

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY**

**Seventy-Eighth Session
February 11, 2015**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair James A. Settelmeyer at 8:01 a.m. on Wednesday, February 11, 2015, 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 in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator James A. Settelmeyer, Chair
Senator Patricia Farley, Vice Chair
Senator Joe P. Hardy
Senator Mark A. Manendo
Senator Kelvin Atkinson
Senator Pat Spearman

COMMITTEE MEMBERS ABSENT:

Senator Becky Harris (Excused)

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Dan Yu, Counsel
Patricia Devereux, Committee Secretary

OTHERS PRESENT:

Donald J. Lomoljo, Utilities Hearings Officer, Public Utilities Commission of Nevada
Judy Stokey, NV Energy
Dan Jacobsen, Technical Staff Manager, Bureau of Consumer Protection, Office of the Attorney General
Mike Eifert, Executive Director, Nevada Telecommunications Association
Randy J. Brown, CPA, AT&T
Kelly Martinez, City of Las Vegas
Robert Ostrovsky, Cox Communications

Senate Committee on Commerce, Labor and Energy
February 11, 2015
Page 2

Debra Gallo, Southwest Gas Corporation
Brian Reeder, Nevada Chapter, The Associated General Contractors of America,
Inc.

Chair Settlemeyer:

We will open the hearing on Senate Bill (S.B.) 86.

SENATE BILL 86: Revises provisions governing pipeline and subsurface safety.
(BDR 58-347)

Donald J. Lomoljo (Utilities Hearings Officer, Public Utilities Commission of Nevada):

The Public Utilities Commission of Nevada (PUCN) has certain safety oversight functions, two of which are addressed in S.B. 86. Section 1 of the bill outlines the PUCN's oversight and enforcement of the Code of Federal Regulations' pipeline safety regulations. The PUCN works with the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration to enforce the provisions of the Natural Gas Pipeline Safety Act of 1968 related to the duties and obligations of pipeline operators in Nevada. The PUCN regulates intrastate pipelines for the federal government.

In 2011, the U.S. Congress reauthorized the Natural Gas Pipeline Safety Act and increased the fines applicable to the Act. The reauthorization required states that enforce the Act to adopt the fine levels or be subject to reduced federal funding used to facilitate that enforcement. The Act only applies to pipeline operators. In Nevada, the PUCN has jurisdiction over Southwest Gas Corporation in southern Nevada and in Carson City, NV Energy's gas system in the Reno area and Paiute Pipeline Company's transmission system in northern Nevada. Interstate pipeline safety is enforced by federal authorities.

The second safety oversight area in S.B. 86 is the "Call-Before-You-Dig" (CBYD) law, which applies to operators of subsurface facilities and to excavators. In sections 2 through 5, the PUCN is seeking a new category of potential penalties under the CBYD law. There are many "high-consequences facilities" in the State such as high-pressure steel gas lines, high-capacity fiber-optic lines, fuels lines and underground high-voltage electric lines. Over the past 8 years, we have seen about 12 instances, and in 1 1/2 years about 4 instances of CBYD law violations near high-consequences facilities. For example, the Kern River transmission high-pressure gas line in Las Vegas Valley is very large and has

more than 1,000 pounds per square inch of pressure. If it was damaged, there would be a quarter-mile-square kill zone and a 1-square-mile heat zone. If there is a violation close to high-consequences facilities, the PUCN would like to be able to impose triple fines, commensurate with the potential damage from running into the facility.

In S.B. 86 section 5, the PUCN would like to increase its ability to seek higher penalties for CBYD violations. Currently, the fine for negligence violations is capped at \$200 per violation, and the fine for willful violations is capped at \$1,000 per violation. The PUCN seeks to combine those fines into a single penalty category of up to \$2,500 per day for each violation, not to exceed \$250,000 for serious violations in a calendar year. We moved willfulness or negligence into the consideration the PUCN would undertake for the level of penalty. We also included an aspect of cooperation by potential violators in assessing the fines level. We clarified that any penalties collected by the PUCN would continue to go to the State General Fund.

The PUCN submitted two proposed amendments to S.B. 86. The first, "Proposed Amendment to Senate Bill 86" ([Exhibit C](#)), is a clarification in section 5 that the tolerance for high-consequence violations is 24 inches on either side of the facility. The original language was 24 inches in any direction, so if someone were digging above a pipeline buried 8 feet that would not constitute a violation. We want to make the obligation consistent with operators' obligation to mark facilities 24 inches on either side, regardless of its depth.

The PUCN's "Second Proposed Amendment to Senate Bill 86" ([Exhibit D](#)) began as a concern raised by the telecommunications industry regarding the definition in section 2 of "high-consequence communications facility," which includes high-consequence copper facilities. In [Exhibit D](#), section 2, subsections 8 and 9, the proposed amendment includes a catchall provision for damage to high-consequence facility subservice installations that interrupts essential public services. Such an interruption would constitute a high-consequence violation, but only if it was significant. Southwest Gas Corporation asked me to clarify that proposed provision.

Senator Hardy:

The Paiute Gas pipeline in northern Nevada has been targeted for use as an interstate connection. Would that make it an interstate pipeline, under the bill's definitions?

Mr. Lomoljo:

Paiute Gas's pipeline is now intrastate. If that changed to crossing state lines, it would come under federal jurisdiction, and the Act would be enforced.

Senator Hardy:

If a pipeline originated somewhere in Wyoming and connected to lines in Nevada without Paiute Gas's lines going out of State, would that make the lines interstate and thus federally regulated?

Mr. Lomoljo:

An example of that is the Ruby Pipeline, which crosses northern Nevada. It is an interstate line that starts in Wyoming and ends in Oregon. If Paiute connected to Ruby for gas capacity and transportation, Paiute would remain an intrastate pipeline. An intrastate pipeline connecting to Ruby serves a couple of northern Nevada mines.

Senator Hardy:

As groundwater and soil decrease, how is 24 inches of depth determined? Is it from recent studies documenting the pipe's depth or from previously collected data, from which we do not know the true ground level because the pipeline was buried just 12 inches deep?

Mr. Lomoljo:

The PUCN's first proposed amendment, [Exhibit C](#), addresses that situation. When a subsurface-installation operator is notified that an excavator is going to dig near his facility, the operator must mark the location of the facility on the surface within two working days, as per *Nevada Revised Statute* (NRS) 455.110. The facility must be marked within 24 inches on either side, but not for its depth. The depth at which a facility is installed is initially known; however, operators are not required to subsequently indicate the depth because grades can change, a road might have been constructed over the facility or erosion may have occurred. The PUCN does not want to establish a depth standard for high-consequence facilities.

How did we determine marking 24 inches on either side of a facility? If the excavator encounters a subsurface facility, it is often exposed. The excavator or operator calls us, and PUCN pipeline safety inspectors arrive and take measurements and photographs of the problem. If the situation rises to a certain standard, we conduct discovery and request information from the operator or excavator.

Senator Hardy:

Would you do that beyond the quarter-mile kill zone?

Mr. Lomoljo:

That situation has never arisen.

Senator Hardy:

If the facility's owner did not document the depth, but the backhoe operator does so, and there is a breach, 24 inches is not very deep. Are there other pipes that are required to be buried 36 inches deep?

Mr. Lomoljo:

Subsurface installations are between a few inches to several dozen feet deep. Under NRS 455, excavators are obliged to use hand tools to locate subsurface facilities indicated by operators, pursuant to the dig ticket.

Senator Spearman:

In S.B. 86 section 5, subsection 2, the term "negligently" has been added to NRS 455.170. Why was that necessary?

Mr. Lomoljo:

Nevada Revised Statute 455.170 has a separate penalty for negligence and willful violations of the CBYD law. The PUCN is moving consideration of willfulness and negligence into the general consideration of penalties. Since the PUCN commissioners have had jurisdiction over NRS 455, they have never pursued a penalty for a negligence violation because the fine is just \$200. The PUCN's philosophy in enforcing NRS 455 involves education and damage prevention. We want to identify excavators who are having issues and educate them with verbal or written warnings then a follow-up, formal education process. We do not see those excavators repeating violations 99.9 percent of the time.

Chair Settlemeyer:

Does the PUCN intend to adopt its own definition of “negligence” under the *Nevada Administrative Code*? Are you looking at it in terms of gross, general or willful negligence?

Mr. Lomoljo:

The PUCN has regulations that implement NRS 455, which include the terms “willful” and “negligence.” They are not defined in regulation, but we could do so, if necessary. Again, the PUCN’s enforcement philosophy begins with education, not penalizing people for one-time minor violations. That philosophy will not change with S.B. 86.

Chair Settlemeyer:

I had an employee who accidentally ruptured a gas pipeline, and the PUCN did not treat it as a willful violation.

Judy Stokey (NV Energy):

NV Energy supports S.B. 86.

Dan Jacobsen (Technical Staff Manager, Bureau of Consumer Protection, Office of the Attorney General):

The Bureau of Consumer Protection supports S.B. 86. We hope its implementation will result in fewer utilities service interruptions.

Mike Eifert (Executive Director, Nevada Telecommunications Association):

The Nevada Telecommunications Association supports S.B. 86. We have some concerns about the definition in section 2 of “high-capacity fiber-optic telecommunications line.” We worked with the PUCN’s regulatory staff to come up with a better approach for high-consequence facilities in urban areas around fiber-optic lines. We need to recognize that in rural areas, there are few fiber-optic lines, but many copper lines, serving essential public services. The PUCN’s second proposed amendment, [Exhibit D](#), addresses our concerns.

Randy J. Brown, CPA (AT&T):

AT&T supports S.B. 86 for the reasons stated by Mr. Eifert.

Kelly Martinez (City of Las Vegas):

The City of Las Vegas supports S.B. 86.

Robert Ostrovsky (Cox Communications):

In general, Cox Communication supports S.B. 86. In the PUCN's second proposed amendment, [Exhibit D](#), we have concerns about the definitions in section 2, subsection 6 of "fiber-optic telecommunications line" and about "essential public service" in section 2, subsection 9. Some public services have dedicated fiber-optic lines. University Medical Center of Southern Nevada, school districts, and police and fire stations have dedicated lines, while some lines are commingled. Residential service may be on the same line as a public service. If lines are commingled, and not exclusive, they must be covered by S.B. 86. Does "essential public service" include alarm services? Cox Communications and other alarm companies use fiber-optic lines. Are home alarm systems that may be connected to fire departments "essential public services"? We will find out.

Senator Hardy:

Mr. Lomoljo told us the maximum violation fine of \$250,000 would go to the State General Fund. Are you suggesting that some of those fines go to Cox Communications or alarm services?

Mr. Ostrovsky:

No. We are satisfied that the proposed fines will be adequate to convince people to call before they dig and do the right things to mitigate the chance of damage. Damage happens, accidents occur, lines appear where no one thought there were any; we understand that.

Chair Settlemeyer:

Was not your testimony more along the lines that if a line is the only one going to a facility and is dedicated, but it has a double loop, it is not necessarily essential because there are other means of transmission?

Mr. Ostrovsky:

No. If a piece of optical fiber is carrying data, essential public service data may be commingled with the same line providing residential email. Unless a public service has a dedicated line buried just for it, we are in a gray area when the same line is carrying all types of sources, including things like Home Box Office and Entertainment and Sports Programming Network.

Senator Hardy:

Would a new liability be created whereby a company could sue if their line was commingled with an essential public service and one of its customers lost service critical to their operation?

Debra Gallo (Southwest Gas Corporation):

Southwest Gas Corporation supports S.B. 86. The PUCN has effectively enforced the CBYD law. Third-party damage is the biggest cause of damage, interruptions and explosions in our industry. We have concerns about what constitutes an interruption of essential public service. Suppose that we had an essential public service line leading to a hospital. Would a damage-caused outage that resulted in a loss of hot water be a violation engendering the tripled fine?

Brian Reeder (Nevada Chapter, The Associated General Contractors of America, Inc.):

The only concerns of the Associated General Contractors of America, Inc. (AGC) with S.B. 86 are in section 5. Under NRS 455.170, there is a penalty difference between a willful or repeated violation and an act of negligence. The penalty cap on negligence is less: \$200 per violation per day. Our amendment, "Proposed Amendment to Section 5" ([Exhibit E](#)), would preserve that distinction by removing "negligently" from section 5, subsection 2, and by retaining section 5, subsection 3 concerning penalties for negligence violations.

Senator Settelmeyer:

I was unaware that negligence was already covered by NRS 455. Would the fact that it was already in law, but the bill would just move it to a new section of NRS, change your testimony?

Mr. Reeder:

By moving the negligence penalty provision to another section, AGC is saying that the fine for a willful or repeated violation should be the same as that for a negligent act or an accident. There should be a distinction between negligence and an accident, with a lesser fine for the latter.

Chair Settelmeyer:

We will close the hearing on S.B. 86 and open the hearing on S.B. 87.

SENATE BILL 87: Authorizes the Public Utilities Commission of Nevada to modify resource plans submitted by certain public utilities. (BDR 58-349)

A letter of support for S.B. 87 from Wendy S.W. Barnett, president of Utilities, Inc., in Arizona and Nevada ([Exhibit F](#)), was submitted to the Committee.

Mr. Lomoljo:

Senate Bill 87 deals with integrated resource planning, a triennial process by which electrical utilities and jurisdictional water and sewer utilities above a certain income threshold—more than \$1 million in revenue—must submit resource plans to the PUCN. The PUCN does not regulate municipal water providers, such as Southern Nevada Water Authority or Las Vegas Valley Water District. The bill only applies to for-profit utilities providers and Utilities, Inc.’s facilities in Pahrump and Spring Creek.

Senate Bill 87 clarifies the PUCN’s approval authority over integrated resource plans. In S.B. No. 123 of the 77th Session, the Legislature approved the provision concerning emissions reductions in capacity replacement, which is a subset of resource planning. In that provision, the PUCN was authorized to accept, modify or deem inadequate emissions reduction and capacity replacement plans.

Senate Bill 87 allows the same approval authority for general integrated resource plans in its section 1, subsection 13. Approval authority for resource plans for water and electrical utilities is in sections 2 and 3. The bill allows the PUCN to exercise flexibility that may save ratepayers money. Under NRS 704.751, the PUCN may accept or deem inadequate a resource plan if just a portion of it is inadequate. The entire plan must be withdrawn then refiled, which is an expensive process.

Senate Bill 87 would also allow flexibility for utilities filing resource plans. If an idea comes out during a PUCN hearing to which the utility is amenable, it can accept that modification, to be included in the PUCN’s approval of the plan. The bill also allows a utility to reject a proposed modification by the PUCN.

Ms. Stokey:

NV Energy supports S.B. 87.

Senate Committee on Commerce, Labor and Energy
February 11, 2015
Page 10

Mr. Jacobsen:

The Bureau of Consumer Protection supports S.B. 87. The current process requires all-or-nothing approval of resource plans, which is not as effective as allowing the PUCN to propose modifications. The bill would benefit consumers.

Chair Settlemeyer:

Seeing no more business before the Senate Committee on Commerce, Labor and Energy, we are adjourned at 8:35 a.m.

RESPECTFULLY SUBMITTED:

Patricia Devereux,
Committee Secretary

APPROVED BY:

Senator James A. Settlemeyer, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	1		Agenda
	B	3		Attendance Roster
S.B. 86	C	3	Donald J. Lomoljo	Proposed Amendment
S.B. 86	D	3	Donald J. Lomoljo	Proposed Amendment
S.B. 86	E	3	Brian Reeder	Proposed Amendment
S.B. 87	F	1	Wendy S.W. Barnett	Letter of support