

**MINUTES OF THE  
SENATE COMMITTEE ON GROWTH AND INFRASTRUCTURE**

**Eightieth Session  
March 14, 2019**

The Senate Committee on Growth and Infrastructure was called to order by Chair Yvanna D. Cancela at 1:33 p.m. on Thursday, March 14, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E 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.

**COMMITTEE MEMBERS PRESENT:**

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

**STAFF MEMBERS PRESENT:**

Marjorie Paslov Thomas, Policy Analyst  
Debbie Shope, Committee Secretary

**OTHERS PRESENT:**

Debra Gallo, Director, Regulatory Projects, Southwest Gas Corporation  
Joe Varela, Director, Energy Solutions, Southwest Gas Corporation  
Nina Kapoor, Coalition for Renewable Natural Gas  
Ryan Kenny, Senior Public Policy and Regulatory Affairs Advisor, Clean Energy  
Bing Young, Bureau of Consumer Protection, Office of the Attorney General  
Garrett C. Weir, General Counsel, Public Utilities Commission of Nevada

CHAIR CANCELA:

We will open the hearing on Senate Bill (S.B.) 154.

**SENATE BILL 154**: Requires the adoption of regulations authorizing certain renewable natural gas activities. (BDR 58-108)

DEBRA GALLO (Director, Regulatory Projects, Southwest Gas Corporation):  
We are here to present S.B. 154. Southwest Gas Corporation has a proposed amendment ([Exhibit C](#)), and worked with the Public Utilities Commission of Nevada (PUCN) and the Bureau of Consumer Protection.

Senate Bill 154 adds a new section to *Nevada Revised Statutes* (NRS) 704. It directs the PUCN to adopt regulations allowing natural gas utilities to invest in renewable natural gas (RNG) activities. The activities must be approved by the PUCN. This bill is consistent with our recent tariff and rate case, approved by the PUCN and is titled "Biogas and RNG Service."

Renewable natural gas is high point natural gas that is created from organic matter and available on a renewable basis. Some examples are agricultural waste, waste water, landfill gas or food waste. The benefits of investing in RNG includes reduction or avoidance of emissions, air pollutants or greenhouse gas emissions. It can create jobs in the sustainable energy field and increase the diversity of Nevada's Renewable Portfolio Standard (RPS). It can provide a choice for consumers to purchase and use this new renewable energy source.

In S.B. 154, sections 3 through 7 are definitions. There are proposed amendments in [Exhibit C](#) which provide additional detail on these definitions to ensure they are correct.

Section 8 on page 3 of [Exhibit C](#) provides the details of the actual process. It has four subsections. Subsection 1 deals with development of the regulations of the PUCN. Subsection 2 details the environmental benefits of RNG. Subsection 3 gives examples of RNG activities. Subsection 4 is goals the public utility would endeavor to achieve. These are not mandates, just goals to achieve.

The last change is on page 6, section 9, of [Exhibit C](#) that adds "upon passage and approval for the purpose of adopting regulations". It would become effective October 1, 2019, for all other purposes.

SENATOR BROOKS:

What are the applicable industries or waste streams that go into making the renewable gas? What is happening in the State now?

JOE VARELA (Director, Energy Solutions, Southwest Gas Corporation):

As far as waste streams in Nevada, there is dairy, land fill waste and waste water treatment plants. Anything that degrades is going to create biogas through a digestive or fermentation type process.

SENATOR BROOKS:

What is currently being done in the State with those processes? How is that gas being utilized in the State now? I worked on one project for landfill gas, but what else is going on with dairies, human waste or agricultural waste?

MR. VARELA:

I am not sure which landfill you are talking about. Depending on the municipality or operator of the landfill, they reclaim it and use combustion engines to generate power at their site. They are also flaring it in certain instances as a way to get rid of it.

NINA KAPOOR (Coalition for Renewable Natural Gas):

The RNG Coalition is a non-profit organization which provides public policy advocacy and education on behalf of the industry across North America. Our international membership is comprised of over 175 member companies in every sector of the industry. It includes the producers of 90 percent of all the RNG in North America.

We are concerned with provisions contained within S.B. 154 for RNG. It has the potential to create the unintended consequence of undermining the market, instead of supporting it.

The RNG Coalition is opposed to language in S.B. 154 that would create unfair competition for developers with utilities. It would authorize the PUCN to approve requests by utility companies to leverage ratepayer funds for the purpose of investing to own or produce RNG directly.

These provisions violate established principles of utility regulation and policy in Nevada. Those provisions refer to retail sales of renewable energy rather than authorizing the utility to produce the energy itself.

We ask that this Committee consider striking lines 37 through 40 on page 2 of the bill. The proposed amendments are available in our letter ([Exhibit D](#)).

What the industry needs from policymakers is market certainty. This secures financing to construct RNG production facilities by private developers.

The mature market for our renewable electricity in Nevada has spurred the large scale development and deployment of renewable electricity. This was without provisions which state the utility should produce that energy. We ask this Committee to consider our renewable gas standard that would mandate a level of gas utility for decarbonizing.

We look forward to working with you on these issues and hope to support the final version of this legislation.

SENATOR BROOKS:

What are your member companies that are a part of the coalition doing in Nevada for RNG or waste gas projects?

MS. KAPOOR:

Our biggest member in Nevada is Southwest Gas. I do not know if we have investors actively developing in the State. I am sure there would be discussions if there was a procurement policy in place like the one envisioned by this bill.

SENATOR BROOKS:

You mentioned this bill would give the utility the ability to own and operate RNG facilities and it undermines the industry. Can you explain how that works?

MS. KAPOOR:

Under current law, utilities put out a request for proposal (RFP) for projects to be bid on in order to produce RNG and sell it to the public utility. That is a more healthy, typical and competitive market for the product. If the public utility is given the ability to leverage ratepayer funds to outcompete, or not put out a bid at all, our developers would be cut out of the process. This will exclude them from the ability to provide RNG while using private dollars.

SENATOR BROOKS:

Is there anything in this bill that prohibits a RFP going out and having a competitive process for RNG to the public utility? Is there anything that prohibits the PUCN from requiring the project be prudent and cost effective?

MS. KAPOOR:

There is nothing prohibiting the public utility or the PUCN from doing either of those things. It is our member's interpretation of the way the language is drafted that gives the PUCN the directive to approve any applications the public utility would make. Public utilities are regulated and allowed a guaranteed rate of return on investments they make in infrastructure. The public utility would not have an incentive from putting out a bid. The public utility is able to get the guaranteed rate of return if they do it on their own.

RYAN KENNY (Senior Public Policy and Regulatory Affairs Advisor, Clean Energy):  
We are opposed to this bill unless amended. The proposed amendment, [Exhibit C](#), from Southwest Gas is not a consensus draft. We were not privileged to see it before this meeting. We still have remaining concerns. It is a giveaway to the public utilities at the expense of private developers of RNG. Developers have invested millions of dollars in biomethane production assets. This yields a robust market for RNG with significant reduction of greenhouse-gas emissions and short-lived climate pollutants.

Our company understands and agrees to decarbonize the pipeline, but through a procurement program. The public utilities should not be allowed to rate base or have that protection to offer better than market pricing to individual natural gas vehicle customers.

There should be a clear separation of two distinct policy goals: one, the connection of biomethane production facilities with essential natural gas distribution systems; two, to decarbonize the pipeline.

We believe this clear separation of pipeline extension and procurement of the producer's fuel must occur to enable the existing competitive market to flourish. The utilities should not be able to participate in the processing facility and go beyond the main extension to the gas system. The unfair competition would undermine the competitive nature of RNG space in Nevada.

We believe the bill picks winners and losers and makes the State an agent to negatively impact the RNG market and private enterprises. It allows utilities to rate base and own production assets. This would give the utilities an advantage over developers with PUCN protection.

There is no justification for the State to give public utilities the power to invest in upstream processing with ratepayer money to compete against private companies. It is not a utility business. If the public utility wants more RNG activity, it can set up a nonutility subsidiary on its own and compete like the rest.

We believe the best use for RNG is for transportation fuel. It is cost effective and maximizes greenhouse gas emission reductions.

This bill would be less complex if the PUCN authorized full rate basing of pipeline extensions connecting Nevada biomethane projects to distribution systems. We agree with the interest to decarbonize a pipeline. The program should serve to partner gas utilities and private developers. There would be interest in optimizing potential Nevada RNG production, as well as attracting outside sources.

Public utilities should not be able to use ratepayer funds to invest in RNG production. It creates a monopolistic competitive advantage in the marketplace for the gas utilities. We believe this would disrupt the marketplace and no single entity can be given any competitive advantage over the private market.

CHAIR CANCELA:

I would like to clarify. When you say you oppose the bill unless amended, is the amendment you are referring to the amendment we just heard about from Ms. Kapoor that is [Exhibit D](#)?

MR. KENNY:

That is correct, through our association with the Coalition for RNG.

SENATOR SETTELMAYER:

How much RNG is currently being generated in the State that is utilized for sale by pipeline? I do not know of any successes in that realm. The RNG is utilized at sewer plants and they use the gas themselves onsite. The plants heat the inside

of buildings during the winter time. It generates a little bit of power or they flare it off.

MR. KENNY:

There are two different aspects; one is the transportation space, the other is the nontransportation. My company has 13 fueling stations in Nevada and RNG is more expensive than diesel or fossil fuel gas. Federal RNG credits do allow the price to be somewhat even and competitive. As far as production goes, that is one of the things we are looking at. We would like more production in Nevada. The projects could increase, but this bill would drive developers and potential projects away from the marketplace.

SENATOR SETTELMAYER:

I am concerned that you have had the ability to do this and nobody utilized it. I do not have a problem with opening it up to others. When we get into the concept of renewable energy and create a market just for developers and preclude others, that bothers me. If our goal is to produce renewables, it should be to allow anyone and everyone to come forth to help.

MR. KENNY:

The RNG space is growing Nationwide and especially in California. Renewable natural gas results in lower greenhouse gas emissions in the transportation space and less nitrogen oxide emissions. This bill would preclude those developers from coming in. It would corner and dominate the market on the public utilities.

This bill should be amended in our view, to make sure that is the case. The public utilities can open up an unregulated subsidiary without any legislation or regulations by the PUCN. This allows them to compete like the rest of the developers. This bill is an attempt to corner the market and protect it against future growth by developers.

MS. KAPOOR:

I will also add that the utility currently does not have a program to procure RNG. This bill does set up that program and we like that aspect. When you ask why we have not done this yet, it is because the public utility is not authorized to procure RNG. Across the U.S., public utilities are bound by requirements that they must purchase the least costly resource available. It is not considered a

renewable piece. Public utilities need enabling legislation like this to let them set up a procurement program.

This procurement program goes a step too far. It not only lets them procure but also produce their own RNG using ratepayer dollars. We would be fully supportive of a program that would only allow them to procure it. You would see RNG producers come and negotiate to actively produce RNG.

SENATOR SETTELMAYER:

One of the biggest producers is dairies. They have the potential to do this but they basically take care of their own because they have enough emission requirement credits.

SENATOR SPEARMAN:

This bill sets up a business model that reduces or eliminates the competition, and you do not want to use any ratepayer fees for RNG? I do not understand.

MS. KAPOOR:

Let me give an example. Say, in your district there is a private company that produced widgets. Then the State decides to come in and build a widget factory right next door. The State uses taxpayer dollars to pay for the widget factory and outcompetes that private producer of widgets in the same market. It would be unfair for the public sector to use public funds to compete with a private company that has to raise its own capital to produce its own product. I hope that helps explain it better.

Traditionally, in utility regulation there are principles that evoke a situation where regulators want to help facilitate a healthy competitive market. There are multiple players that are competing on a level playing field for that market. When one entity can use public dollars, but other entities cannot, it can be difficult for other players to compete in the market against public dollars in order to produce the same product.

SENATOR SPEARMAN:

In private business when you go out and recruit venture capitalists to put in money, there is a certain amount of risk that is in return of the investment formula. Sometimes, the greater the risk, the greater the repayment. In your example, using widgets, if we were trying to expand the use of widgets in my district, I would probably want as many people to jump into the game as



possible. Now when we talk about RNG, we are usually relegating it to transportation and not to other forms. If you cannot use public dollars to help do some of the research and development, unless you have a large pool of venture capitalists, then you will not reach the goal. Why does it have to be an either/or? Why can it not be venture capitalists along with public dollars that help us expand? We are trying to make sure we have the renewable resources in place to support the RPS and other policy agendas that might be coming from this body.

MS. KAPOOR:

The State's RPS statute is silent on this issue. If the public utility decided they want to go and build their own renewable electricity facility, it would be their prerogative to go before the PUCN and try to get approval. They would have to show there is not a significant amount of private capital or players coming to negotiate offers, and there is some kind of a market failure. It would be more of an exception than the rule.

That is not what this bill proposes to do. This bill actually gives explicit authorization for the public utility to do that without having to prove any of those things. So that is why this is a little bit different than the RPS example.

MR. KENNY:

The point you are making is the heart of our concerns with the bill. The financial markets are where the developers and private companies have to assume the risk, apply for capital and use that for capital expenditures. Rate-based money is money public utilities can use without any risk and use it as a clear advantage in the marketplace. They would outbid and outcompete with private developers in the RNG space. We believe production should be left to developers and the public utility should be outside the meter downstream.

BING YOUNG (Bureau of Consumer Protection, Office of the Attorney General):

We are not opposing the bill with the amendment that was submitted, [Exhibit C](#), by Southwest Gas. We did participate with the PUCN and the gas company in coming up with the language. We just received the two oppositions and have not discussed it. I believe we would oppose any sort of mandate without the PUCN limiting costs if they are excessive.

GARRETT C. WEIR (General Counsel, Public Utilities Commission of Nevada):

We appreciate the efforts that Southwest Gas has made reaching out to both the PUCN and the Bureau of Consumer Protection. We had all our initial questions and concerns addressed. We believe this amendment, [Exhibit C](#) as proposed, resolves the initial concerns we had. Notably, as some of the opposition testimony acknowledged, this does contemplate a deviation from least cost planning. The PUCN wants to ensure that there would be language allowing it to retain appropriate oversight. The language proposed in the amendment would allow the PUCN to still consider the forethought of projects, reasonableness of costs and rate impact to customers.

In earlier testimony and for clarification of legislative history, the PUCN does not envision the language requiring any sort of approval. It is enabling language for the PUCN if the costs are reasonable and the project is prudent with legislative direction. The PUCN would have oversight of costs and allow those be recovered through rates.

An issue that was raised with the public utility is that there is no guarantee of the rate of return. It is only an opportunity to earn the rate of return on those projects. There are associated risks.

As amended, the PUCN believes those concerns have been addressed.

SENATOR DENIS:

There was discussion about ratepayers funding these projects. You stated that there are risks. I am assuming that you are saying the ratepayers would not be paying for these projects?

MR. WEIR:

If the approved projects being executed are prudent and costs are reasonably incurred, ratepayers would pay for those projects. I was speaking to the risks or the general guaranteed rate of return concept; it is never a guarantee for the public utility. It is an opportunity for the public utility on those capital investment rate base items to receive a rate of return, as determined by the PUCN.

SENATOR DENIS:

Would the PUCN determine if the risk is too high with the process they go through? With either the proposed amendments, or the bill as is, would there still be those consumer protections, regardless of who did the project?

MR. WEIR:

Yes. There would be normal safeguards that exist to protect consumers for these and current projects that are approved by the PUCN's review. The difference is the bill recognized the deviation from least cost planning. The PUCN would entertain proposals that are not necessarily least cost, but need to be prudent and reasonable before they can be approved.

SENATOR SPEARMAN:

I was reading an article that acknowledged barriers for public utilities trying to open up more opportunities to develop RNG. Center Point is a mid-west gas utility which proposed a pilot program in Minnesota. It allows consumers to set a dollar amount on their bill allowing the public utility to proceed with projects. If we do not invest in research and development, how do we ever get there? This article from the Energy News Network will explain their project: <https://energynews.us/2019/01/30/midwest/minnesota-utility-wants-to-offer-customers-renewable-natural-gas-option> .

MS. GALLO:

We are a member of the Renewable Gas Coalition, and there are no viable projects at this point but are interested in bringing it to the PUCN for their oversight.

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CHAIR CANCELA:

There being no further business, the meeting is adjourned at 2:16 p.m.

RESPECTFULLY SUBMITTED:

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Debbie Shope,  
Committee Secretary

APPROVED BY:

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Senator Yvanna D. Cancela, Chair

DATE: \_\_\_\_\_

<b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit / # of pages</b>		<b>Witness / Entity</b>	<b>Description</b>
	A	1		Agenda
	B	3		Attendance Roster
S.B. 154	C	6	Debra Gallo / Southwest Gas	Proposed Amendment
S.B. 154	D	2	Nina Kapoor / Coalition for Renewable Natural Gas	Letter and Proposed Amendment