N] was not ... and the BCP [Bureau of Consumer Protection] were in concert they don't want to penalize the company when they couldn't do something, even though it was in the law because the ratepayer pays the penalty. So, we were ... I want to make sure I understand this ... the way I read it is, discretionary. But I don't know whether you want to penalize them if in fact they carry a deficiency forward, but over that rolling average, they still meet the standard. I want to make sure I'm clear on what your intent is.

ASSEMBLYMAN CONKLIN:

The intent of this is simply for flexibility. You know, I am not a PUC[N] Commissioner, don't pretend to be one, but ... Here's the way I look at this, Senator Townsend: that if I put in here it's one

or the other, I've narrowed the decision opportunities that the PUC[N] has, particularly if at some point in time the cost of a REC becomes less than the cost of a penalty.

So, the way I read this is that the PUC[N] is going to adopt some regulations that give them a policy to deal with deficiencies, and we will review those regulations. And in that, because we've made this permissive, they could say, "We're not going to fine in cases that you can do this. If you meet the three-year rolling average deficiency and are on schedule to meet it, we won't fine you. We'll allow your deficiency to go forward. If you have shown no good faith and you're not meeting it, we're going to make you do the deficiency and fine you."

And I think what it does is it broadens the range of the ability to deal with the issue, but it also still keeps enough of a[n] ... authority in there that if you want to act in bad faith, if I separate these out, I have tough choices to make. And now the penalty could be worse, but it also could be far less, too. I mean, there could be no penalty as a result of multiple deficiencies. If that's what the market bears, as long as you're making progress to generating.

I mean, let's face it, we are facing, as I said in my initial testimony, a 50-percent need in excess supply by 2010 nationally over what is going to be demanded on renewable energy in this Country. Fifty percent; that is, we are not going to meet that for many years. So, we know we are facing that, and deficiency is likely, that may mean the utility may choose, "Hey, I'm going to develop some [renewables] exclusively for my purpose." That development's five years out; that's not going to happen overnight.

... if we know we're making that progress, this allows that kind of flexibility should it be necessary as long as the PUC[N] determines that they're still meeting the requirements of the policy and showing good faith to get there. So, it really is a double-edged sword. And I appreciate that question, but I happen to think the "and" is an "or." It reads as an "and," but it could be "and/or"

because of the word “may,” which is simply permissive and does not say “shall” or “must.”

JOE JOHNSON (Sierra Club):
The proposed amendments satisfy the concerns I expressed in the original hearing on A.B. 387. We support the bill.

SENATOR TOWNSEND:

[Assemblyman Conklin,] I want to get on the record in terms of your thoughts, and this Committee’s understanding of them, with regard to the issue of good faith. When a provider is putting in their IRP [integrated resource plan]—“This is our plan for the next, 5, 10 and 20 years with regard to meeting that standard”—that the PUC[N] in its deliberations, the way I read the statute—and you tell me if you have a different view because it’s important that both Houses see the same thing—that they are allowed to say for purposes of this section with regard to carry forward either excess or deficiencies. They have in ... their plan a 100-megawatt (MW) whatever—wind, solar, biomass, doesn’t matter—in year 3. So we will roll that on the assumption they will meet that because they put it in their plan.

Now, what do you believe is their flexibility if the provider comes back and says, “You know, four years ago, that was financially viable. It’s now two years out; as we went to bid, it’s no longer financially viable at 100 MW”? And we’ll just pick solar, “And we’re now going to shift over and do 200 MW of wind, and it’s going to take this much money, this is ... and it’s only going to be for peak for this particular ...” Do you believe, the way you read the statute, there’s enough flexibility for the Commission to say, "That’s good enough with your amended IRP. So that we’re not going to ... we’re going to follow your progress, we’re going to hold you to the new progress because you’ve made a change”? Do you think that’s viable, so there isn’t this absolute, max, hard-line, “That’s what you said. We don’t care if conditions have changed”?

Do you think there’s enough flexibility in the statutes, but more importantly in the regs, that allow them to accommodate that, so we’re not just going around fining people that aren’t ... you know.

We want to hold them to a standard, and we want to make sure they know there's a penalty there. But the flip side of that is we also ... market conditions change. That's why we allow them to amend their plan. Do you think the flexibility—

ASSEMBLYMAN CONKLIN:

I think ... there's ample flexibility in here for this. As a matter of fact, I would argue now with it being clear in statute. Currently, they do some of these things, but there's no statutory authority really to do it. Now we're putting it in statute, and saying, "You know what? This is a good policy. The only thing we're asking in return is that you draft some regs into this policy, and we want to take a look at them and we want to know." And you know how hard it is to get this stuff forwarded; it can take years to put forth a good piece of legislation.

And if we really want to address it now, my feeling is the only way we can do it is by requiring regs to deal with these issues because we're not going to sit here and debate for the next two weeks, even if we could do it all day long and come up with something without some potential grave errors in it and not have a chance to fix it in two years.

So, I do think there is ample opportunity here. And I think, you know, there's a balance to be struck with the renewable-portfolio standard. That balance is we collectively want a better world. We want a better place. We want investment, development in ... green energy decreases our reliance on fossil fuels and other things that will run out and more reliant on things that have a greater lifespan, leave the world a better place for our children.

But we also have to be realistic of the free-market conditions that exist out there associated with them. And I think that's to your point: ... that plan may include purchase, it may include ... purchase of renewable RECs on the open market, it may include some development—I'm sure there's going to be a blend of things in that plan. And the market is changing such right now that what you had planned for two years from now could look completely different.

> And I guess, from my point of view, as long as you have a backup plan, as long as when you come to me and say, "Hey, this is no longer viable, and here's why. Here's what it's going to cost, or here's the downside, and ... is no longer less than the upside, but we have an alternative plan, and here's how we want to deal with that," I think you're showing good faith. Now, whether they choose to create a deficiency out of that or choose to deal with it in some other way, we've also created the flexibility in here for them, for the PUC[N] to have flexibility in how they answer those, as well. And so ... I think it's incredibly flexible.
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> However, the one thing I would want to say is the standard is still the standard. I mean, I think you said that well, too. We want compliance with the standard; we don't want a false standard out there. We want a real standard, but it's a real standard in a changing world where when it used to be just us. It's actually probably the easiest it was to meet, when it was just us. The more people that come on the market, the more demand outstrips supply, the harder this is going to be. And there needs to be some flexibility in there.

SENATOR CARLTON:
This is to Senator Townsend or Assemblyman Conklin: you are talking about the flexibility and fining capability. We have had a RPS for many years, and it has had a hard time being met. There have never been any fines issued for not meeting the RPS, so there should not be a fear factor out there about fining. Is it true the PUCN has not yet utilized that ability to penalize an entity for not meeting the RPS?

ASSEMBLYMAN CONKLIN:
There has been one fine issued, but it was not like it was $1 billion. The fine is not necessarily something of which people want to be afraid.

SENATOR TOWNSEND:
Four years ago, when the Committee realized we just were not going to be able to get there, we dealt with what was about to become a finable incident by allowing and changing the policy to include energy efficiency as a way to meet the RPS. There is no point in having Chief Deputy Attorney General Eric Witkoski say it was unnecessary, and now he has to deal with it in a rate

case because it was passed on. The Committee looked at the goal of cutting energy usage as much as we could in order to help ratepayers. So, we put efficiency into the RPS.

SENATOR CARLTON:
I am concerned that the utility can pass fines on to ratepayers. The ratepayers have no choice; the utility is making the choice. Is that correct?

CHAIR SCHNEIDER:
Fines are supposed to go on to the shareholders.

SENATOR CARLTON:
Then we need to have an investigation because I thought those fines could be built into the next rate case.

ASSEMBLYMAN CONKLIN:
The intent of the statute basically says a utility cannot pass that fine on to ratepayers. A utility is a privately held corporation in a monopoly market. It is going to make a profit and find a way if there is an increase to costs—a fine—to generate enough revenue to cover it. Eventually, that will have to be borne by the ratepayer. I am not suggesting the fine is in the rate case, but it is not free money. Fines have been infrequent and rare, and this is not the most important issue in front of us.

SENATOR CARLTON:
With this flexibility and the new market world, I need to feel comfortable with this Committee's decisions.

MR. NICHOLS:
> The utility is not allowed to recover any portion of the fine from its retail customers or in a rate case. The statute specifically provides that they cannot, yes. That's in what has been renumbered as subsection 6 of the section [of the proposed amendment] that we're talking about. This is on page 13 of Assemblyman Conklin's mock-up: ... "If the Commission imposes an administrative fine, the utility cannot recover in a rate case or from the retail customers ..."

CHAIR SCHNEIDER:
There was a fine issued to Barrick Gold Corporation in 2006.

SENATOR TOWNSEND:
The thing that this Committee and Assemblyman Conklin's Assembly Committee on Commerce and Labor need to focus on is how do we incentivize utilities to meet the RPS, as opposed to penalizing them for not meeting it? NV Energy, Inc. President and Chief Executive Office Michael Yackira sees the RPS as a floor, not a ceiling. He wants to substantially exceed the RPS because he understands it is the right thing to do for the customers and shareholders. I do not disagree with the fines, but the incumbent utility and anyone who leaves the grid needs to know the rules.

ASSEMBLYMAN CONKLIN:
The flexibility will also encourage in-state renewables development because if utilities must meet the RPS today, they will beg, borrow and steal to do so. As the market becomes more compressed due to larger demands and an inadequate supply, it is like chasing your tail. If a utility is developing 25 MW and decides it can carry a deficiency for 2 years while it increases to 100 MW or helps another company develop, it can make it up when the plant goes online. It would then have surplus RECs to bank, versus "nickel-and-diming" RECS year after year to try to keep up with the RPS.

JUDY STOKEY (Director, Governmental Affairs, NV Energy, Inc.):
It is indeed in statute that a utility cannot pass any fines it receives on to ratepayers. Customers who leave the grid must adhere to the same standards. NV Energy has not been asked to pay a fine because it has always been able to substantiate it has done everything it can to meet the RPS, and the PUCN has agreed with that. NV Energy achieved the RPS this year. We agree flexibility is needed because projects come online later than anticipated, often through no fault of their own.

I was confused about the RPS schedule created by the PUCN. We want to make sure the language is very clear that the schedule is in statute at the time. We do not know if Legislators need to define "portfolio standard schedule." I agree with Assemblyman Conklin on what that schedule needs to be.

CHAIR SCHNEIDER:
We do need to clear up the definition of the RPS schedule. Senator Townsend, would you like to get your understanding of it on the record?

SENATOR TOWNSEND:
As per the language in the proposed amendment and Assemblyman Conklin's statements, we are quite clear on the definition. If you look at page 2, lines 31 and 32 of the amendment, Ms. Stokey is saying we must make sure it is clear "the Commission must establish in the order a portfolio standard schedule" that is in statute.

MS. STOKEY:
When NV Energy builds transmission lines specifically for certain renewables projects, we want to make sure the part of the bill that gives us the authority to build and collect on them is the "used and useful" language. The transmission line might not be fully used and useful at the time, and we want to ensure we can still collect reasonable costs for those renewables.

SENATOR TOWNSEND:
Has there ever been a transmission line in Nevada that was fully subscribed at the time it was built? I do not believe so. That does not mean your concern is illegitimate, but we tend to gloss over that fact, particularly with regard to renewables.

If a line is built to accommodate new load, and distribution components of it reach into renewable zones, not all lines will be built by then. According to the proposed amendment, any regulated entity that asks for recovery costs should be penalized if the line is not fully subscribed when completed. Is this your concern?

MS. STOKEY:
Exactly. As for the penalties, statute already says the PUCN allows us to carry forward excesses and can penalize us. This amendment makes the penalty harsher; however, as we have done everything we can to adhere to the RPS, it need not be that stringent.

CHAIR SCHNEIDER:
Which portion of the amendment makes the penalty harsher?

SENATOR TOWNSEND:
It is on the top of page 13, starting on line 10.

DR. HATICE GECOL, Ph.D. (Director, State Office of Energy, Office of the Governor):
We have worked with Assemblyman Conklin on this amendment, and we support it.

CHAIR SCHNEIDER:
I would like the Committee to review this information, and we will return to the bill on May 15. We will close the hearing on A.B. 387.

A new issue with Senate Bill (S.B.) 358 has developed after we had passed it on concerning the funding of Dr. Gecol's Office. Mr. Nichols, could you please review that for us?

MR. NICHOLS:
> It came to our attention after the Committee voted to amend and do pass S.B. 358 yesterday that the Energy Office's funding from the U.S. Department of Energy—the non-stimulus money—that they receive every year is based on a formula that at least in part requires a matching amount of funding from the State. And those requirements were waived for the receipt of the stimulus money. But for their ongoing funding from the Department of Energy, they're required to get a certain portion of State matching money.
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> Because of the way the amendment to [S.B.] 358 was drafted, the Department of Energy is not going to receive anything from the State for the next two years. Beginning in 2011, the mill-tax assessment will begin to cover the expenses of the ... Director's Office, but until then, there would not be any State matching amount. So, there was concern from Dr. Gecol that this would jeopardize her federal funding for ongoing operations.
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> In addition, there are some competitive grants that the Energy Office applies for that require sometimes as much as a 50-percent matching amount from the State. And, again, for the next two years, because there is no State money that could be used to

match those amounts, it would be difficult for her to apply for and obtain those competitive grants.

And not to confuse the issue further, but we also learned that the portion of the stimulus money that is set aside for administrative expenses has to be used for programs, projects and employees who work on stimulus plan-approved energy projects and programs. It's not intended to supplement funding for state entities—I'm sorry, to supplant it, rather—it is to supplement state funding. To get approval for any of that administrative set-aside, the new renewable-energy and energy-efficiency authority would have to demonstrate that the money we're receiving through the stimulus plan is used for stimulus-plan projects. So, it complicates things a little bit. I don't think it could be used to fully fund the authority.

If I may offer something for your consideration, and that would be to change the effective date of the provision in the amendment that allows for the mill assessment to be used to fund the Energy Office and the authority to go into effect upon passage and approval, and that the amount of the mill assessment available to either of those entities would have to be approved by the IFC [Interim Finance Committee]. So that the Energy Commissioner or the Director would have to go before the IFC and explain, "These are the amounts that I need to fund my Office that can't be met through stimulus money, or that we must demonstrate a State matching amount so that we can receive federal money." And then the IFC could consider those presentations and then make a decision based upon it.

CHAIR SCHNEIDER:
We would need to adjust the amendment we passed yesterday. If the Committee is comfortable with that, we could have Mr. Nichols adjust it. The bill will come back to us for review anyhow.

SENATOR TOWNSEND MOVED TO REVIEW THE AMENDMENT TO S.B. 358 AFTER MR. NICHOLS ADJUSTS IT, BASED ON THE NEW INFORMATION ON FUNDING FOR THE OFFICE OF ENERGY AND RENEWABLE ENERGY AND ENERGY-EFFICIENCY AUTHORITY

REGARDING REQUIREMENTS OF THE U.S. DEPARTMENT OF ENERGY AND FEDERAL STIMULUS PACKAGE.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CARLTON WAS ABSENT FOR THE VOTE.)

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CHAIR SCHNEIDER:
The Office of Energy's budget was closed a week ago in the Senate Committee on Finance. Seeing no other business before the Senate Committee on Energy, Infrastructure and Transportation, I adjourn this meeting at 9:35 a.m.

RESPECTFULLY SUBMITTED:

_____
Patricia Devereux,
Committee Secretary

APPROVED BY:

_____
Senator Michael A. Schneider, Chair

DATE: _____