

**MINUTES OF THE JOINT MEETING OF THE
SENATE COMMITTEE ON GROWTH AND INFRASTRUCTURE
AND THE
ASSEMBLY COMMITTEE ON GROWTH AND INFRASTRUCTURE**

**Eightieth Session
May 23, 2019**

The joint meeting of the Senate Committee on Growth and Infrastructure and the Assembly Committee on Growth and Infrastructure was called to order by Chair Yvanna D. Cancela at 5:57 p.m. on Thursday, May 23, 2019, in Room 1214 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 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.

SENATE COMMITTEE MEMBERS PRESENT:

Senator Yvanna D. Cancela, Chair
Senator Chris Brooks, Vice Chair
Senator Moises Denis
Senator Pat Spearman
Senator Marcia Washington
Senator Joseph P. Hardy
Senator James A. Settlemeyer
Senator Scott Hammond

ASSEMBLY COMMITTEE MEMBERS PRESENT:

Assemblywoman Daniele Monroe-Moreno, Chair
Assemblyman Steve Yeager, Vice Chair
Assemblywoman Shea Backus
Assemblywoman Shannon Bilbray-Axelrod
Assemblyman Richard Carrillo
Assemblyman John Ellison
Assemblyman Glen Leavitt
Assemblywoman Rochelle T. Nguyen
Assemblyman Tom Roberts
Assemblyman Greg Smith
Assemblyman Howard Watts
Assemblyman Jim Wheeler

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STAFF MEMBERS PRESENT:

Marjorie Paslov Thomas, Committee Policy Analyst
Darcy Johnson, Committee Counsel
Michelle Van Geel, Committee Policy Analyst
Jessica Dummer, Committee Counsel
Lori McCleary, Committee Secretary
Debbie Shope, Committee Secretary

OTHERS PRESENT:

Ernest Figueroa, Consumer Advocate, Chief Deputy Attorney General, Bureau of
Consumer Protection, Office of the Attorney General
Barry Gold, AARP
William Stanley, Southern Nevada Building Trades Unions
Chris Anderson, Sierra Club
Danny Thompson, International Brotherhood of Electrical Workers LU396
and 1245
Warren B. Hardy, II, Natural Resources Defense Council Inc. and its Affiliates
Josh Griffin, Switch
Rusty McAllister, Nevada State AFL-CIO
Tom Bird, Nevada Alliance for Retired Americans
Kyle Davis, Interwest Energy Alliance
Deni French
Andrew Diss, Meruelo Gaming
Jessica Ferrato, Solar Energy Industries Association
Judy Stokey, NV Energy
Garrett C. Weir, General Counsel, Public Utilities Commission of Nevada
Ray Bacon, Nevada Manufacturers Association
Michael D. Hillerby, Google

CHAIR CANCELA:

We have one bill tonight which is Senate Bill (S.B.) 547 and we will open the hearing.

SENATE BILL 547: Revises provisions relating to providers of new electric resources. (BDR 58-913)

SENATOR BROOKS:

Senate Bill 547 revises *Nevada Revised Statutes* (NRS) 704B among others. *Nevada Revised Statutes* 704B is the statute that defines how a large customer can leave the service of a public utility and procure electricity on the open market.

Several customers have used this statute to leave, and several more are in the process of leaving. Some are customers who may not have even used electricity in this State yet. *Nevada Revised Statutes* 704B was never intended for the purpose it is being used. As a result, it is no surprise it does not work well for any of the parties involved.

Those who have been through the process do not like it: the Public Utilities Commission of Nevada (PUCN), the public utility providing electric service and the Consumer Advocate. Most importantly, it is not good for the consumers in Nevada.

The statute lacks clarity on who is an eligible customer, what is a new electric resource or what cost the departing customer is responsible for. It lacks transparency and predictability. The last few years the way NRS 704B has been used, has created a situation where every outcome is based on continuous negotiations or even litigation. My concern is when this happens the consumers in Nevada lose. That is why I introduced this bill.

I would like to go through the slides ([Exhibit C](#)) and walk through the bill afterward.

In the 1990s, there was a push to deregulate electricity across the western United States. Several states passed laws that demonopolized their energy sectors. This was done under the assumption that reduced regulation and market-based approaches will always lead to good results for consumers.

The deregulation would not be successful. Some of you may recall when California saw rolling blackouts and rate instability with consumers seeing massive hikes in their electric bills and a host of other problems. Millions of customers in that state alone were affected by it. Some utilities shut down plants in order to increase their prices.

Other states, including Nevada were affected, but the California example is probably the one remembered the most. That crisis cost our economy in this Country billions of dollars.

Nevada responded by passing a law in 1997, A.B. No. 366 of the 69th Session, directing Nevada to open its energy market. However, this did not come to fruition. California's crisis with blackouts and price increases were the key factors in Nevada slamming the brakes on its deregulation push.

There is a quote on page 5, [Exhibit C](#), from our then Governor, Kenny Guinn. It states "Watching our neighbors next door, I can't in good faith let this continue to happen." That is when Nevada reversed course.

Legislators and Governor Kenny Guinn kept delaying the open market deadline as the crisis in the West unfolded. In 2001, to protect Nevada's economy and ratepayers, the Legislature chose a regulated utility structure, through A.B. No. 369 of the 71st Session and A.B. No. 661 of the 71st Session. *Nevada Revised Statute* 704B was created for a process by which entities could file an application to leave the umbrella of NV Energy and build their power plants.

More recently, Question No. 3 of the Nevada 2016 and 2018 General Elections was a ballot initiative which was an attempt to revive the energy deregulation proposals of the late 1990s and put them into *The Constitution of the State of Nevada*. It passed in 2016 but failed by a decisive margin in 2018. There were concerns in the State that we could be emulating the mistakes California and Nevada made in the 1990s.

This did not stop the efforts of companies to procure energy in open electricity markets. Over the past few years, several major businesses in Nevada, such as casinos, manufacturers, data centers and mines have left or explored leaving the NV Energy umbrella under NRS 704B. It was their desire to purchase their own cheaper electricity and be freed from public policy costs and regulations associated with the public energy grid. I believe this is outside of the purview of the law's original purpose.

In effect, they were trying to achieve what was not accomplished through the Question No. 3 campaign or the deregulation efforts of the late 1990s. To be

clear, under current law, it is perfectly legal. It is understandable why a business would want to maximize their profits and lower their costs to whatever extent possible under current statutes.

It began the leveraging of NRS 704B. Companies that have left under NRS 704B and are buying electricity in the markets are Switch, MGM, Wynn, Caesars and the Peppermill Reno. You can see the dates in which they left on page 11, [Exhibit C](#) from about 2014 to roughly 2017. I call this the second wave of Barrick and Newmont back when this law was first passed. They went out and built power plants so they could supply their own electricity load. It was because the public utility and the State did not have the money, credit rating or the capital to go and do it for them. That was when the law was created.

Since then we have had another wave where the statute would serve as a means for them to go out to the open market and leave the public utility. This is a process through the PUCN.

Now there is a whole other wave of customers who have filed to leave the public utility under NRS 704B. They include SLS Las Vegas, MSG Sphere Las Vegas, Boyd Gaming, the new Las Vegas Stadium for the Raiders, the new Fulcrum Sierra Biofuels and Station Casinos. These are big names we all know and are a large part of our community. Georgia-Pacific Gypsum filed in September 2018, and the others are listed in order of dates on pages 12 and 13 of [Exhibit C](#).

I would like you to note the dates of this last wave of filings. They all took place after the last general election, December 2018 and November 2018. We have Georgia-Pacific Gypsum, South Point Casino in December 2018, Air Liquide and The Cosmopolitan in February 2019 and The Drew in April 2019.

I believe this many consumers leaving the grid under the current form of NRS 704B, have potential impact and it is harmful to Nevada consumers. It could increase prices and stresses on the electric grid caused by companies potentially hopping back and forth between alternate suppliers and the electric provider. It could cause unpredictable demand, erosion of public policy costs and fees, less renewable energy and shift costs to residential customers.

Senate Bill 547 was meant to address companies leaving the grid. We did it by defining: who is an eligible customer; what is a new electric resource; and what is a provider of a new electric resource. We are requiring recovery of certain public policy costs from eligible customers and requiring providers of electric resources to pay governmental fees. It will strengthen the requirements that an eligible consumer must meet before they purchase energy from providers of new electric resources. It also requires eligible customers for new electric resources to file an application at least 280 days before they begin attaining the applicable energy.

Under this bill, the PUCN will be empowered to establish annual limits on the amount of energy an eligible customer may obtain from providers of a new electric resource to assist in planning for the rest of us. Companies have to demonstrate that their utilization of NRS 704B furthers the public interest.

The bill will afford licensure for providers of new electric resources and include them in the PUCN mandate to collect annual mill assessments. It requires annual revenue reports be filed by providers of new electric resources, with the PUCN having the power to conduct an audit. It also requires eligible customers to conduct annual vulnerability assessments, prepare emergency response plans and submit those to the Division of Emergency Management of the Nevada Department of Public Safety.

The bill requires customers to pay any cost, rate or fee which would be due to the public electric utility if they were taking service from the public utility. It also requires payment for renewable energy programs such as low-income energy assistance and others that have been mandated as good public policy in the Legislature for many years and are recovered by electric ratepayers.

The PUCN would be able to revoke any orders for failure to pay taxes or fees authorized by this legislation.

Page 19 in [Exhibit C](#) shows a link which explains more in depth the history process of NRS 704B and where we are now. It was put together by the PUCN and presented in the Governor's Committee on Energy Choice. A few of us were a part of that during the Interim where we discussed this deregulation, energy choice and NRS 704B.

I would like to generally discuss and go through the components of the bill. I want to make one thing clear, this is not meant to completely stop a consumer from accessing the wholesale energy markets. This is meant to set parameters, define terms and regulate businesses that are coming into our State to become providers of new electric resources. For many years, there was a lot of debate that some of the things being done under NRS 704B were legal or the intent of the original legislation. This aims to clarify some of that so a future wholesale market has some sort of guidance and guidelines if it moves forward.

I will move to the bill. On NELIS is an amendment ([Exhibit D](#)) that I am proposing based on some conversations as these complicated issues have evolved. It reflects my most current viewpoint. There is a document that defines what the amendments are in the bill and is a table. It explains and breaks it down section by section. I will go to that table ([Exhibit E](#)).

Section 1 is administrative changes that later repeal NRS 704B.320.

Section 2 addresses data centers and clarifies that data centers which provide electricity and data services as a bundled product are not considered a public utility for the purposes of NRS 704B.

Sections 3 and 21 ensure the providers of new electric resources are paying for the regulatory oversight provided by the PUCN.

Section 4 provides a means for the PUCN to ensure that all assessments are paid by providers of new electric resources.

Section 5 has parts which have proposed amendments on page 1, [Exhibit D](#). Basically it allows the PUCN to oversee and regulate the extent to which an organization purchases energy from a provider of a new electric resource. This clarifies the forecast is focused on retail electric service, not on wholesale.

There is new language in the proposed amendment in section 5, subsection 6 on pages 3 and 4 of [Exhibit D](#), regarding plan years clarifies that an electric utility must propose a limit for each of the 3 years of the action plan which is the utilities' triennial integrated resource plan.

Section 5, subsection 6 of [Exhibit E](#) clarifies when a new load that meets certain criteria can be exempt by the limits imposed by the PUCN on the amount of energy and capacity permitted to exit the electric utilities' system.

This provision was allowed to accommodate large projects which might be looking to build in our State, but have not yet figured out how they are going to acquire electric service or how they will file for NRS 704B. We need provisions to allow for large consumers to take a look at Nevada as a potential home and what that would mean for them on how they could acquire electric service.

Section 6, subsection 9 of the bill basically ensures that the limitations on how much energy and capacity that can be purchased from a provider of new electric resources are implemented with the public interest in mind. In particular, new language aligns the PUCN to consider a plan regarding how many customers can exit NV Energy's system with public policy goals, which are discussed in [S.B. 300](#) which passed out of the Assembly.

[SENATE BILL 300](#): Revises provisions governing the rates charged by electric utilities. (BDR 58-302)

Section 7 makes administrative adjustments.

Section 8 is a definition for license.

Section 9 establishes guidelines that a provider of new electric resources has to meet before attaining a license for operation. It is important to note that there are provisions in the bill that look at existing providers of new electric resources that are currently in business with eligible customers. It does not disrupt the relationship and gives them a process by which to get licensure.

Section 10 of the table, [Exhibit E](#), replaces language deleted in section 19, subsection 3. This permits the PUCN to establish regulations how, when and how many times an eligible customer may use the incremental pricing tariff once the eligible customer has been approved to exit NV Energy's system.

I foresee a future where consumers are taking different types of service from different places, and maybe there is an opportunity they want to go back to NV Energy, and then leave again. In the past, it was not clear if that was even

possible. It was prohibited in some areas. We want to create a process by which consumers have multiple choices in how they procure their energy.

Section 11 is more definitions.

Section 12 defines eligible customer. The language ensures that eligible customers who are governmental entities who were not previously an end-use customer of the public utility are covered by the definition of "eligible customer." There was not a lot of clarity in years past on who was an eligible customer.

Section 13 has further definitions of new electric resource, such as energy, capacity and ancillary services and how they apply to this bill.

Section 14 updates NRS 704B.170.

Section 15 provides transparency and manners through which to ensure that the law is being complied with.

Section 16 is more administrative and definition changes.

Section 17 establishes the means through which eligible customers file applications for the purchase of electricity from providers of new electric resources.

Section 18 clarifies when energy may be purchased from providers of new electric resources without approval of the PUCN on the effective date of this bill.

Section 19, subsection 3 was deleted because this was addressed in a different way in section 10 of the proposed amendment, [Exhibit D](#).

Section 20 states the PUCN can set a date by which meter equipment is set up. It has been a problem for customers who are trying to acquire service from a new electric resource. This makes it clear.

Section 21 ensures eligible customers or providers of new electric resources are paying for legislatively mandated public policy programs. This is the most

contested, debated and one of the more important parts of what we are trying to accomplish with this bill. If you look at the amended language, [Exhibit D](#), with these legislatively mandated public policy programs in discussion, it is things such as the net metering program, the new community solar program, the renewable energy program costs that we have had since 2004 in this State and any of the low-income energy assistance programs. Those are public policy positions Nevada chooses and we then collect through rates. This defines how and who is going to pay for those components of rate which the rest of us all pay.

Section 22 is another administrative change.

Section 23, subsection 3 ensures all aspects of the electric grid are secure and reliable regardless if customers are being served by an electric utility or a new provider of electric resources.

Section 24 clarifies the status of pending applications before the PUCN. This was when I mentioned some of those application dates. This puts their order dates somewhere between a week from today to over the next several months. There was a lot of concern with customers who have filed applications under current NRS 704B on where their order would be and what this pending legislation could do. This clarifies the status of applications pending before the PUCN in those applications not being disrupted.

Section 25 is another administrative change to NRS 704B.080.

Section 26 establishes the providers of new electric resources which are currently operating in Nevada pursuant to a PUCN approved contract are automatically granted a license. However, such providers must subsequently submit an application containing the information the PUCN deems appropriate for evaluating a provider's fitness to serve customers in the State. In a previous chapter, those qualifications are defined as the requirements for licensure.

Section 27 repeals outdated sections of the NRS.

Section 28 states this act becomes effective on passage and approval. Keep in mind this does not disrupt the application process which is currently taking place. There is nothing in statute that states it has to stop.

The new section which begins on page 12 and 13 of [Exhibit E](#) is the second most debated or contentious piece of the bill with companies who have already left the system.

It ensures the unbundled customers share in historical costs of complying with the renewable portfolio standard (RPS). Language will apply to all customers except for certain water pumping customers who are exiting and are not governed by NRS 704B but by NRS 704.787, and other water utility customers who have exited or are covered by other chapters of NRS. I want to be clear, this does not apply to the Colorado River Commission or the Southern Nevada Water Authority. This is about the NRS 704B customers which are large commercial customers and the public utility.

If you can think back, while solar is the cheapest form of energy we have available to us today, that was not always the case. There are some geothermal contracts that are well out of market. It means they are far more expensive than what you could buy energy for today. The State told the public utility that the policy of the State for purposes of business development, environment and job creation was to encourage the public utility through ventures such as RPS and other programs that they invest in these contracts.

Over time, the cost of those technologies has come down, but we are still in those contracts. Every time you pay a power bill, those costs are embedded in your rate. When you look at those over time and you aggregate them together it is not excessive, but when you look at those individual contracts that we are responsible for as a State, some of those numbers are really big.

What this says is all customers in Nevada who are using the electrical infrastructure of this State are paying their fair share of public policy costs. One of those public policy costs is what we refer to as the renewable base tariff energy rate (RBTER) and that is what is addressed in this new section.

In the new section, on a quarterly basis it takes a look at the costs of those contracts and purchase power. The electric utility shall separately calculate a RBTER which is for all of us, everyone who is a customer of the public utility, no matter what type they are; bundled like all of us or the distribution only service (DOS) customers because they left through NRS 704B. They are still customers of the public utility. The public utility shall separately calculate a

RBTER and the public utility shall separately state the RBTER in Schedule 5 with the PUCN and shall apply the RBTER to all customers, including those who purchased distribution service from the public utility.

What is interesting about this way of trying to recover those costs is that the costs decline over time, as contracts end, plants shut down and new renewables are brought into the mix. These contracts will become less of a component of rate on all of our bills. Another thing with this RBTER for these older legacy contracts are the portfolio credits associated with them.

In this session, S.B. 358 was passed and signed into law by Governor Sisolak. It applies the same RPS to all providers of new electric resources in Nevada, in which they apply to the public utility.

SENATE BILL 358: Revises provisions relating to the renewable energy portfolio standard. (BDR 58-301)

We, the bundled customer, get the benefit of the credits through rates and through compliance. But the unbundled customer does not get the benefit of that portfolio credit. We are making a public policy position. If we are demanding the customer, no matter which type of customer they are, help pay for these legacy portfolio projects, they get the legacy portfolio credits associated with them as well, or their pro rata share of them based on their load in Nevada.

This is innovative, it is new and there are mixed opinions. This is a way which provides equity where it did not exist before. In some filings of those who have left, there was no upfront payment for credits. In some filings, there was an assessment for what the departing customer's obligation was and they pay them on a basis.

If there is an assessment, monies that have been paid, a lump sum payment up front, or in the case of some consumers, they did not pay anything at all when they left. This will apply to them. If there had been monies paid or monies owed through previous filings at the PUCN, those will be applied to this new tariff.

To reiterate, this is not intended to apply to water utilities. I know there was concern whether or not this would apply to those particular water utilities that

did not leave under NRS 704B. The provisions which state a provider of a new electric resources that would not apply to are a solar power plant, a wind farm, a power marketer or a geothermal plant that is in a contract with a third party which is being the provider of electric resources. Examples you might be familiar with are Shell Energy North America, Tenaska and Constellation are some power marketers in Nevada. They would be the licensed provider of new electric resources. The generator would not be considered the provider of new electric resources. That was another concern.

I understand if there has been a bit of consternation and confusion. I hope to work with all of those parties where we can reach an understanding of what this bill means.

ASSEMBLYMAN ROBERTS:

Under section 21, you spoke about this rate in which people who have already left the public utility are going to pay. I assume it is yes, there is some rate they will pay. The amount of money they pay to exit the utility, how is that taken into account whenever you determine the rate? You stated some do not pay anything and some do. Is the PUCN going to develop something so they pay a different rate?

SENATOR BROOKS:

Yes. In the rate that all DOS customers pay, the PUCN assesses a lot of things. Now they have the statutory authority to put what they deem necessary into that rate. What we are doing is clearly defining what that is going to be.

These are the public policy costs that we are putting into the rate for your portion of the distribution system that you pay through your distribution service costs. That is the problem where we are now. If there are ten different customers, and ten different filings, then there are ten different ways it is being treated. Some customers did not pay an upfront anything; some customers were not assessed any cost associated with this. Some were. It creates this problem that we find ourselves in, where everyone is looking at the last deal and stating, "Well, I didn't get that deal." But the world changed just by that person leaving. It changed the entire mathematics associated with what the new deal looks like.

This is meant to clarify from this day forward, on a pro rata basis, your percentage of the load in Nevada on the public utilities system. Based on that per megawatt hour, or your percentage of it, these are the costs that will be associated with your percentage. These costs may decline or they may go up. It depends on what we, in this building, do in this Session and future sessions.

The issue is how the departing customer's initial payments and/or orders for payment are treated. It comes in the last section of the bill on the RBTER. That is where the money is and that is where the most concern from departed customers comes from.

ASSEMBLYMAN CARRILLO:

My question is regarding the bill. Section 2, subsection 12, states, "Any plant or equipment that is used by a data center... ." I am assuming you are talking about companies such as Switch and Google that are planning on going online. I am not sure they have addressed this. I know there are some plants, such as Planet Hollywood, that have their own plant for air conditioning and refrigeration, and The Palazzo has one as well. How are they connected, for instance, if it was an entire casino versus a plant or a data center?

SENATOR BROOKS:

That section was meant to specifically define a specific business model which is not a public utility. Co-located data centers sell their services based on what is traditionally looked at as an electric sales unit on megawatt hours. Their data services, cooling, electricity, everything is part of the square footage of the building. It is part of that unit; it is the way it is done all over the world with that unique, specific business model, the co-located data center.

Switch is a perfect example of it and there are many others. There was confusion that it might be considered a public utility. For the purposes of this bill, because it is defined in NRS 704, we are clearly defining it so there is no future confusion. The co-located data center model is not considered a public utility.

It does not necessarily fit in with the rest of the bill. As you know how this works, you have a means and the chapter is open and you want to define some terms. This was a good bill to define those terms. It is specifically for the co-located data center.

ASSEMBLYMAN CARRILLO:

Would this affect anybody who is in the process of exiting the system or has their application submitted, such as some gaming establishments? Section 28 states the act becomes effective on passage and approval. There are a few big businesses, as you have stated such as the Las Vegas Stadium, which is the most recent one I remember. What happens to them; are they subject to this? Will we say it does not matter where your application is, this is what is happening today?

SENATOR BROOKS:

This does not interrupt that process. The bill states that those who have applied before the introduction of this bill will get to continue with the processes, the time frames and the orders.

There is a new component and it is how we look at ongoing costs. In the past, there was no direction or clarification on how ongoing costs were dealt with. It was a case-by-case basis.

It was important that we did not disrupt those existing projects and state, for instance, July 1. Half of the applications being processed would fall before July 1 and the other half would be after. If we had selected August 1, then we would pick up a couple more applications. You could never find the right date. It is important that we honor all open applications and let that process run out.

ASSEMBLYWOMAN BILBRAY-AXELROD:

Is there a definition or some parameters which help us determine those sellers?

SENATOR BROOKS:

There are several requirements to be a provider of new electric resources and what is necessary to get that licensure. In section 9, to qualify an applicant must submit an application, demonstrate to the satisfaction of the Commission: the applicant is authorized to conduct business in Nevada, prove you have technical competence necessary to sell energy, has managerial competence necessary to sell energy, has the financial capability to sell energy capacity, has ancillary services and there are no pending lawsuits for doing exactly what you are trying to be done in Nevada and other states. The applicant needs to demonstrate to the satisfaction of the Commission that the provider of new

electrical resources is in compliance with all of NRS 704.78213, which is the entirety of the chapter that discusses licensure.

It is a long list, but frankly the applicant should not be a provider of new electric resources if all of those boxes cannot be checked.

ASSEMBLYMAN WATTS:

Section 23, subsection 3 states the requirement for providers of new electric resources to prepare vulnerability assessments and emergency response plans. Can you discuss that and the similarities or differences between that and the provisions of S.B. 329? We are working on that bill and taking it to the next level in terms of natural disaster response for the public utility.

SENATE BILL 329 (1st Reprint): Revises provisions relating to the prevention of natural disasters. (BDR 58-1132)

SENATOR BROOKS:

This is different than S.B. 329. It states who is managing the wires, who is managing the hardware and trying to prevent causing disasters, and how that system is handled and how it responds to disasters.

This is different in that you have this provider of a new electric resource, this distribution utility and this load. I will use the Las Vegas Strip as an example. What happens if the lights go out? Who is responsible? Is it your provider of a new electric resource? What is their protocol, how are they communicating, what is their backup plan, what is their capacity and what do they have in place to make sure that does not happen? What happens if they go down? The public utility, who is in charge of that distribution system, has to step in.

If the public utility has to step in and it is for a day, a week, a month, there has to be some sort of understanding of what that resource is going to be or what it entails. That is why a provider of a new electric resource should be able to show to the same extent that we require the public utility to show. This is the plan and this is how I am going to serve this customer, both in good times and bad. This is what it addresses.

ASSEMBLYMAN ELLISON:

You talked about solar and a few other things, but you did not talk about co-ops. Where are we with co-ops? The second question is you have different utility companies throughout the State; there is a large infrastructure in poles, wires and transformers. How are you going to handle it between someone who is just coming into the open market? I know they have to rent the poles. Can you explain those issues?

SENATOR BROOKS:

This only applies to the regulated, investor owned utilities in Nevada. It does not apply to co-ops; NRS 704B does not apply and there is no process. This applies to Sierra Pacific Power Company; and Nevada Power Company, two businesses in the State doing business as NV Energy. NRS 704B only applies to that type of a company structure.

ASSEMBLYMAN ELLISON:

I know that NV Energy is a large public utility energy company. They have millions of dollars in investment with poles, wires, transformers and generation plants. If there was a new supplier to come into the State they would have to rent that equipment from them in order to tie into their lines. Is that how it works?

SENATOR BROOKS:

It gets to the part of what we are trying to accomplish in this bill. There are fees, rates and tariffs which customers can pay to access the provider of a new electric resource. You have an eligible customer who wants to access a provider of a new electric resource. There is a distribution utility, we will say it is NV Energy, and you will pay a certain rate. It is a completely different rate than what you and I pay, or any other NV Energy customer, because we pay what is called a bundled rate. We are a fully bundled customer. We are paying for energy, distribution, transmission, the return on their equity and all of the public policy costs. We are paying for old contracts and new. All of that is bundled into a rate for a fully bundled customer.

For a customer who has left under the processes defined in NRS 704B or the processes in the event this bill becomes law, they have a different rate. It is a distribution rate. There are some customers who just have a transmission rate; they are not receiving any service except using the wires to get from

point A to B and sometimes they are passing through the State. That is regulated through the federal government.

The distribution rate is set by the PUCN based on different parameters. That is what we are getting to in the heart of here. They do not rent the wires, but they pay a fee to use the distribution system of the public utility to provide transportation between point A and B which is the provider of a new electric resource and the eligible customer of the new electric resource. It is similar to renting but is a set fee. We are trying to define in this bill what that set fee is for those customers past, present and future.

ERNEST FIGUEROA (Consumer Advocate, Chief Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General):

I am here to provide testimony in support of S.B. 547. I will read from my testimony ([Exhibit F](#)).

An AARP study showed that public utility rates can cause people to choose between food and medicine and can even cause foreclosure.

As Senator Brooks recognized, when NRS 704B was enacted, it was in the midst of the Western U.S. energy crisis. Its main purpose was to provide a way for sophisticated, large industrial users to bring new electrical generation into the State, specifically without harming the ratepayers. It was to be a win-win for everyone.

I will continue to read from my written testimony, [Exhibit F](#).

ASSEMBLYMAN CARRILLO:

Do you feel this is a good step in the right direction to protect the residential consumers? I am not sure this is complete and that it is going in the right direction. I want to make sure I can take that home to my constituents.

MR. FIGUEROA:

This is a first good step and a necessary step to protect the residential ratepayers from the NRS 704B exits from the grid.

ASSEMBLYMAN ROBERTS:

You discussed the individual ratepayers are paying for a variety of upkeep to the grid. Rates have dropped over the last few years despite these companies exiting the grid. Do you anticipate that it will change? Do you think ratepayers are being damaged now? Would they be eligible for larger reductions in rates as a result of this bill?

MR. FIGUEROA:

The rates have gone down. With these exits, it is believed that the ratepayer rates would have been reduced more.

ASSEMBLYWOMAN MONROE-MORENO:

I think it is more of a statement than a question. Is it fair to say the current fully bundled customers, which the majority are residential customers, will continue to pay for the decisions we have made as a State as we move toward our clean energy policies? If we continue in this direction and because of some of the agreements which were made in the past, depending on where they are in the process of their contracts and agreements. Some ratepayers would not be moving with us as we move forward into the future to make our goals as a State for clean energy. Is that a fair assessment?

SENATOR BROOKS:

I think that is a fair assessment. We have made investments as a State based on public policy goals from the Legislature and our constituents. We have made the public utility commit to those investments and that is the foundation we are standing on now for the clean energy economy that we have created in Nevada. However, some of those contracts are 15 to 30 years and some will continue to go on for 15 years more. There are contracts the State signed 15 years ago, for one reason or another, so that we could lead and build the foundation for this energy economy which we have. Those are five times more expensive than the same renewable energy today.

We need to spread or socialize those costs across everyone who is on this electric system. We are trying to do it with this bill. There are some who will say, "Hey, we filed, we left, we're done," but that is not the equitable thing for the ratepayers of Nevada.

SENATOR HARDY:

If I understood correctly, it is going to be the prospective requirement and a retrospective requirement on those who have exited the grid?

SENATOR BROOKS:

This will apply to the rates moving forward, but the rates will also apply to those who have already left. It does not look back. It looks forward. What is left that the State owes, what are the costs of these public policy positions that we are recovering through rates? What of these RBTER money contracts that we are still paying for? Now to move forward, what is your pro rata share of the load in this entire State? That is what we would look at within the PUCN when we are setting rates.

SENATOR HARDY:

If someone had a business model and is going to charge \$100 for X number of utility electrons, now they are going to have to pay more because they have to include the socialized cost of the renewables that were made 15 years ago?

SENATOR BROOKS:

The fee for that DOS in which eligible customers left the public utility and are taking electricity from a provider of new electric resources was never defined in statute what it could or could not include. It was dealt with in a variety of different ways. That is one of the major problems. For some, there is no cost associated with it, so when there is a rate case, they are putting in some of the costs associated with distribution service. With others they said they want an upfront payment for everything. It is based on three years of future load or it is based on six years of future load. On some, it was stated they can make payments over six years. None of it was clearly defined on what it was to entail, so it was a negotiation every time.

To be clear, some of those companies got an order, made a business decision, entered into a contract and then they said, "I'm going back to the Commission and I am going to get more money out of them." They received tens of millions of dollars that went back to their bottom line, because they went back and renegotiated a rate after they had already agreed to a rate and left, then entered into service to take new service.

The concept of it is forever and surely does not apply to many of the customers who have done this and do not agree with that concept. They are constantly going back and looking for a better deal.

SENATOR HARDY:

You state this is the first step. What is the next step?

SENATOR BROOKS:

With something as complicated as this, I am sure we are not going to get it 100 percent right the first time.

This provides the equity necessary. We will see if this is too restrictive on companies that are going out and having choices and options to where they get their energy. It may not provide enough guidelines to the Commission.

These things are pretty complicated when they go to these long, in-depth PUCN dockets. There are interveners who are there, hundreds of hours of testimony and thousands of pages of documents. If this is not the right step, it will need to be adjusted one way or the other as we often do in this building.

SENATOR SETTELMAYER:

I understand the discussion of transmission distribution costs; those are actually set by 3rd quarter 2000 distribution rates and are standardized across the 2 different service areas. I think transmission has to be the same Statewide; distribution is allowed to be broken up. Based on the old Sierra Pacific Power versus Nevada Power, my question is an issue of fairness. The theory is once you exit you are done.

I know you have done a lot of research on this. I am familiar with some of these individuals who have left a long time ago and wiped their hands of everything. Then due to maybe someone changed the tax breaks that gave a certain industry a windfall, they came back in and asked for a refund. Do we know of any entities that have left under NRS 704B who did not come back and ask for refunds?

SENATOR BROOKS:

Did you say who did not?

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SENATOR SETTELMAYER:
Correct.

SENATOR BROOKS:
I think the majority of them did not.

SENATOR SETTELMAYER:
I want to know of anyone who left, wiped their hands and were happy not to be part of the grid and they did not come back and ask for a monetary refund. Those are the ones I am more interested in. Because I question that there is a contractual issue when they walked away and never came back. Those reaching back are the ones I am concerned with.

SENATOR BROOKS:
The PUCN has had the statutory authority to set rates on the DOS rate. There is a whole host of things included in the DOS rate, including the components you mentioned, the federally regulated transmission distribution components of it. Those can change and have changed based on the cost of providing that service in the State. Even those who left long ago have had different things change on them, like the portfolio standard for instance.

You brought up a great example of the tax. There was a tax break that created a windfall that should be shared with all consumers, but there were DOS customers who went back in and said, "Hey, I want some of that." Rightfully so. I think you are referring to some of the older ones, the original departures that departed under a different set of circumstances. Their DOS rate has constantly changed on them over the years based on new parameters and new things that came up.

BARRY GOLD (AARP):
AARP fights so the residential ratepayers only pay what is fair and reasonable and not a dime more. Simply put, this legislation while highly technical, will help residential ratepayers, you, me and people on fixed incomes who often have to choose between food, electricity and medicine. It will help them from future rate increases. On behalf of our 348,000 members across the state AARP Nevada supports this legislation to help prevent future rate increases for the residential ratepayers.

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WILLIAM STANLEY (Southern Nevada Building Trades Unions):

Many hardworking Nevada families and seniors on fixed incomes who live in our district simply cannot afford higher household costs. Your support of this legislation will help keep electric rates low for residents and small businesses, by making sure big businesses pay their share of electricity costs in the future. My members and the people I represent appreciate your leadership on this bill and look forward to it passing.

CHRIS ANDERSON (Sierra Club):

The Sierra Club supports S.B. 547. The Sierra Club believes that after the defeat of Question No. 3 from the 2018 general election, reforming the NRS 704B statute process is a natural next step to the overwhelming success of clean energy initiatives this Legislative Session.

Access to affordable clean energy for all Nevadans is a priority for the Sierra Club. Senate Bill 547 brings into consideration renewable energy resources during the NRS 704B statute exit application process. Any company or entity exiting the grid should not saddle ratepayers, particularly low-income customers, with an additional financial burden for their energy. Sierra Club supports the provisions of this bill that require any new energy provider to pay any mill tax or assessment supporting energy efficiency or other clean energy programs as NV Energy currently does.

Clean energy has become the cornerstone of Nevada's economy and any applications to exit the grid should be carefully considered through the clean energy and equity lens. We agree with the bill sponsors that customers leaving the grid should benefit our State's economy, environment and other existing customers.

DANNY THOMPSON (International Brotherhood of Electrical Workers LU396 and 1245):

When NRS 704B was passed, it was done for a couple of mining companies who were out in the middle of nowhere and there was no talk of anyone being harmed. Fast-forward to today, where if all the people who have applied to leave you are looking at about 10 percent of the load. In effect what this has become, is a way to shift the burden of their utilities onto your constituents. If this is not stopped or at least slowed down, there is no way the incumbent power company can maintain the rates in effect. As those costs are shifted

back onto all the ratepayers, the ratepayers are stuck in the system and are compounded by a smaller and smaller pool. It compounds the cost and eventually rates will have to go up. They will go up on your constituents. We ask you to pass this bill and think it is a great first step in dealing with this problem.

WARREN B. HARDY, II (Natural Resources Defense Council Inc. and its Affiliates):
We did request some clarification specifically regarding the participation of existing customers and energy efficiency programs not provided in the bill. With the amendment, we are in full support of this legislation.

JOSH GRIFFIN (Switch):

Switch is in support of S.B. 547. This bill will bring stability and predictability to the process in which large customers can apply to access an open market by lining the applications to exit the system with the integrated resource plan. This will ensure the providers of new electric resources are able to serve their customers. We also believe as Senator Brooks testified, that while this bill establishes broader considerations the PUCN can make, it does not prevent further exits. It reinforces the requirements to allow customers to exit and in some cases develop their own resources.

ASSEMBLYMAN CARRILLO:

Did Switch leave the system and if so, how long ago was that?

MR. GRIFFIN:

Yes, Switch applied to exit and was displayed on the PowerPoint presentation. I believe it was in 2015 and had two exits, one in the north and one in the south.

ASSEMBLYMAN CARRILLO:

What was their reason for exiting at that time?

MR. GRIFFIN:

There was a lot of considerations. The overwhelming desire for Switch to leave was to provide a much greener resource and a renewable energy product for them and their customers.

ASSEMBLYMAN CARRILLO:

Do you think Switch was being a good community partner in that process?

MR. GRIFFIN:

Without a doubt I think they have been a leader in that effort of renewable energy and a leader in renewable technology.

ASSEMBLYMAN CARRILLO:

What I mean by community partner is how it would affect my constituents and the effect of everybody else who decided to exit the system. That is what I am talking about, I am not talking about the green, I am talking about the solar, about how it affected constituents or how it works. I am glad this bill was brought forward and appreciate you coming forward in support of this bill as well Mr. Griffin.

RUSTY McALLISTER (Nevada State AFL-CIO):

We are in support of this legislation and believe it is a good opportunity to keep rates under control. We believe the more these companies are allowed to leave the system, the people who are left will be holding the bag. For us, we have members who cannot afford having their rates go up \$10, \$15 or \$30 a month. For those reasons we pay close attention to this, the more companies who exit, the more opportunity there is the rates will go up. It just cannot happen any other way.

TOM BIRD (Nevada Alliance for Retired Americans):

I am here in favor of S.B. 547. I represent 18,500 retired members across the State. Too many of our seniors are living month to month on social security. One of the most important aspects of your jobs is to protect Nevadans. This bill will help ensure the people on fixed incomes, like Nevada retirees, will not have to pay higher electric bills. I think it is obvious after hearing the experts the power bills will not be stable if we let these people go on with their exits to escape paying for these exit fees and so forth. If they are going to leave, they need to pay.

We need to protect all customers, especially seniors and working families, from any possible rate increases caused by large businesses choosing to leave the public utility. These customers are least able to bear an increase in prices. Please keep this in mind when you consider a vote on this bill.

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KYLE DAVIS (Interwest Energy Alliance):

Interwest Energy Alliance is a trade association with large-scale renewable energy developers working with non-governmental environmental groups across the intermountain west. We are opposed to S.B. 547 as currently drafted, but would like to thank Senator Brooks for discussing the issues with us and are optimistic many of our concerns can be dealt with through an amendment.

I know that Senator Brooks has presented an amendment today and he did send me a copy. Unfortunately, I have not had a chance to review the amendment in detail and have not been able to reach my client for review as well.

At this time I just want to put concerns on record. We will review it as quickly as possible and appreciate everyone for listening and responding to our input.

As the bill was introduced, our concerns can be summed up in three main areas. First of all, the bill appears to treat independent power producers as providers of new electric resources. Our members have power purchase agreements with NV Energy and with NRS 704B customers known as "eligible customers" under the law. While these contracts are standard agreements for the sale of capacity and energy, these independent power producers do not provide any grid operation or scheduling services and do not have the authority to do so. Thus, under the bill they cannot demonstrate what is required of these providers of new electric resources under the bill.

We appreciate the clarification that Senator Brooks offered on the record, in which he does not believe this will be the case that the independent power producers will be treated like this. We have had the opportunity to discuss with the PUCN as well, and hopefully will be able to clarify in neutral testimony on this issue as well. That will go a long way with taking care of our concerns.

The second point we want to bring up is our members have concerns the provisions in this bill may have the effect of limiting the potential market for new renewable energy projects through the new requirements that limit the capacity of energy which could be sold under NRS 704B. Potentially the bill could be read to put long-term contracts at risk and long-term contracts are incredibly important when you discuss renewable energy contracts.

Third, we appreciate the public policy promoting increasing transparency over supplies for NRS 704B customers. We caution against undo limitations and restrictions on competitive markets in Nevada which may have unintended negative consequences. But we look forward to reviewing the amendment and continuing to work with Senator Brooks.

DENI FRENCH:

I am here as a person that AARP sort of missed. I appreciate their involvement and their general consideration. I think they are moving in the right direction. They are there to protect consumers, such as myself, who are on a fixed income. While I do not fit in some of the categories of this discussion, I fit most of them.

My concern with this bill is it is being looked at from a position that is villainizing people who had started a company for profit and are moving their choice of services to ways that monetarily support their businesses.

I would like to have a resource where I could pay out or opt out of any involvement where I consider it indentured where we are paying for a contract from years ago. NV Energy has not necessarily lived up to what I would have liked in a contract. They are actually in for the money as well. However, they always initiated the best opportunities as far as the development of resources that would allow those that are being used to be renewable and green.

I would not necessarily be able to buy out, by getting an individual home service brought in, because I would still have to pay for the new service plus paying my dues toward those old contracts. It is not affordable to me, even if I had the initial installment amount.

I do not think everyone who is moving away from the grid is necessarily bad. In fact, I think they could be used as a resource to see how they are able to do that. How is one company able to furnish its own electricity and be independent of the grid? How wonderful it would be if each of us as individuals could say that our homes could be so efficient that we opt out of the grid.

The grid is not secure, it could go down any time. This is a great idea as far as holding people responsible to pay, but how much do we want to make them the villains? How much do we want them to pay back for something they had paid

into for a long time? For myself, I feel indentured. There are no options for me to get out of this contract. I regard that as a positive and a negative. I have electricity and I do not have the option of bowing out. I do not have the money to bow out.

It is really about money and unless we realize that we need to go green and make this State work for itself on green resources, we are going to be stuck in this situation until kingdom come. It all revolves around if I lose in this business, I am going to raise your prices because we have to get those things paid. Our bottom line is that we need to make a profit. How much of that profit are they putting back into making it more efficient and more user-friendly?

ANDREW DISS (Meruelo Gaming):

I am here today in neutral as we are still digesting a lot of the new language in Senator Brooks' proposed amendment, but want to thank him for working with us, particularly on section 24.

When this bill originally came out, we had some concerns, but those have been addressed with this proposed amended language. I want to share the perspective of a company that is currently going through the NRS 704B process. By happenstance, SLS received our order from the PUCN this morning to leave the system. When negotiations with our company's ownership started regarding looking at different energy sources, they were driven by a need to fill our customer's desires. What I mean is the convention business in this State. There are a lot more trade shows and conventions that come in and that is our bread and butter, Monday through Thursday, that is what fills our property.

We are seeing a growing demand from different conventions coming to our State that say, "We want to go to a facility that operates under renewable energy." That was really the driving force. When we started looking at what other providers were offering, we quickly realized we could be greener for cheaper by going with someone else. That is what drove our decision.

As part of our exit fee we received this morning from the PUCN, includes the RBTER. In some of the testimony we heard people talking about harm in leaving other people holding the bag. That is not our intent. I do not think that is the intent of anybody who has filed for NRS 704B previously. The fact the RBTER is included in our exit fee is designed so that we are paying our fair share and are

not leaving the remaining customers on the hook. I felt it was important to bring this up, address it and to push back a little bit on some of the things which were said earlier.

JESSICA FERRATO (Solar Energy Industries Association):

The Solar Energy Industries Association includes 1,000 member companies across the U.S. that include developers, installers, sales and marketing people who work in the solar industry. We are here tonight neutral on the bill. I am still reviewing the proposed amendment, as is my client. I want to thank Senator Brooks because I have had a few conversations with him. His intent in the bill did clarify our primary question, which was our concern that solar providers provide energy to both the public utility, as well as NRS 704B through third party contractors. It is not his intent to make independent power producers treated as providers of new electric resources. I appreciate the clarification. It was my biggest point of concern and has been resolved.

JUDY STOKEY (NV Energy):

We are here in neutral on S.B. 547. I will not go through the history, but will say ditto for what Senator Brooks had stated about the history of why we even went through the NRS 704B process in the early 2000s. I was here then and am glad we are back trying to fix the things we need to fix.

NV Energy has worked hard to listen to our customers and adapt to their needs. Things are changing rapidly. We do this while still providing safe, reliable and affordable energy. We are proud and I am sure some of you have seen some of the press releases. All of the partnership agreements we recently have announced with many of our large customers identified solutions for meeting their changing business needs and sustainable goals.

Over the past decade and under the purview of our State utility regulators, we added more Nevada based generation facilities, making Nevada more energy independent and less reliant on volatile wholesale energy markets. We implemented the State's energy policy and achieved the desired goal. We are proud of that. These in-State resources have also created thousands of good paying jobs and they are Nevada jobs.

Last year our company exceeded Nevada's RPS for the ninth straight year. We also announced the largest solar development in our State history. More than

1,000 megawatts were approved and are currently being developed. That is enough to provide energy to 600,000 Nevada homes at one time.

We are also going to request even more renewable projects in our next filing with the PUCN, next month. We are well on our way to meet the new RPS passed by this body earlier this Session which we did support.

We are proud to be exiting our final remaining coal contract in southern Nevada this year.

We appreciate the bill sponsor and all the other stakeholders for acknowledging that the energy landscape has changed dramatically over the last 20 years when NRS 704B was first put in place. Doing so is in line with our commitment to keep rates flat or declining for our customers for another decade or more. While doing so we are meeting our renewable energy and environmental goals.

GARRETT C. WEIR (General Counsel, Public Utilities Commission of Nevada):
Out of respect for the Committee's time, we are happy to answer any questions you may have. Senator Brooks did a great job of explaining the effect and implementation of the bill.

ASSEMBLYMAN WATTS:

I want to follow up. It was put on the record by Senator Brooks, but we have heard some concerns that have come up from others. Is it the understanding of the PUCN the bill with the proposed amendments would not apply to a renewable energy developer who has a contract or is selling energy to an eligible customer?

MR. WEIR:

Our view is the licensing provisions would apply to providers of retail end-use electric service. Unless an independent power producer was supplying electricity directly to an end-use retail customer, then the licensing would not be required, similar to the RPS requirements that are applicable to providers of new electric resources. This bill does not actually change the definition of a provider of new electric resources. If an independent power producer is not currently subject to the RPS requirements, we would not see them being subject to licensure.

RAY BACON (Nevada Manufacturers Association):

This is not a question that directly impacts my members. To the best of my ability, I will take a look at the proposed amendment. When you look at it, in section 12, subsection 4, it takes the governmental entities and allows them to be eligible for the NRS 704B process. If that stays the game, you wind up with a government which is representing the people who will be getting the discounted rate as a large user. I think that potentially creates some conflicts.

When you look at the large users that you have in Clark County, you have the school district, the convention center, Clark County government probably with the City of Las Vegas and maybe Henderson, depending on their total consumption, and I have no idea what some of those numbers are. In Washoe County, you clearly have the county, the school district and the water utilities. There are all kinds of entities that are effectively directly related to consumers and supplying the same consumer would wind up with the supposed discounted rate. Now you are getting into a conflict between servicing the customer and servicing the wider perspective. How do you adjust all of those rates? It becomes complex and I cannot figure it out on relatively short notice.

MICHAEL D. HILLERBY (Google):

Senator Brooks referenced briefly in the proposed amendment that there is some new language which begins to help some of the issues we have talked to him about; in particular section 5. Google has a different perspective. It is a new user with new load, meaning they are making an investment in Nevada under construction at one of the two sites. They are poised in the process of making one of the largest investments they have made in any state in the U.S. in terms of data centers. How to handle the new customer and a new load, how all that works, made interesting conversations this week in Senator Brooks' office. Google brought in their global head of energy, markets and policy. We look forward to working with the group that Senator Brooks assembles to continue on the amendment of the bill.

SENATOR BROOKS:

I just want to thank the Committee for hearing this technical and long bill.

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CHAIR CANCELA:

We will close the hearing on S.B. 547. There being no further business, the meeting is adjourned at 7:37 p.m.

RESPECTFULLY SUBMITTED:

Debbie Shope,
Committee Secretary

APPROVED BY:

Senator Yvanna D. Cancela, Chair

DATE: _____

Assemblywoman Daniele Monroe-Moreno, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	6		Attendance Roster
S.B. 547	C	19	Senator Chris Brooks	History of NRS 704B and Energy Deregulation in Nevada
S.B. 547	D	30	Senator Chris Brooks	Proposed Amendment
S.B. 547	E	13	Senator Chris Brooks	Highlights for Revising Provision Relating to Providers of New Electric Resources
S.B. 547	F	3	Ernest Figueroa / Office of the Attorney General	Testimony