MINUTES OF THE
LEGISLATIVE COMMISSION
NEVADA LEGISLATIVE COUNSEL BUREAU
***Nevada Revised Statutes* (NRS) 218E.150**

The Legislative Commission held its first meeting in Calendar Year 2016 on Friday, February 19, 2016. The meeting began at 9:20 a.m. in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and was videoconferenced to Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada.

COMMISSION MEMBERS PRESENT:

Senator Michael Roberson, Chair
Senator James A. Settelmeyer, Vice Chair
Senator Kelvin D. Atkinson
Senator Moises (Mo) Denis
Senator Aaron D. Ford
Senator Becky Harris for Senator Ben Kieckhefer
Assemblyman Nelson Araujo
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Irene Bustamante Adams
Assemblyman John Hambrick
Assemblyman Ira Hansen
Assemblyman Lynn D. Stewart

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Rick Combs, Director
Rocky J. Cooper, Legislative Auditor, Audit Division
Russell J. Guindon, Principal Deputy Fiscal Analyst, Fiscal Analysis Division
Brenda J. Erdoes, Legislative Counsel, Legal Division
Risa B. Lang, Chief Deputy Legislative Counsel, Legal Division
Kevin C. Powers, Chief Litigation Counsel, Legal Division
Susan E. Scholley, Research Director, Research Division
Debbie Gleason, Secretary for Minutes, Research Division
Sylvia A. Wiese, Executive Assistant, Administrative Division

Chair Roberson called the meeting to order. Exhibit A is the agenda, and the attendance sign-in sheets are Exhibit B. All exhibits are filed in the Director's Office of the Legislative Counsel Bureau (LCB) and are on the Legislative Commission's webpage at http://www.leg.state.nv.us/Interim/78th2015/Committee/Interim/LC/?ID=2. Items taken out of sequence during the meeting have been placed in agenda order.

PUBLIC COMMENT

Chair Roberson called for public comment.

K. Neena Laxalt, lobbyist, Nevada Propane Dealers Association, Reno, Nevada, commented on Regulation 116-15 (Exhibit C). She said Senate Bill 151 (Chapter 59, *Statutes of Nevada 2015*) revises provisions governing the expansion of gas infrastructure. Ms. Laxalt referred to documents submitted to the Legislative Commission (Commission) (Exhibit D), which express her concerns regarding the determination made by the Public Utilities Commission of Nevada (PUCN) that a small business impact statement (SBIS) is unnecessary. She asked the Commission to address the possible loophole between the legislative and regulatory processes pertaining to SBISs, and requested the Commission require the PUCN to provide an SBIS for R116-15.

Jana Wright, resident, Clark County, Nevada, presented written testimony (Exhibit E) in opposition to R087-14 (Exhibit F). In addition to several concerns she has regarding the regulation, her primary contention pertains to the 96-hour trap visitation period. Ms. Wright asked the Commission to deny R087-14.

A.R. Fairman, private citizen, Nevada, testified regarding the Taxicab Authority (TA), Department of Business and Industry (DBI), and the Nevada Transportation Authority (NTA), DBI. Mr. Fairman referred to a packet he provided to the Commission (Exhibit G) regarding the definition of a category II peace officer, and the rules and regulations an officer may enforce. He stated the officers enforce the State, county, and city laws, but do not have legislative authority to do so. Mr. Fairman asked the Commission to review the material in an effort to resolve some of the issues.

Celice Cyran, private citizen, Nevada, testified in opposition to net metering. Her position is the PUCN is punishing homeowners by forcing them to pay more for clean energy and by denying them clean energy options.

Fred Voltz, resident, Carson City, Nevada, read from written testimony in opposition to R116-15 and R087-14 (Exhibit H). Mr. Voltz stated S.B. 151 delegated to the PUCN procedural responsibility for an economic development program of natural gas expansion with R116-15 as the result. Mr. Voltz's primary opposition to R116-5 stems from the PUCN's determination not to provide an SBIS, which is required by NRS. He asked: (1) that R116-15 be

returned to the PUCN for repair of procedural omissions and noncompliance with NRS; and (2) for a full operations analysis of the PUCN.

Mr. Voltz also expressed opposition to R087-14 dealing with animal trap inspection intervals. He said the Board of Wildlife Commissioners, Department of Wildlife, is required to preserve, protect, and manage wildlife and its habitat, pursuant to NRS 501.105. Leaving a severely injured animal in a trap without food, water, shelter, or the ability to protect itself for up to 96 hours before a human appears does not meet the requirement to preserve and protect.

Debbie Dooley, President, Conservatives for Energy Freedom, Atlanta, Georgia, expressed concern pertaining to the PUCN's decision regarding solar net metering, stating it sided with big brother monopolies and went after solar choice and solar freedom in Nevada. She asked the Commission to reverse the PUCN's decision.

Naomi Duerr, Council Member, Ward 2, City Council, City of Reno, representing herself as a rooftop solar panel customer, testified in opposition to the PUCN's decision regarding solar net metering. In addition to providing an overview of the solar ratemaking case, Ms. Duerr outlined the issues and impact of the PUCN's net metering decision. She offered 13 recommendations to improve the solar net metering case and rendered suggestions to make the process more transparent (Exhibit I).

Mike Stitley, resident, Las Vegas, Nevada, testified in reference to the investigation of the regulation of renewable energy and net metering. He asked for help on behalf of himself and thousands of other solar customers in Nevada. Mr. Stitley described his initial enthusiasm at becoming a solar energy customer, which would not have been financially possible if not for the Solar Energy Systems Incentive Program. He said solar customers and solar businesses feel victimized because of the PUCN's decision pertaining to net metering. Mr. Stitley expressed concern over not being able to sell his house and that something needs to be done. He stated he would like to put the public back into the PUCN, where it belongs.

Tina Past, resident, Henderson, Nevada, testified that she became a solar panel customer to save money. The savings achieved with the solar panels and the rate reduction has been minimal, but the reimbursement rate is critical. She thought the accumulated 11 cent per kilowatt-hour reimbursement would offset air conditioning costs. Ms. Past stated the ramifications of R116-15 and the basis on which it was made are questionable and she hopes the Commission will investigate.

Casey Coffman, Sales Manager, Sunworks, Reno, Nevada, testified that according to some media reports, the solar industry supported S.B. 374 (Chapter 379, *Statutes of Nevada 2015*), but he could not recall his company being consulted. He implied business had substantially decreased since the PUCN's decision and questioned the timing of S.B. 374. When S.B. 374 passed, it called for the PUCN

to appropriately identify and apply a tariff for net metering customers. At that time, no subsidy had been found by NV Energy (NVE) or anyone else. He mentioned a 2014 independent study that indicated net metering was a net benefit to all customers. In his opinion, S.B. 374 was intended to find a subsidy and use it to suppress solar. Mr. Coffman stated NVE's calculations are incomplete and incorrect, but are used anyway. He has laid off nearly his entire sales staff since the decision by the PUCN. Consumer confidence in solar power is down and there is no incentive to purchase solar power because the rates are not guaranteed. In Mr. Coffman's opinion, the net metering decision should be made by the Legislature. He stressed not waiting until the next Legislative session to deal with the issue because local solar companies might not be able to reenter the market if it is left unresolved that long. Mr. Coffman is concerned that only the big, out-of-state companies will be left, and they will send their profits elsewhere. Mr. Coffman asked for a special session to address the matter of net metering.

APPROVAL OF MINUTES OF THE DECEMBER 21, 2015, MEETING—Senator Michael Roberson, Chair

SENATOR ATKINSON MOVED APPROVAL OF THE MINUTES OF THE DECEMBER 21, 2015, MEETING.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED.

INVESTIGATIONS AND INQUIRIES

A. Investigation of the Regulation of Local License Taxes and Fees on Businesses, Including Discussion and Evaluation of Procedures, Administration and Regulation by the City of Las Vegas and Whether Possible Future Legislative Action Regarding Such Regulation May be Necessary or Advisable

Chair Roberson stated he has received many questions and comments from licensing applicants in southern Nevada regarding the perceived arbitrary and capricious nature of local governmental licensing of transportation network companies (TNCs). On January 20, 2016, the City of Las Vegas (City) passed Ordinance No. 6494 (Ordinance) to establish a business license fee (BLF) for TNCs. Chair Roberson asked the Legal Division of the LCB to review the Ordinance to determine whether it was consistent with Assembly Bill 175 (Chapter 278, *Statutes of Nevada 2015*) and A.B. 176 (Chapter 279, *Statutes of Nevada 2015*) passed during the last legislative session. He stated an opinion from the Legal Division had been distributed to the public, the Commission members, and to the City (Exhibit J). Chair Roberson asked for a summary of the opinion.

Kevin C. Powers, previously identified, stated the Legal Division is a nonpartisan agency that provides legal advice to the Legislature regarding the interpretation, application, and constitutionality of legislation. Mr. Powers addressed the first question of whether the powers of the City to impose licenses, taxes, and fees in its city charter and under NRS 268.095 were preempted by legislation enacted during the 2015 Legislative Session. Two pieces of legislation were involved in the question: (1) the limited home-rule bill, A.B. 493 (Chapter 465, *Statutes of Nevada 2015*), that modified Dillon's Rule, the common-law rule on local governmental power; and (2) A.B. 175 and A.B. 176 governing TNCs.

Mr. Powers said when A.B. 175 and A.B. 176 were passed, the Legislature enacted the expressed preemption clause, which provides that a local government cannot impose a tax or fee on a TNC or its affiliated drivers. However, the Legislature created an exception to the preemption provision that a local government could require a TNC and driver to pay for and obtain a business license as long as the fee was the same as the fee that is applicable to all other businesses. The distinction between the preemption and the exception is that the preemption provision applies to taxes and fees, whereas the exception only allowed a fee. Mr. Powers explained a tax is a revenue-generating measure designed to provide for the operations of government. A fee can be for revenue, but it can also be a fee for regulation, which is collected to defray the cost of regulating a particular industry and cannot exceed that cost. Fees for revenue are designated for the City's General Fund (GF); fees for regulation are typically segregated funds used only for that regulatory activity.

Mr. Powers stated when the City passed the Ordinance, it established an annual $100 BLF for TNCs, which is based upon the number of active drivers of the TNC. On a monthly basis, the City determines the average number of drivers and assesses the fee based upon that number. The question is whether the $100 is a fee for revenue or for regulation. The Ordinance does not indicate it is a fee for regulation, and it does not segregate the money to be set in a separate fund and earmarked for a particular regulation. Mr. Powers stated it is the Legal Division's opinion that the Ordinance is a fee for revenue. He reiterated the exception from preemption is only for a business fee for regulation. The express preemption provision in Section 44 of A.B. 176 preempts the City from imposing the BLF on TNCs through the Ordinance.

Mr. Powers said the Legal Division is of the opinion that the plain language of the exception clearly limits it to only fees for regulation. However, even if there were questions or ambiguities regarding A.B. 176 and the preemption clause, the following default rules applied: (1) looking at legislative history; (2) applying the rules of statutory construction; and (3) looking at Dillon's Rule on local governmental power. All three sources lead to the same conclusion—the City's BLF for revenue on the TNCs is still preempted.

Regarding the rules of statutory construction, Mr. Powers said when the City adopted the Ordinance, it relied on NRS 268.095, a general statute that provides the City with a general power to impose license taxes. However, the express preemption clause in legislation passed in 2015 is also a statute. When reading the two statutes, there is a general power for the City with an exception that prohibits it from proposing fees on TNCs for revenue. The rules of statutory construction lead to harmonizing the two pieces of legislation, and preemption is the result. Even if there were an irreconcilable conflict between the general power in NRS 268.095 and Section 44 of A.B. 176, the rules of statutory construction state the more specific and most recently enacted statute takes precedence, which is Section 44 of A.B. 176.

Mr. Powers stated the legislative history for the TNC bills made it clear the Legislature was creating a broad preemption so that regulation of the TNCs was at the State level and not the local level. The Legislature wanted to ensure that when TNCs obtained a business license, they paid the same processing fees as any other business; the TNCs were not being exempted from all business licenses and fees, but were being exempted from fees for revenue.

Regarding Dillon's Rule on local governmental power, Mr. Powers said it was a common-law rule created by case law in the 1800s. It means local governments only have: (1) powers expressly provided in statutes; (2) powers that exist by strong and clear implication; and (3) powers that are indispensable to operating the local government. Dillon's Rule on local governmental power has a default rule—if there is any fair or reasonable doubt whether a city or local government has a power, that doubt is resolved against the city and the power is denied. Assembly Bill 493 modified Dillon's Rule regarding matters of local concern—it gave a limited amount of statutory home-rule to cities and other local governments. Under A.B. 493, when it is a matter of local concern, the bill changed the rules so that if there is any fair or reasonable doubt, that doubt creates a presumption in favor of the city unless contrary evidence can be presented of legislative intent indicating the city should not have that power. However, that rule does not apply in this situation because that change in rule only applies for matters of local concern.

Mr. Powers stated the regulation of TNCs is not a matter of purely local concern. Throughout the session, the Legislature made it clear the regulation of TNCs is a matter of Statewide concern. The NTA regulates the TNCs and the permitting process goes through that centralized function, which is not a matter of local concern. Therefore, the change in Dillon's Rule from A.B. 493 does not apply in these circumstances. The result is Dillon's Rule still applies and the default rule under Dillon's Rule also applies where any fair or reasonable doubt is resolved against the city and the power is denied. In conclusion, Mr. Powers restated the Legal Division is of the opinion the BLF imposed by the City is a fee for revenue and is preempted by Section 44 of A.B. 176.

Rick Combs, previously identified, swore in, under oath, officials of the City of Las Vegas.

John A. Curtas, Deputy City Attorney, City of Las Vegas, representing the City and the subpoenaed witnesses, explained the purpose for his presence at the meeting. Mr. Curtas stated that because the Ordinance has been a contentious legal issue, the threat of litigation against the City is considered real. Under the circumstances, he had asked the Commission to subpoena the witnesses from the City of Las Vegas. Mr. Curtas acknowledged Mr. Powers' legal opinion as being well researched and written. However, in his opinion, if that much time is required to explain why a statute is unambiguous, that proves its ambiguity, which explains the City's actions.

Orlando Sanchez, Deputy City Manager, City of Las Vegas, said he is here to provide information on the City's business licensing and procedures and address the City's decision to impose a per-unit BLF on TNCs. Mr. Sanchez said NRS 268.095 gives cities the right to fix, impose, and collect for revenues or for regulation, or both, a license tax on all character of lawful trades, callings, industries, occupations, professions, and businesses conducted within its corporate limits. Overall, business license revenue allowed within the caps provided in State law is one of the few discretionary revenue sources allowed to local governments. The City collects BLFs and provides regulation, inspection, and community services to such businesses. This revenue is allocated through the City's annual budget process to provide a wide variety of public safety and community services directly affecting our local businesses and the residential community the City serves.

Mr. Sanchez stated the City manages over 32,000 active business licenses, including franchises, and general and privilege licenses. License fee structures are divided between 64 percent flat incremental and 36 percent of gross revenue. Through NRS 268.095, the City is permitted to impose either a flat fee or a gross revenue fee on all businesses operating within its corporate boundaries. The 2015 Legislature authorized the establishment of TNCs. In particular, subsection 2 of Section 44 of A.B. 176 states it does not prohibit a local government from requiring a TNC, or driver, to obtain a local business license, or pay a BLF in the same manner that is generally applicable to other businesses operating within local government jurisdictions. The actual language reads as follows:

> 2. Nothing in this section:
> (a) Prohibits a local governmental entity from requiring a transportation network company or driver to obtain from the local government a business license or to pay any business license fee in the same manner that is generally applicable to any other business that operates within the jurisdiction of the local government.

Mr. Sanchez continued. The City chose to license TNCs in the same manner as all other businesses in the City, pursuant to the NRS 268.095. The City chose to impose a flat fee, as authorized by A.B. 176, instead of the gross revenue fee. This licensing requirement is generally applicable to any business operating within the jurisdiction of the City under Title 6 ("Business Taxes, Licenses and Regulations") of the Las Vegas, Nevada, Municipal Code (LVMC), which clearly states it is unlawful to engage or to permit another person to engage or continue in the City any business without a valid, unexpired license, pursuant to this title. In implementing subsection 2 of Section 44 of A.B. 176, the City chose a simple, flat-fee structure that allows the lowest fee range available in the City's licensing code and one that is generally applicable.

Mr. Sanchez reiterated the following points: (1) A.B. 176 was drafted and passed by the Legislature; (2) the plain reading of the statute gives the City the right to require TNCs to obtain a local business license; (3) at most, there is ambiguity in the language of the statute that needs to be resolved; and (4) either way, the City is operating within the framework of that statute as it is written and given to the City by the State. He said the City stands by its interpretation of the law until it is changed.

In closing, Mr. Sanchez said the NRS provisions governing local government BLFs allow only two basic options for generally applicable license fees—a flat fee, or a gross revenue or sales base. He said the City's business licensing model not only follows what NRS allows, it also follows the same licensing structures as other businesses in the City. The limited options provide minimal ability to implement creative solutions to changing business models, while at the same time, dealing with the changing technological environment. Regarding TNCs, the City continues to discuss challenges created by the business model and technology and its ability to manage local business licenses. As technology and business models evolve, the City believes it will continue to work closely with its business partners and the Legislature to ensure the framework of flexibility and licensing is available to meet the needs of local government, the business community, and the residents the City serves.

Assemblyman Stewart asked whether there were other businesses licensed by the City that are similar to Uber.

Karen E. Duddlesten, Deputy Planning Director, Department of Planning, City of Las Vegas, explained the City works closely with Clark County (County), Henderson, and North Las Vegas, as well as Lyft and Uber. The City has met with the TNCs and their drivers to format a business license model. The TNCs asked to account for active drivers rather than charge for each driver. There was also considerable testimony from drivers who asked not to be required to obtain and maintain an individual business license on a six-month or annual basis. The $100 fee is applied to all types of motor carriers in the City. Ms. Duddlesten

explained when an occupation or business is regulated by a State agency, the City places them in a flat-fee category, which ranges from $100 to $250. The City used the lowest rate available and worked with the TNCs in addressing their request to pay only for drivers who come into the City, which the City accommodated. If a driver comes into the City only once, the driver would not be charged for the entire time, but rather the driver could be averaged in order to earn the discount.

Ms. Duddlesten confirmed Assemblyman Stewart's summation that the City is applying the same licensing fee to Lyft and Uber as it does to other types of motor carrier businesses.

A conversation ensued between Ms. Duddlesten and Senator Atkinson, which clarified TNCs—not the drivers—pay the $100 fee. Ms. Duddlesten said the TNCs asked the City for a discount because a driver might enter Las Vegas one month but not reenter during the succeeding months. This was a compromise between the City and the TNCs. At the time, the City had been working on a regional license with the County and all of the local entities agreed to that language.

Senator Atkinson pointed out that the City recognized the situation with the TNCs and drivers was different from how other BLFs were charged. He asked for more detail on the comparisons.

Ms. Duddlesten explained the minimum gross revenue fee is $110, annually but paid $55, semiannually. Some of the current categories are motor carrier or transportation services—$100, annually, per vehicle; limousines—$100, annually, per vehicle; truck rentals—$100, annually; and all State professionals are $150, $200, and $250, annually.

Chair Roberson interjected his recollection of the January 20, 2016, hearing when the City indicated it cannot collect $100 from limousine drivers, but rather it had to be paid to the TA.

Ms. Duddlesten replied that the City issues licenses for limousine drivers. Referencing NRS 706.826, she explained that in counties where there are medallions or regulations on taxis, a statute was enacted where all of the revenues collected by the cities and counties, where there was a set number of cabs or medallions, had to be transferred to the TA.

Senator Atkinson asked whether the transportation categories Ms. Duddlesten provided are considered independent contractors, as are TNCs, and asked for a distinction between them.

Ms. Duddlesten stated that during the hearings and meetings with TNCs and drivers, the City received several letters. One letter received from Lyft requested

the City not license drivers individually, but rather the TNCs be licensed. She said the City tried to account for individual units coming into the City.

Senator Atkinson asked for additional clarification regarding the distinction between independent contractors and limousine drivers who work for TNCs.

Ms. Duddlesten explained the City has many categories of individuals who are licensed by the State and the City licenses the company, such as insurance agents, doctors, veterinarians, dentists, et cetera. The number of licensed employees determines the license fee for the company. These examples are similar to independent contractors and drivers who work for TNCs.

Chair Roberson asked whether Ms. Duddlesten was referencing employees or independent contractors.

Ms. Duddlesten replied that with the example of insurance, it could be either.

Senator Ford recalled the intent of A.B. 176 was that no municipality would add a tax to the TNCs. He asked Mr. Curtas to provide his best argument as to why the fee the City has charged is "generally applicable to any other business that operates within the jurisdiction of a local government" and how that fits the parameters of the exception in A.B. 176.

Mr. Curtas answered the City has a variety of fees for a variety of businesses. At the very least, subsection 2 of Section 44 of A.B. 176 gives the City the ability to impose a BLF. Nowhere in statute are these fine distinctions made between taxes and fees. The City reads the statute as giving the City the right to impose these fees because it seems to preempt at one level, but on the other hand, it gives back. He said the City is simply acting on the language provided by the State.

Senator Ford said the distinction between a fee and a tax is clear in the statutes and the City ordinances, and the State does give the City the right to charge a BLF. However, the limiting aspect is one that is generally applicable to any other business that operates within the jurisdiction of the local government. Senator Ford repeated he is trying to understand why the City thinks charging the TNCs in the way it does fits within the realm of "generally applicable to any other business." He understands there are other businesses that might not be analogous to what Mr. Curtas is saying in that they are charged similar fees. Senator Ford asked what Mr. Curtas finds ambiguous about the law.

Mr. Curtas said if the law intended to make a distinction between a tax and a fee in subsection 2 of Section 44 of A.B. 176, it would be there. He stated the City is charging a BLF.

Senator Ford asked for confirmation that the funds collected from BLFs would not be used for revenue-generating purposes.

Mr. Curtas said the distinction is between what a tax is and what a fee is. Many fees necessarily act as revenue-generating taxes, and taxes are sometimes disguised as fees in bills.

Senator Ford questioned the effect of what is charged, which determines whether a charge is a fee or a tax. He asked what effect the City is attempting by charging the TNCs.

Mr. Curtas said the Las Vegas City Council (LVCC) would best answer the effect and practicalities of the budgetary and financial concerns.

Bob Beers, Council Member, Ward 2, LVCC, said the City was primarily relying on its legal staff's opinion that what it was doing complied with the law. He concluded there are differing attorney opinions and a judge should decide. Mr. Beers explained the intended effect of charging TNCs was consistency with the City's general business licensing framework. There are a number of business categories that have a nearly identical structure to their BLF. Within the two primary areas of structuring BLFs being fixed or gross revenue, both are applied depending on the nature of the business being licensed. Mr. Beers said the City understood it was being consistent with how fixed fees are assessed on a number of other industries.

Bob Coffin, Council Member, Ward 3, LVCC, stated he voted against enacting the charge for TNCs and he agrees with Mr. Beers' testimony. He explained the bill takes away the City's ability to police drivers within City limits. Regardless of whether it is called a fee or a tax, it reduces the amount of money available to the City to maintain the streets and highways, but also provides monitoring of the drivers in their "home office."

Senator Ford asked whether the collected fees are being used to monitor and enforce, or are they being raised as revenue for the City to use elsewhere. Therein lays a distinction critical to determining whether the charge is a fee or a tax.

Mr. Coffin reverted to his previous point that A.B. 176 lacks safety provisions and the ability to police TNC drivers by not requiring them to obtain an individual City business license.

Chair Roberson commented the law makes clear the State will occupy the regulatory field through the NTA to regulate TNCs. He also mentioned the subpoenas were issued at the request of the City.

Mr. Coffin stressed the importance of attempting to rectify mistakes or oversights not considered in the heat of a legislative session through renegotiation afterward. That flexibility has always been available in a biennial session framework.

Mr. Beers framed Senator Ford's question as follows: Is there a nexus between the fee the City is charging and services being provided or implemented regulation? He explained how components and infrastructure of the community and BLFs are assessed in order to provide services by the City. Taking into consideration the different types of businesses the City licenses, some require a little more regulatory attention, particularly in areas of special-use permits. Mr. Beers stated the City's licensing practices are consistent with all businesses.

Assemblyman Hansen asked for identification of the subpoenaed individuals and for the LVCC's votes for and against the Ordinance.

Mr. Curtas replied the subpoenas were issued to the following individuals: Mr. Sanchez; Elizabeth (Betsy) N. Fretwell, City Manager, City of Las Vegas; Ms. Duddlesten; and Brian McAnallen, Government Affairs Manager, Office of Administrative Services, City of Las Vegas. He said Ms. Fretwell was released from her subpoena because she had to be out of town; Mr. Sanchez appeared in her stead.

Chair Roberson provided the LVCC's votes on the Ordinance as follows: Councilman Coffin and Councilman and Mayor Pro Tem, Steven D. Ross, Ward 6, voted nay; and Councilman Beers; Councilman Stavros S. Anthony, Ward 4; Councilwoman Lois Tarkanian, Ward 1; and Councilman Ricki Y. Barlow, Ward 5, voted yea.

Vice Chair Settelmeyer emphasized A.B. 176 was probably the most heavily lobbied bill, with several conflicting amendments, in the history of the Legislature. He said there was ample opportunity for lobbyists and the City to make any concerns they had pertaining to A.B. 176 known to the legislators. In his opinion, it is clear the language is preemptive to only requiring a license that is applicable within the City.

Vice Chair Settelmeyer and Mr. Coffin discussed Mr. Coffin's position that an effect of A.B. 176 is if costs by the City are increased and there is no revenue to cover those costs, revenue must be taken from other parts of the City's budget. Vice Chair Settelmeyer raised the point that none of the regulations are within the City's jurisdiction, but rather within the NTA, and he asked which costs were being increased. Mr. Curtas replied costs were increased to maintain highways, sidewalks, carriages for hire, et cetera.

Vice Chair Settelmeyer asked what an independent contracted motor carrier is charged for a business license.

Ms. Duddlesten answered if the carrier is regulated by the State of Nevada, the charge is $100, annually. Independent contracted, local delivery drivers on a gross revenue license who are not regulated by the State pay an annual minimum fee of $110.

Mr. Beers stated his answer to Vice Chair Settelmeyer's question differs from that of Mr. Coffin. Beyond the standard costs for services incurred by the City, funded by BLFs, in his opinion, there are no additional regulatory costs directly related to TNCs, other than those for administering business licenses.

Vice Chair Settelmeyer brought up the potential savings as a result of TNCs He expressed concern over the City's gross revenue. For example, the City is charging 5 percent of the businesses' gross revenue to individuals entering the field of medical marijuana.

Mr. Beers replied the charge is 7 percent of the gross, which currently brings in approximately $75,000 per year. He added the City is significantly upside down in its costs versus revenue in creating the regulatory framework because it was extremely labor intensive at the front, and the results have not yet been achieved. In Mr. Beers' opinion the City is realizing, having set higher fees for medical marijuana companies than in the surrounding jurisdictions, some proprietors have moved their businesses elsewhere, which is one of the reasons the City has failed to achieve their budgeted revenue in that area.

Further discussion took place between Vice Chair Settelmeyer and Mr. Beers. Vice Chair Settelmeyer referred to the City's legislative history, which addressed streamlining the business license process to make it friendlier for businesses by having one common portal. In Mr. Beers' opinion, the City is not technologically capable. Vice Chair Settelmeyer opined the City is technologically capable, but resistant. Mr. Beers replied this discussion has revealed the diversity of businesses licensed by the City, and there is not one consistent licensing rule that applies to every business.

Assemblywoman Bustamante Adams surmised TNCs are charged a $100 BLF because their services are compared to motor carriers, such as limousines, which also pay $100. She asked what the cost is for taxicab drivers.

Ms. Duddlesten confirmed Assemblywoman Bustamante Adams' statement. She continued that about 15 years prior, the Legislature passed Chapter 706 of NRS ("Motor Carriers"). The law required the revenue collected through business licensing by counties from a number of issued medallions be forwarded to the TA. At some point, the City stopped collecting the fee due to the cost of collection.

Assemblywoman Bustamante Adams asked if the law had not been imposed, would the BLF be $100.

Ms. Duddlesten said the fee would still be $100, and pursuant to the motor carrier code, anyone who is regulated by the State under Chapter 706 is charged $100.

Assemblywoman Bustamante Adams stated fees could be collected to defray the cost of a regulation but could not exceed the cost of regulating. She asked whether the City uses a formula to determine the costs for administering regulations.

Mr. Beers answered there was no set formula because there is not a consistent consumption of all City services by all of its citizens, making the distinction between that of a lifetime net contributor and a net consumer of the City's governance, which is the nature of society.

Assemblywoman Bustamante Adams surmised the TNCs view the $100 BLF as being excessive and asked whether the Ordinance allows the City to reduce the fee.

Ms. Duddlesten replied the County BLF for Get Me is $1,000; $25,000 for Lyft; and $75,000 for Uber. In addition, each driver in the County is required to be licensed; the number of licensed drivers is 1,100. The $100 annual fee charged by the City is the result of discussions among the County, the City, the City of Henderson, the City of North Las Vegas, Lyft, and Uber. Ms. Duddlesten stated meetings commenced up until the day prior to the day the Ordinance was passed. The City met with drivers and TNCs in an effort to obtain an agreement by the drivers regarding a fee structure that worked for them. Two TNCs did not agree on a fee structure, and they submitted to the Council a proposed fee of $1 per driver. Although the difference in fees was considerable, Ms. Duddlesten said the direction from the LVCC was to continue meeting with the TNCs to discuss fee reduction and alternate proposals by the TNCs. She clarified that the City was the first local government in southern Nevada to integrate into the Office of the Secretary of State's business portal and paid for the link out of the City's business license fees.

Mr. Curtas commented he is puzzled that all of the legal issues pertaining to what should or should not be applied are solely being directed at the City Ordinance and not the County, which is subject to the same State laws as the City.

Chair Roberson stated he personally pushed back against the initial regulations and/or business license fees the County tried to impose; the County then significantly backed off from their initial proposal. He continued that the County is in control of McCarran International Airport (McCarran), and there is a carve-out in A.B. 176 for the Airport Authority. In addition, Chair Roberson said it is in a different situation than any other municipality in southern Nevada.

Senator Atkinson asked the following questions: (1) how much money does the City anticipate generating from the fees; and (2) what projects will the money fund.

Chair Roberson interjected there are between 10,000 and 20,000 TNC drivers within the County, which potentially could result in hundreds of millions of dollars in annual licensing fees.

Ms. Duddlesten stated Lyft and Uber signed a joint letter to the City indicating the rides in the City are about 10 percent of what they are in the County. Over the last four months, the County has accounted for 1,100 authorized drivers. The City anticipates a total of $5,500 realized if drivers operate 10 percent of the time. Ms. Duddlesten said Lyft and Uber would not share the actual number of drivers with the City, so they can only go by the number of licenses issued.

Senator Atkinson concluded the City does not have a projection. He said since the County and City have different mechanisms for issuing business licenses, and the numbers vary considerably, maybe the State could provide a more accurate number since everyone is required to obtain a State business license (SBL). Senator Atkinson lamented the Legislature did not hear from the City during the 2015 Session, and if it had, perhaps something could have been done at that time.

Ms. Duddlesten replied Lyft and Uber have paid the City $100 each.

Chair Roberson stated he initially did not want to talk only about the business licensing of TNCs, but rather more about the structure of business licensing in general. He said because the Commission might not get to that subject today, the City representatives might need to return at the next Commission meeting.

Mr. Beers responded to Senator Atkinson by saying Mr. Coffman was at the short end of the 4 to 2 vote on this matter, and the four prevailing members were of the mindset—recognizing the regulatory limitations the State had set on the City—of implementing a framework consistent with general business licensing that occurs throughout the City. He said wanting "a piece of it," referring to generating money for the City, was a minority opinion that did not prevail.

Implying there are many businesses that should have an SBL but do not, Mr. Coffin suggested the Commission contact the State for those statistics. He stated that in 1981, the Legislature stripped local governments of the ability to raise money by creating high sales taxes, fees, et cetera, and there is a great inequity that still handicaps local governments from taking care of their constituents.

Vice Chair Settelmeyer recounted discussions with the Office of the Secretary of State that its SBL application does not provide for applicants to indicate whether they are drivers for TNCs. Therefore, it is not possible to obtain an accurate number of licensed TNC drivers from the State. He agreed business licenses should be discussed as a whole. Vice Chair Settelmeyer reiterated his concern over the City charging businesses a fee based upon gross revenue when most

businesses operate on a 2 to 3 percent margin, at best, especially in the field of medical marijuana, which is intended as medicine.

Mr. Coffin replied the City's framework is flat fees, with the exception of one item that incorporates a percentage in order to avoid auditing expenses. The City found that because the County used percentages, it accelerated the process for businesses; it allows them to get started quicker and cheaper, which the City is also exploring through an amendment in the spring. Mr. Coffin said A.B. 176 created a lot of turmoil, and processes are still in flux.

Mr. Beers clarified the Ordinance apportions the TNCs' activity between that which occurs within the City limits and that which does not. The City is not attempting to asses a fee for drivers whose only route is south of the Las Vegas Strip (Strip) and the airport.

Michael D. Hillerby, Director of Legislative Affairs, Kaempfer Crowell, representing Lyft, provided a broad overview and response to some of the comments made during the meeting. Mr. Hillerby said TNCs asked to be regulated by the State. They believed A.B. 176 was one of the most comprehensive and toughest bills in the United States, which they supported. Nevada TNCs have higher minimum insurance requirements than the national agreed-upon model in most other states, driver background checks, and safety and vehicle inspections. Regarding the impact on the State, roads, et cetera, Mr. Hillerby said there is a 3 percent general tax on transportation entities, including TNCs, taxicabs, and others that goes to the State, which was not officially earmarked. However, during the budgetary process some of that money was designed to help pay for the University of Nevada, Las Vegas, School of Medicine, as well as some going to local governments, and the State's General Fund.

Mr. Hillerby stated the NTA testified on February 9, 2016, before the Sunset Subcommittee of the Legislative Commission (NRS 232B.210) (Sunset Subcommittee), that there are approximately 19,000 permitted TNC drivers in Nevada, the majority of whom are from Lyft and Uber. He said each driver is required to pay $200 to obtain an SBL; however, the TNCs are not privy to the compliance of the drivers. Mr. Hillerby said Lyft is telling its drivers they are obligated to obtain an SBL, and he noted that combined with the 3 percent general tax, the TNCs are making a significant contribution. He recounted he testified last summer during the first licensing workshop in southern Nevada where Lyft fully supported the idea of a multijurisdictional license but opposed the idea of a $100 fee per jurisdiction or $400 per driver fee because those fees were too high. The staff from most of the local governments was not interested in licensing drivers individually due to the cost and expense, and they wanted to find a way to do that with the TNCs. Lyft supported the multijurisdictional license because it would be easy; however, that is no longer possible because of the mechanism the County chose, which is not multijurisdictional. Mr. Hillerby acknowledged TNCs do

not fit neatly within existing regulatory structures and licensing fees, and this type of discussion is occurring around the country. The ride-sharing economy is going to continue to challenge policymakers.

Mr. Hillerby shared that Nevada is the most expensive State for Lyft in terms of the cost of regulations and licensing. The NTA permit is $60 per driver. Lyft has a permit that allows a maximum of 5,000 drivers, and the fee paid to the NTA is $300,000. Lyft has paid a maximum flat fee of $25,000 to the County, which is based on the number of drivers on the permit. Lyft is also licensed in Washoe County, the City of Reno, and the City of Sparks. The licensing fees are as follows, respectively: (1) $75 for the first year; thereafter, the fee is based on gross revenue based on drop-offs that occur in unincorporated Washoe County; (2) $1,100 was paid to the City of Reno in the first year; and (3) $105 for the first year; thereafter, the fee is based on gross revenue based on drop-offs that occur within the City of Sparks.

In describing Lyft's experience in obtaining its business licenses from the three local governments, Mr. Hillerby said Lyft contacted the governments; they all met in one location; were welcomed to the area; were provided with a one-page license application, which they submitted at a business licensing counter; and paid for all three licenses. He said should Lyft be required to pay the fees in the City's Ordinance, Lyft's concern is the definition of "active driver" in the Ordinance does not specify that activity take place only in the City. Lyft brought up that point and asked whether it could be limited to drop-offs to find some way to measure business activity. Lyft indicated that suggestion was not well received by the City. He said without that definition, and in following Ms. Duddlesten's calculations pertaining to per driver and 10 percent of the 1,100 drivers, it appears the City wanted to find every active driver. Mr. Hillerby explained if 50 percent of Lyft's drivers were active over the course of a year, that would amount to a $250,000 fee for one piece of paper from the City for a license. He surmised that could not be anything but revenue generation, and reiterated the City is preempted from regulation under A.B. 176 and related laws.

In closing, Mr. Hillerby referred to the $100 licensing fee per vehicle charged by the Motor Carrier Division, Department of Motor Vehicles, which was discussed a great deal during the last session. Mr. Hillerby clarified TNC drivers are very different from full-time drivers. Multiple drivers, as opposed to TNC drivers who drive approximately 15 hours per week, can drive limousines and other types of motor carriers up to 24 hours per day. He pointed out that LVMC requires delivery services to pay $50 for the first vehicle and $30 for each additional vehicle, which is inconsistent within the City.

John Griffin, representing Uber, stated Uber remains committed to the Legislature and local government in finding a workable solution pertaining to business licensing with ordinances and within the structure of A.B. 176. However, Uber's position

has been that the City's Ordinance is illegal. He said Uber has proposed alternatives to the City that it thought mirrored the County's licensing process, noting the total amount of traffic of TNC drivers in the City was 10 percent of that of the County. Uber took the County's version of the proposal and offered 10 percent of that to the City. The City did not accept that proposal, but rather voted for the Ordinance.

Responding to Senator Atkinson's questions of how many part- and full-time contracted drivers Uber has, and of those, how many have a SBL, Mr. Griffin stated he did not have that figure. He qualified his answer by explaining A.B. 176 requires TNCs to *notify* a driver of the SBL requirement.

Senator Atkinson made the argument that other contracted services are required to display a SBL, and does not understand why TNC drivers are not. He said if this issue is not resolved, there wIll be problems.

Vice Chair Settelmeyer concurred the issue is with compliance, and he suggested a bill is needed requiring all businesses to keep proof of an SBL for each independent contractor on file. He continued it was unfair to single out a particular business.

Senator Atkinson agreed the TNCs were being singled out because they are present, but also because they are one of the industries that hire the most independent contractors.

Mr. Griffin said he would provide Senator Atkinson with the number of its contracted drivers and how many have an SBL; he agreed to participate in a legislative solution.

Senator Ford said the TNCs did not want to be regulated, and that is why they came into Nevada and were shut down. Ultimately, TNCs participated in the statutory process and were regulated. He stated he likes taking taxis and Uber vehicles, but he does not like entities not complying with statutory requirements. The Legislature tasks counties and cities to comply with legislation, but the TNCs are not in compliance. Senator Ford is not opposed to passing legislation that puts the onus on TNCs of ensuring contracted drivers have an SBL if they cannot keep track of which drivers are in compliance. He pointed out, among other issues with drivers, the State is losing money because some drivers are not using the smart phone application, which charges 3 percent that goes to the Highway Fund. Senator Ford explained there is a consistent contention among the Commission members who want to know the number of TNC drivers and how many comply with the law by obtaining a SBL. He concluded TNCs should be responsible for ensuring their drivers comply with the law, and he wants to ensure the State is getting what it bargained for.

Mr. Hillerby stressed Lyft did not illegally operate at any time. Lyft approached the Legislature, asked for regulations, supported one of the toughest bills in the country, was permitted by the NTA, and began operating. He said Lyft's permanent permit was recently increased from a maximum of 2,500 drivers to 5,000, and Lyft has just taken onboard 3,000 drivers and is approaching 5,000. He said he would provide the Commission with this updated information. Mr. Hillerby pointed out TNC drivers not using the application by picking up cash passengers is illegal. This action is grounds for being removed from the application, costs TNCs money, potentially puts customers at risk, and is bad for drivers who are following the law. He encouraged anyone who experiences this to provide the NTA with a photo of the license plate and car. One of the NTA investigators will move on it, as will Lyft, if it is one of their drivers, and will take action to remove the driver from the platform.

Senator Ford stated he would inquire whether there was money for enforcement by the NTA.

Assemblywoman Bustamante Adams asked Mr. Hillerby to provide information on how many Lyft drivers have an SBL. She raised a discrepancy regarding Mr. Hillerby's comment that it costs $100 to issue a paper.

Mr. Hillerby replied if he made that comment, he did not mean to. His concern was issuing one license to one company at a cost that may be hundreds of thousands of dollars for the year. In Lyft's opinion, that did not equate with a reasonable basis on the administrative costs, which is what was heard from the City's testimony. Lyft could not understand how the cost for one license could potentially be hundreds of thousands of dollars.

Assemblywoman Bustamante Adams said the City asked TNCs for proposals of what would be reasonable to them; she asked where they were in that process.

Mr. Hillerby recounted on January 14, 2016, Lyft and Uber jointly submitted a letter to the City with fee recommendations based on the City's proportionate size to the larger County market. Both companies determined it represented about 10 percent of the business that occurs in the County, which would be 10 percent of the business license fees in the County. It would be $5,000 for Lyft and $7,500 for Uber.

In response to Assemblywoman Bustamante Adams' question regarding whether there was a specific dollar amount per independent contractor, Mr. Hillerby replied in Lyft's opinion it was not about a per driver amount. The amount was based upon the County fee, which is tiered, and upon the number of permitted drivers with the NTA. He noted Lyft's County permit is based upon its entire roster of drivers with the NTA and not those specific to the County. Under the County ordinance, Lyft's business license is $25,000, based upon a maximum of

2,500 drivers, which will eventually increase to $50,000 based upon a maximum of 5,000 drivers. Mr. Hillerby reiterated Lyft's and Uber's proposal was based upon approximately 10 percent of the County fee. They were trying to approximate the size of the market and the County's fee in an attempt to find resolution with the City that was fair to the TNCs and the City.

Conversation ensued between Assemblywoman Bustamante Adams and Mr. Hillerby regarding whether Lyft had been involved in negotiations with the County to come up with the $25 fee for independent contractors. Mr. Hillerby said Lyft had been involved in those negotiations. She asked if the cost had been placed on the independent contractor, was there a proposal of what that cost could be at the City level. Mr. Hillerby was unsure whether that had been considered. He said in the summer of 2015, most local jurisdictions expressed to Lyft they were not interested in thousands of drivers coming into their offices for a business license or having them obtain a license online. They agreed it was easier for Lyft to obtain the license on behalf of the drivers.

Chair Roberson stated there were many policy discussions today pertaining to TNCs. He said he would prefer to concentrate on the law because the Legislature has already spoken on the policies. Chair Roberson said that he, Vice Chair Settelmeyer, and Senator Atkinson were intimately involved with the drafting of A.B. 175 and A.B. 176. The intent of the Legislature is consistent with the legal opinion offered by legislative counsel who also drafted the bill. As a matter of law, in his opinion, the City is wrong, and the Ordinance is illegal. He suggested the City take the time to think more about the Ordinance, consider the Legislature's legal opinion, and revisit the Ordinance. Chair Roberson would like to see the City return to the next Commission meeting and have a wider range of discussion on business licensing. He offered to send the City several questions to which the City could prepare responses for the next meeting. Although he understands Mr. Curtas' perspective, Chair Roberson does not think he sufficiently addressed many of the arguments in favor of the State's position on this matter.

Addressing the adequacy of his response, Mr. Curtas stated he received the 16-page legal brief only one day prior to the meeting, which, in his opinion, goes through great legal calisthenics to achieve an answer that comports with some peoples' view of the statute. The City respectfully disagrees with the State and takes the position that A.B. 176 is ambiguous, and if the State wanted A.B. 176 to read the way it is being interpreted, it could have drafted it as such. Mr. Curtas said the City would like to work with the State to resolve the ambiguities to everyone's satisfaction. Until that occurs, the City's position is they have a legal Ordinance. He stated he would be better prepared to engage with Mr. Powers once he spends sufficient time on the legal opinion.

Mr. Coffin noted TNCs had the opportunity to participate in drafting the legislation and encouraging votes to be counted on behalf of the laws. Taxpayers'

representation at the Legislature is inadequate against large companies, such as TNCs. Every figure offered by the TNCs to the City, whether it be 10 percent or $1 per driver, is expected to be accepted by the City with the TNCs knowing they have the law on their side. Mr. Coffin concluded the process has been hard on the City.

Mr. Powers emphasized the Legal Division is a nonpartisan agency that does not support or oppose any particular legislation or enacted statute, but rather it is available for providing legal advice and counsel to the Legislature based upon legal principles derived through statutes, constitutions, and case law, which is also known as common-law. Based on the simple and plain language of the statute, subsection 1 uses the terms tax and fee; subsection 2, the exception, only uses fee. The Legislature speaks just as clearly by removing a word as it does by adding a word. It is clear the exception in subsection 2 is much narrower and only applies to a business fee. Because it does not say tax in subsection 2, it cannot apply the exception to any fee that would be considered a tax under the law, and that law is case law. There is a well-established body of case law that says a fee that acts as a tax is a tax even if the local government calls it a fee. Assuming, however, for the sake of argument, the statute is ambiguous, the next step is how to resolve the ambiguity. Mr. Powers said an ambiguity is not always resolved by going to court; ambiguities are resolved by applying well-settled principles of law. In this case, the ambiguities are resolved by looking at the legislative history, applying rules of statutory construction, and then by applying Dillon's Rule of common-law on local governmental powers. Once those additional principles of law are applied, and if there was any ambiguity, it would have to be resolved against the power of the City and in favor of the preemption of that local fee.

B. Investigation of the Regulation of Renewable Energy and Net Metering, Including Discussion and Evaluation of Procedures, Administration and Regulation by the Public Utilities Commission of Nevada and Whether Possible Future Legislative Action Regarding Such Regulation May be Necessary or Advisable

Paul A. Thomsen, Chair, PUCN, acknowledged he had been sequestered to appear before the Commission due to pending, contested cases before the PUCN—all of which are closed.

Chair Roberson started the discussion by expressing concern over the perceived lack of transparency with the PUCN. He said he has heard many complaints that the public cannot watch PUCN hearings online, it is difficult to obtain meeting minutes of the hearings, and it is difficult to get a seat at the meetings. Everything the legislative members know of the PUCN's recent decisions pertaining to S.B. 374 (Chapter 379, *Statutes of Nevada 2015*) has been received through secondhand sources, that is, the media or an individual's opinion. If the PUCN acknowledges there are transparency issues, Chair Roberson questioned its plans to improve on them, which may require legislative action. He asked the PUCN to

explain how it arrived at its conclusion regarding the net metering issue, and how the PUCN perceives that it is consistent with the legislation passed in 2015.

Mr. Thomsen acknowledged it has been confusing for the hundreds of new participants who want to engage in the new process. The PUCN conducts weekly meetings in accordance with the Open Meeting Law (OML) as defined in Chapter 241 ("Meetings of State and Local Agencies") of NRS where commissioners deliberate on the issues and make decisions. The PUCN also conducts hearings that are governed by Chapter 233B ("Nevada Administrative Procedure Act") of NRS wherein a party files a petition of leave to intervene in order to participate in a hearing, which is a quasijudicial process. The PUCN struggles with the process of conducting a hearing and then bringing the issues discussed before a public meeting. At the beginning of each meeting during public comment, the PUCN clearly states that if the comment pertains to a contested or a ratemaking case, the PUCN cannot accept the public comment as evidence in the decision-making process for the administrative hearings.

Mr. Thomsen said the PUCN is transparent; it provides all docket information online and in real time. Whenever one commissioner reviews the arguments of another, the PUCN follows the procedures of the OML, and the review is simultaneously made available to the public. The orders, hearings, testimony, exhibits, and data requests submitted during testimony are available online. The PUCN does not have the technical capability to offer meetings online; however, it does try to provide audio support during meetings, but it is limited. In the most recent net energy metering (NEM) proceedings, between July 1, 2015, and February 16, 2016, the PUCN's Consumer Complaint Resolution Division handled approximately 700 phone calls, received nearly 4,000 e-mails, and heard close to 20 hours of public comment on three dockets alone. In addition, 2,500 comments were filed in the dockets, and 2,400 people were on the service list receiving information about the NEM dockets. The PUCN did everything in its power to make the public cognizant of the PUCN's actions in real time for the past six months concerning the net metering hearing before the PUCN.

Mr. Thomsen provided an overview of how the PUCN reached its current standing with respect to net metering. The Legislature passed S.B. 374, which required the PUCN to evaluate whether a subsidy was occurring within the net metering process. In an evidentiary hearing, the PUCN determined NVE's marginal cost-of-service study (Study) of the Nevada Power Company (Nevada Power) and Sierra Pacific Power Company (Sierra Pacific) provided reasonable rates for a marginal cost of providing service. The PUCN looked at the costs incurred by providing service to NEM customers. The Study demonstrated a cost-shift of significant magnitude was occurring. Due to the unique usage of NEM customers, the PUCN created a new net metering rate class. All ratepayers in that class could be treated equally, allow for more efficient tracking, and make known costs and benefits of ratepayers in the future general rate cases.

Regarding the issue of "grandfathering," Mr. Thomsen stated that testimony of A.B. 374 on May 20, 2015, explicitly gave the PUCN the ability to evaluate whether different vintages of NEM customers should be grandfathered in. The PUCN grappled with this and held an extra hearing on the issue to ensure it clearly understood all of the evidence. He said he strongly supported the notion that the PUCN apply the same rates and tariffs to all NEM customers, regardless of the vintage of their system. When the Legislature tasked the PUCN to reduce the subsidy over time, it was going to be difficult to do if it grandfathered some NEM customers into perpetuity; the PUCN would never cut into the subsidy.

Mr. Thomsen, responding to a question from Chair Roberson who asked what that subsidy equated to on a monthly basis for nonNEM users, said it was approximately $3. Looking at today's subsidy at $16 million per year, it comes to about a $3 subsidy for nonsolar customers subsidizing the rooftop solar industry. For example, if NEM customers were subsidized for 20 years, $16 million multiplied by 20 equates to a $320 million subsidy.

Chair Roberson asked what the monthly cost would be per consumer by dividing $16 million per year by 97 percent of nonNEM users.

Mr. Thomsen replied the impact would be up to $3 per month on nonsolar bills. He cautioned that many net metering contracts were signed between the time S.B. 374 passed and December 31, 2015. That is the figure if all of those contracts come to fruition and do not adjust for an attrition rate in the applications pending before NVE. Mr. Thomsen briefly explained grandfathering and one of the tenets of sound ratemaking, which is the cost principle of horizontal equity, or treating equals equally. The PUCN struggled with the idea that some rooftop solar customers would have a different rate than other rooftop solar customers simply due to the vintage of their system—not because they were incurring more costs or that it cost NVE more to serve them. It decided to gradually implement the change in rates, which would enable net metering customers to receive a return on their investment, gain an understanding of the new rates, and allow the PUCN to simultaneously reduce the subsidies. The PUCN adopted a 12-year phase-in that implemented a 20 percent change every three years until the subsidy had been eliminated. Over a 12-year period with a 20 percent lower subsidy every three years, it is still a $100 million subsidy that nonsolar ratepayers will be paying to NEM ratepayers. The PUCN did not want to cause undue harm to the rooftop solar industry or to the nonsolar customers; therefore, it determined this was the best compromise to fulfill the legislative requirement of eliminating the subsidy.

Mr. Thomsen stated the new rates became effective on January 1, 2016, and will continue for the next three years, during which time NEM customers will see a 20 percent increase in their basic service charge and a 20 percent decrease in the sale of their excess power. He pointed out that many net metering customers have had concerns regarding the Study between general rate cases. The PUCN is

required to have a general rate case every three years during which it reviews all rate classes and the costs associated in providing service to those classes. It was unable to come up with a general rate case in the Study, but the PUCN had to arrive at a tariff and a rate by December 31, 2015. Before there is another rate change, Sierra Pacific and NVE will go through a general rate case and will review the Study. All parties will have the opportunity to evaluate the data and ensure the marginal cost numbers are accurate before additional changes are made respecting net metering and nonsolar customers.

Responding to Assemblyman Stewart's question whether an analysis exists that provides the percentage recouped by solar customers over the 12-year period, Mr. Thomsen responded that although the PUCN is not required to review independent parties' rates of return during the rate-setting process, the PUCN was cognizant of that aspect, which resulted in the gradual rate change. This was an area in which the PUCN found discrepancies. It realized during case hearings there was a misconception by many rooftop solar customers that they would see a payback within the 8- to 10-year range; however, during testimony from the third-party solar developers and industry association groups, the PUCN learned the typical payback period for the systems was between 15 and 19 years. It exposed a disconnect between the sales pitch and the numbers presented to the PUCN. With gradual phasing out of the subsidy, Mr. Thomsen stated the PUCN's policy staff added approximately 10 years to the expected payback for some developers, which is extended from 19 to 29 years in Sierra Pacific's territory and from 15 to 25 years in NVE's territory. While that may not meet expectations of some customers, the PUCN had to balance the amount of money nonsolar ratepayers should be subsidizing the industry. From the PUCN's position, the 12-year compromise gave solar customers time to recoup their expected return during the lifetime of the panels.

Assemblyman Stewart asked how much would he recoup over a 12-year period if he was to put $20,000 into solar panels on his home.

Mr. Thomsen stated he could not provide an answer because many of the third-party solar installers have a variety of sales packages, which affect the degree of payback due to the amount of energy used and/or sold back by the customer. He said the PUCN took that into account when it considered gradualism.

Assemblyman Stewart asked whether new rooftop solar system customers will receive the same 12-year deal as preexisting customers, or would they be grandfathered.

Mr. Thomsen said because there was so much confusion after the passage of S.B. 374, the PUCN agreed all NEM customers would be treated equally, and be eligible for 12 additional years of gradualism. He emphasized the approach is prospective, as opposed to retroactive, and the PUCN never sought repayment of

subsidies from NEM customers, regardless of when their systems were installed. However, the PUCN made clear in their final order that if potential rooftop solar customers did not sign up for solar, the NEM subsidy would be phased out over a 12-year period. He elaborated by saying the PUCN is looking for innovation from the solar industry. If the subsidy continues, in addition to the solar generation subsidies for the industry, change and innovation cannot be expected. Large-scale rooftop solar companies are moving on to states where they get the maximum subsidy. They have no interest in innovation, such as deploying battery storage, or in trying to figure out how to build a cost-effective system. The PUCN is of the position that, over time, gradualism will encourage rooftop solar installers to look at how to become more efficient and innovative and how to reduce the burden on nonsolar ratepayers.

Senator Ford opined the PUCN's decision to grandfather was wrong, and the issue should have been approached differently. He pointed out the PUCN is operating on the premise that a subsidy exists, which is contrary to the position of some people. Staff recommended it and consumers advocate that the PUCN reject the Study, which it did not, and, therefore, used it as their premise that there is a subsidy. He asked why the PUCN accepted the Study and declined recommendations to reject the Study.

Mr. Thomsen said opponents to the PUCN's decision are attacking the facts gathered through an evidentiary hearing and the Study. A marginal cost-of-service study is conducted in every jurisdiction where there is a vertically integrated utility to study the cost of providing service. That study is typically done in a general rate case where all costs can be reviewed, and the PUCN tries to make the fairest and nondiscriminatory decisions possible. When the PUCN created a new rate class for NEM customers due to their unusual energy usage, it had to conduct a new marginal cost-of-service study. Nevada Energy proposed making a few modifications to the Study in an effort to be as accurate as possible. Staff's recommendation not to use the Study was not intended to not use the concept, but rather to use the previous cost-of-service studies conducted two years prior for Sierra Pacific and one year prior for Nevada Power. In the PUCN's opinion, NVE's modifications provided reasonable estimates of the subsidiary; the PUCN accepted the modifications and made the new tariff filing deadline based upon those estimates. Once the PUCN goes to a general rate case this year for Sierra Pacific and the following year for Nevada Power, those studies will be reviewed with all of the other rate classes. He is confident that will alleviate staff's concern with regard to interfering with a marginal cost-of-service study between general rate cases.

In addition, Mr. Thomsen said there has been a lot of rhetoric surrounding the use of utilities' numbers. The fact is, in every rate case over the past 30 years, the PUCN has used the utilities' numbers because they are the ones who can provide that data, which was available to all parties who participated in the case, and is

available on the PUCN's website. Experts can compile the data and make their own conclusions or provide additional evidence in future general rate cases that will allow the PUCN to continue making decisions pertaining to cost-of-service. Mr. Thomsen continued stating there has been much discussion about a cost and benefits study, known as the E3 (Energy + Environmental Economics) study, conducted in 2015 on which many opponents base their position. They claim the E3 study showed there is a $30 million subsidy going from the rooftop solar sector to the nonsolar sector.

Mr. Thomsen resolved the difference between the Study and the E3 study is that one looks only at the costs to provide service, and the other looks at costs and environmental, societal, and construction benefits, which is not what occurs in a basic marginal cost-of-service study. The E3 study had multiple sensitivities, but the Study found there was a $30 million subsidy going back to nonsolar customers if the State avoided building $100 per megawatt (MW) large-scale solar power plants. Instead of building an expensive, large-scale solar power plant, rooftop solar plants should be built where a savings exists. Opponents neglected to point out another sensitivity, which was if the price of large-scale solar drops to $80 per MW, the $30 positive subsidy turns into a $222 million subsidy going in the other direction. Within the past four months, the PUCN has approved 329 MWs of large-scale solar at a leveled cost of $40 per MW over 20 years, indicating that figure is far from the $100 MW price.

In response to Senator Ford's question regarding what factors the PUCN found more persuasive over the PUCN's staff's recommendations and those of consumer advocates relative to rejection of NVE's study, Mr. Thomsen replied the PUCN was asked to use an older marginal cost-of-service study, whereas the PUCN preferred to use an updated study that reflected current market rates, which it found to be sufficient. Therefore, the PUCN accepted the Study, slightly modified, rather than the two-year, dated study staff proposed. He restated this would be resolved in this year's general rate case where a comprehensive marginal cost-of-service study will be conducted based on evaluating all of Sierra Pacific's rate classes in concert.

Senator Ford stated that, according to statutes, the PUCN works to encourage private investment and renewables, stimulate economic growth, and reduce or eliminate unreasonable cost shifts. He said the PUCN has reduced any cost shift of rooftop solar as it goes to nonrooftop solar users. Senator Ford asked why the PUCN has taken that approach instead of looking at what constitutes an unreasonable cost shift, noting there is always a cost shift associated with energy consumption and transmission. He also asked why the PUCN does not see the $3 cost shift as being unreasonable, in an effort to maintain a balance and continue a vibrant rooftop solar industry.

Mr. Thomsen said the statutes state the PUCN should not approve a tariff or authorize any rates or charges for net metering that unreasonably shift costs from

customer generators to other customers of the utility. The PUCN took the position that a $300 million cost shift of $16 million per year from rooftop solar users to nonsolar users was unreasonable—that was the premise used for adjusting rates. He stated he worked in the renewable energy sector for over ten years where he advocated for tax credits and incentives in an effort to move those policies forward. Those tax credits and incentives are transparent and were brought before the Legislature where decisions are made whether to implement those incentives and subsidies and have them applied equally to all ratepayers. Net metering, the Study, and legislation have brought clarity in identifying costs. The PUCN found that one group of ratepayers was subsidizing another in the same rate class, known as an intraclass subsidy, which is not normal. The PUCN has strong tenets in the ratemaking process not to discriminate amongst ratepayers in the same rate class for any reason.

Mr. Thomsen said when the PUCN was asked by the Legislature to define an unreasonable cost shift—intraclass—the PUCN's answer was zero. The PUCN is of the position that a low-income family receiving bill assistance through the universal energy charge should not have to pay a portion of that bill to help someone put rooftop solar on their home. With that presumption, the PUCN asked the question of how to get the intraclass subsidy out of the ratemaking process. Ratepayers expect the PUCN to set those rates fairly and equitably for all ratepayers. If the PUCN starts selecting special interest groups and giving them perks in the ratemaking process, the whole thing falls apart. The PUCN is correcting that, despite incredible public pressure to incorporate different ideas in the ratemaking process. The Commission can be proud that the PUCN stood strong against that pressure by not debasing the ratemaking process by trying to create an intraclass subsidy. The solution is, if the Commission agrees the PUCN has reduced the subsidy by $200 million for the rooftop solar industry, to bring forth a transparent bill that does not interfere in the ratemaking process. The PUCN is not going to conceal a $3 surcharge on nonsolar ratepayers. The PUCN also created a line item so that 98 percent of the ratepayers who have been subsidizing NEM customers will see over time what was occurring due to the net metering policy.

Senator Ford summarized Mr. Thomsen's previous comment by saying the PUCN made a series of judgment calls, one of which was whether to accept the Study, and the other was that no amount of subsidy is reasonable under the circumstances, which is to have rooftop solar as a viable industry within the same rate class. He asked how the PUCN expects its decision to encourage private investment and renewables when jobs have been lost and the solar industry has left Nevada due to the PUCN's decision.

Mr. Thomsen referred to the legislative "declaration" in NRS 704.766 that states it is the purpose and policy of the Legislature in enacting NRS 704.766 through 704.775, inclusive, to encourage private investment in renewable energy resources, to stimulate the economic growth of the State, to enhance the

continued diversification of the energy resources in the State, and to streamline the process for customers of a utility to apply for and install net metering systems. He proceeded to itemize the PUCN's fulfillment of these precepts: approximately $6 billion has been invested in large-scale renewable resources during the past six years; 275 MWs of rooftop solar have been installed within the past two years; an enhancement of continued diversification of renewable energy resources by bringing on geothermal, large-scale solar, rooftop, and wind resources; and streamlining the process for customers of the utility to apply for and install NEM systems. He contested the PUCN has exceeded all of the legislative declarations in NRS 704.766.

In its attempt to follow the legislative intent of S.B. 374, Mr. Thomsen said the PUCN is encouraging additional private investment from the large-scale solar industry so that in the future they will back off subsidies, become more competitive, and reduce prices. The delta between large-scale solar and rooftop solar costs is dramatic. The most recent large-scale solar projects approved by the PUCN are being paid about 4.5 cents at a leveled cost over 20 years. Switch and Apple paid Nevada's ratepayers to purchase the renewable energy credits, driving that price down to the long-term avoided cost of about 3.5 cents. Rooftop solar customers are demanding payment of 11 cents for the power generated by their systems. That chasm between 3.5 and 11 cents is becoming extensive. The gradualism encourages the solar industry to become more efficient and effective. The PUCN wants to create room for people to look at innovative ideas pertaining to renewable energy.

Mr. Thomsen encouraged the Commission to review policies that will enhance the rooftop solar industry. He said the peril of the ratemaking process is when one subset of a class of ratepayers is pitted against the others. Mr. Thomsen explained the role of the Bureau of Consumer Protection (BCP, Office of the Attorney General (AG), is to protect ratepayers. Prior to January 5, 2015, the BCP was ardent of its support that subsidies should not be paid by nonsolar customers for solar customers. Then the BCP's position altered and it wanted grandfathering for rooftop solar customers for 20 years. It became unclear what ratepayers they were representing in the case. That is one of the perils of a hidden subsidy in the ratemaking process, which is what the PUCN has tried to remove and, in Mr. Thomsen's opinion, was the intent of S.B. 374.

Mr. Thomsen referred to a letter dated November 16, 2015, signed by Senators Kelvin D. Atkinson, Patricia Farley, and James A. Settelmeyer, and Assemblyman Randy Kirner that basically said when the Legislature established net metering, it recognized that in creating the program, ratepayers who were not net metering would see an increased burden in their billing, acknowledging a subsidy to those customers who install onsite generators who are still hooked to the grid, primarily rooftop solar. This was reiterated in 2013 when the Legislature voted to increase the net metering cap from 2 to 3 percent of the utilities' peak

demand. At that time, the renewable energy industry understood the Legislature was unlikely to increase the cap due to the increased cost to remaining ratepayers. Elimination of the subsidy was one of the primary purposes of S.B. 374, which received near unanimous support during the 2015 Session.

Senator Ford retorted the Legislature did not intend to decimate the solar industry. He noted he has expressed to the solar industry his opinion that some of their claims are exaggerated, but also told them there would be a coexisting environment where NVE and the solar industry could make its money. Senator Ford stated he is seeing the opposite in the near eradication of an industry, citing a 97 percent drop in the installation of rooftop solar in Nevada. He questioned what needs to occur to maintain a vibrant solar industry while simultaneously allowing NVE its place; adding, zero is not an option—there needs to be something reasonable relative to the subsidy. We want to continue encouraging the solar industry to offer alternatives to folks who do not already have solar energy.

Mr. Thomsen responded that during the PUCN hearings, customers asked about the money going to NVE. The fact is, the $16 million per year, or $300 million subsidy, is in the pockets of every NEM customer who has not paid the full costs of implementing their rooftop solar system—there is no inflated benefit to NVE. With regard to jobs, Mr. Thomsen said there were approximately nine parties representing the solar industry, and the Great Basin Solar Coalition participated in the case and refused to provide the PUCN with job numbers on data requests during rebuttal testimony. To date, it has not provided one piece of credible evidence to substantiate the 98 percent figure—neither of jobs that have left the State, nor of the 6,000 jobs lost. Prior to accepting the position as chair of the PUCN, Mr. Thomsen stated he served as the Governor's energy advisor. In order to receive a tax incentive from Nevada, the large-scale solar industry has to show employment numbers in the second quarter of construction, including drivers' licenses and W-2 forms. There was verifiable information that the large-scale solar industry had employed 3,000 people, which makes him suspect of the 6,000 figure.

Mr. Thomsen stated it is perplexing that multiple, publicly traded companies that have laid off so many people cannot provide verifiable information to back up that claim after repeated requests by the PUCN. Because this information is being discussed during a quasijudicial hearing, the PUCN can only weigh the evidence in front of it. The PUCN would need credible evidence in order to offer a better price for excess power as it reviews the economic impact during general rate cases. The PUCN has seen an incredible public relations machine on this issue during the last six months. In the meantime, the PUCN has been sequestered due to its quasijudicial role. During this time, it has experienced rampant attempts to violate the ex parte communication rules, undue influence, and pressure to hand out personal information at rallies. He urged the Commission to look carefully at the

hyperbole. Mr. Thomsen reiterated all of the evidence is available online, and the PUCN is eager to assist anyone seeking information on how the PUCN made its decisions in this matter.

Assemblyman Hansen recounted his commitment to aggressively oppose all types of subsidies during his election run for the Assembly, citing historical references to justify his position. He said the government needs to remove itself from attempting to pick winners and losers in areas like energy markets to keep the taxpayers from subsidizing these types of projects, and leave those decisions to the market. However, for several years, the State has encouraged its citizens to install solar energy systems with the understanding they would be reimbursed for their costs over time. Assemblyman Hansen noted solar energy contracts contain a clause that basically state the agreement shall be governed and construed under the laws of Nevada as they may be amended or superseded from time to time, and the PUCN or the utility may amend its tariffs upon PUCN approval, which are subject to public noticing requirements. He stated it is unlikely solar company representatives discussed the possibility of those tariffs substantially changing with their customers. Assemblyman Hansen noted the numbers Mr. Thomsen has presented in his testimony are powerful. Three dollars per billing is not a lot of money, but the reality is the people who can afford a $35,000 system are typically not the low-end users of power who are living paycheck to paycheck and cannot afford such a system, but they are being asked to subsidize those who can. He said he would like to see a reasonable compromise for solar customers who, in good faith, trusted the State of Nevada to honor these types of arrangements, and allow them to pay off the debt they have incurred.

In addition, Assemblyman Hansen asked for the profit margin between excess energy sold wholesale by solar customers and the retail rate of that energy when sold to customers and whether there is a profit margin that can be used to offset costs to the rest of the ratepayers.

Mr. Thomsen responded that there has been much debate about whether the tariffs can change and the expectation of energy prices. Rooftop solar companies often marketed themselves by telling customers they can lock in a fixed rate of energy with the companies themselves; however, the expected rate of return can change if the PUCN changes rates. All NEM customers have been subjected to rate changes since the inception of the program in 1997. Those customers were in a residential rate class, but when the PUCN went through a general rate case and changed the rates on residential costs, their rate of return was affected. In northern Nevada, there has been a rate reduction in the residential classes that has harmed NEM customers' perceived payback for their solar system. He opined the PUCN should not be bound to never lowering rates to ensure customers who tried to take a hedge against energy prices would be made whole on their expected rate of return. Prior to the passage of S.B. 374, there were 6,000 customers participating in net metering in Nevada. On June 5, 2015, after the passage of

S.B. 374, that number increased to 24,000. During the hearings on S.B. 374, much testimony addressed what third-party solar customers were going to do, whether they would pace themselves going forward, and their intent. What transpired was an effort on the part of the solar industry to sign up as many customers as possible by December 31, 2015, with the sales pitch of getting in before energy rates changed. This was disingenuous because S.B. 374 specifically contemplated grandfathering. He noted an accepted amendment in S.B. 374 to allow the PUCN to treat all ratepayers the same.

Assemblyman Hansen asked whether the PUCN attributes the spike of 18,000 new NEM customers to the grandfathering clause.

Mr. Thomsen replied third-party customers would say they never had an expectation customers could be grandfathered in. He speculated that in a legal discussion, the solar industry would take the position they did not know, and if they told their customers they could be grandfathered in, they would say they did not expect that to happen. Mr. Thomsen commented it is a legal debate that has left the PUCN's regulatory purview and can take place in the legal process.

Assemblyman Hansen asked whether Mr. Thomsen is suggesting the spike in new NEM customers in such a short period—the result of an aggressive sales campaign by the private sector—is a result of consumer fraud. Alternatively, he questioned whether it is the fault of legislators, the PUCN, or fraudulent sales techniques by solar companies who are trying to take last minute advantage of a subsidy that was to discontinue.

Mr. Thomsen said that testimony provided during the 2015 Session addressed the need for current customers, specifically whether they should be grandfathered in, and if so, how that should be carried out. In addition, the question was asked whether grandfathering is more, or less, restricting. He stated the amendment offered the PUCN additional discretion by allowing it to determine any limitations on grandfathering of existing net metering customers. Mr. Thomsen reiterated A.B. 374 clearly contemplated grandfathering to draw down the subsidy over time, and at some point, the grandfathering would have to be addressed; otherwise, the subsidy could not be drawn down. Despite those facts being on the record, there was a clamoring of customers waiting to sign up. The PUCN received 20 hours of public testimony, which revealed customers were promised rates could never change, the PUCN's decision to change rates was challenged, and there were modifications of customers' expectations. Mr. Thomsen said the PUCN did not want to create a total cutoff for customers. However, despite the mandates of S.B. 374 to require reducing subsidies through time and giving the PUCN the ability to address grandfathering and the possibility of creating a new rate class, those concerns were not enough for customers to consider waiting to see the effects of the new rate. He said there was considerable testimony urging the PUCN to get the solar industry through the new rates. Thereafter, the industry would live with

them and modify their models accordingly, which has not happened with some solar equipment suppliers. Under the gradualism approach, the PUCN wanted to compromise by providing 12 years before the subsidy ceased.

In response to Assemblyman Hansen's question of the subsidy rate for other ratepayers under the 12-year program, Mr. Thomsen said it is reduced by approximately two-thirds, or $100 million, which is about $1 per ratepaying customer. With regard to the PUCN's profit margin of buying NEM customers' energy wholesale and selling it to other customers retail, Mr. Thomsen said there is no money in the transaction but rather credit earned for the excess power pushed back into the grid. He explained the concept of net metering is to force the utility to take the excess power, that otherwise would not be worth anything, and credit the NEM customer at the retail rate, which is approximately 11 cents in Las Vegas and 10 cents in northern Nevada. He noted the 11 cents includes all of the transmission, distribution, employee, billing costs, et cetera, which, upon reevaluation, the PUCN realized is contributing to the subsidy problem because they can buy power at the wholesale rate in the marketplace. He clarified NEM customers are receiving wholesale and not retail credit. In addition, Mr. Thomsen stated, as an example, if a utility can purchase wholesale power on the open market for approximately 5 cents, there is a base-tariff general rate of 5 cents that assumes all of the costs previously mentioned; the utility can then sell the energy for 10 cents. The PUCN sets an expected rate return for a utility, which is in the high digits, and that is when the discussion is heard of over or underearning. He stressed the PUCN does not guarantee a rate of return for a utility, but it does set rates for an expected rate of return to protect the utility working in a vertically integrated rate structure.

Assemblyman Hansen mentioned the large power users, such as casinos, are trying to get off the grid with NVE because they substantially subsidize different classes. He asked whether that statement is accurate and whether the PUCN has subsidies it is comfortable with.

Mr. Thomsen clarified there are interclass subsidies between different classes of ratepayers. The PUCN tried to eliminate them, but in the ratemaking process, they can occur. That means regular customers may not pay everything for transmission and distribution, and the difference is made up in a different rate class. He said there is a current interclass subsidy between NVE service territory, the large commercials users, and the residential rate class. To balance that out, the PUCN would have to raise ratepayers' rates and reduce large energy users' rates. The PUCN tries to do that gradually without causing a huge cost shift.

Assemblyman Hansen questioned how much the large users are subsidizing.

Mr. Thomsen said he did not have that answer, but it would be reevaluated at the next general rate case for Nevada Power. He stated there has been a lot of

publicity over Nevada Power possibly overearning, and if that is the case, the general rate case will provide the opportunity to use some of that to correct any interclass subsidization. On the other hand, pertaining to the intraclass subsidizing, there normally is no cross subsidization.

Assemblyman Hansen stated casinos are not subsidizing other casinos, but nonsolar power customers are subsidizing solar power customers.

Mr. Thomsen said sometimes that is the nature of the beast, particularly when there is a small, residential rate class; sometimes that is needed in order to keep the process going.

Senator Settelmeyer said the incentives fall under two categories: (1) the basic service charge; and (2) the exchange rate of retail versus wholesale. He asked whether Mr. Thomsen knew of the percentages of those incentives and whether incentive weighs more heavily in the realm of the basic service charge or in the retail versus wholesale rate exchange.

Mr. Thomsen replied he did not have an answer on the specific breakdown between the two categories. He said within the first three years of the PUCN's new tariff for the net metering class, it expects to see a $5 impact in the basic service charge on the bill per month and a reduction of .02 cents on the excess energy sold. That goes into a rate design question, which is answered depending on the volumetric charge. For example, if a NEM customer is selling a lot of power to NVE, that reduction in the excess sales rate could have a larger impact. If NEM customers consume all of their power and do not sell excess power, that basic service charge increase would have a big impact. Mr. Thomsen said the tariffs put forward by the PUCN are not definitive and cumulative. The PUCN put forward two options for new NEM customers—a flat rate option and a time-of-use option. The PUCN wanted to create an option that credited more to NEM customers who produced power and pushed it to the grid during periods of peak usage. He said he expects the PUCN to come up with tariff structures that evaluate innovations. There were mechanical mechanisms in the hearings, such as demand charges, where there could be a three- or four-part rate that evaluates this. The PUCN decided to put these NEM customers in their own rate class so it could evaluate the costs for this group. He continued that there is no end to the tariffs that can be put into that rate class to allow solar customers every option and advantage to maximize their efficiency and the rate structure that works best for them.

Assemblywoman Bustamante Adams said, as she understands it, the business model by solar companies does not work without subsidies.

Mr. Thomsen replied that is yet to be determined. The PUCN has seen an aggressive policy campaign to pressure and cajole it into making a decision. Over time, the truth will surface if the third-party developers can work with the

rates moving forward, noting the rates could change after reviewing the general rate cases. Over 12 years of reducing incentives, he said he is optimistic the solar industry should be able to compete. Mr. Thomsen said there has been an extraordinary decline in the cost for large-scale solar, and there is no reason that could not also happen with the rooftop solar industry.

Replying to Assemblywoman Bustamante Adams' question regarding what percentage of NEM customers are leasing solar equipment, Mr. Thomsen stated he did not have that information with him today, but he would provide a breakdown between ownership and leasing of the 30,000 participating NEM customers. He clarified that of the 18,000 new customers, that figure includes contracts that have not yet been installed.

Due to the possibility of a ballot initiative, Senator Ford questioned whether: (1) during the general rate case study the PUCN plans to take into account environmental benefits that should be considered; (2) a subsidy exists; and (3) when the study will begin. Mr. Thomsen responded the general rate case will be filed in June or July 2016, but he was unable to answer the remaining questions.

Senator Denis said part of the issue is the public feels it has not been heard by the PUCN; he asked what the PUCN will do to rectify that feeling.

Mr. Thomsen recommended first looking at policies, subsidies, and support for the solar industry that are not in the ratemaking process. For example, he said NVE's SolarGenerations Electric program that has put $255 million into distributed solar, wind, and hydro projects, which did not create the issue of different ratepayers conflicting with each other. Secondly, Mr. Thomsen said the PUCN is eager to make their hearings and meetings viewable through the Internet. With regard to hearings, he reiterated the public can view them, but cannot participate or engage unless they filed to be an intervener in the case or a consumer advocate. The PUCN has the money in its budget for streaming meetings on the Internet; however, it would require an increase in budget authorization. Thirdly, he recommends passing a consumer protection bill that addresses what sales representatives can say when engaging with a ratepayer, which is outside the purview of the PUCN.

Acknowledging Chair Roberson's estimation of a 400 percent increase in NEM customers, Mr. Thomsen clarified for Chair Roberson the number of NEM customers between 1997 and June 5, 2015, was 6,000. Since June 5, 2015, the total is 24,000, including customers who have systems on their roof, submitted an application, or are in the process for net metering.

Shawn M. Elicegui, Senior Vice President, Regulation and Strategic Planning, NVE, stressed the importance of recognizing that S.B. 374 was a compromise piece of

legislation supported by multiple parties, including 62 legislators. The bill recognized new rules for rooftop solar customers needed to be adopted, and the PUCN was the best agency to adopt those rules. It required the PUCN to undertake a proceeding in which a cost study was provided, and the cost of providing a specific service was presented, which would then be assessed whether the price charged resulted in a subsidy. The PUCN found that prices charged by the utility that were mandated in 1997 resulted in a subsidy to rooftop solar customers. Mr. Elicegui said that is what happened, and that is the expectation of anyone who said the PUCN is the appropriate agency to make such a determination. The PUCN would be expected to make a good-faith attempt to make an evidence-based decision following a hearing, which is what occurred.

Mr. Elicegui stated the discussion is not about being for or against solar energy or choice versus no choice. He said it is about a simple issue, which is whether a hidden subsidy should flow from one set of customers to another. Within the past two years, NVE has developed 360 MWs of solar at very low prices while allowing all customers to enjoy the benefits of the green energy revolution and without cost-shifting.

In addressing Senator Ford's question regarding the presumption there is a subsidy, Mr. Elicegui said that is a finding made after an evidentiary proceeding. He pointed out that steps are taken in other states to eliminate subsidies. There is a section on publicly filed security statements of rooftop solar companies titled "Government Incentives." Listed in that section are taxes, direct cash incentives, and net metering, all of which are subsidies. Mr. Elicegui said 97 percent of NVE's customers would benefit from the PUCN's decision, not NVE. Specifically, the PUCN requires NVE to earmark every additional dollar generated by the new net metering rates and return those dollars to customers in subsequent rate receiptings. Finally, Mr. Elicegui emphasized the PUCN's decision was made in good faith. He recounted attending three PUCN hearings where he, in addition to expert witnesses from all sides, provided testimony to address the subsidy issue.

Responding to Assemblyman Hansen's question regarding the markup of energy, Mr. Elicegui explained NVE has two basic rate elements: (1) a base general rate; and (2) an energy charge, which does not have a markup. He said NVE has a balancing account. For example, if NVE pays $1 for energy, the customer is also charged $1 for that energy. However, there is a rate of return on investment and facilities built into the base general rate and a dollar-for-dollar recovery of labor expenses for providing service to customers. He said there are approximately 19,500 installations and approximately 12,100 applications pending.

Kevin D. Romney, Manager, Radiant Solar Solutions, Henderson, Nevada, opined there is no subsidy. He explained the solar industry is not allowed to install rooftop systems that create more than 100 percent of the energy residences will utilize. Energy generated during daytime hours goes into the grid, which is analogous to

putting $1 in the bank; there is no guarantee that dollar will be worth the same when later withdrawn. He said energy, like water, flows to the lowest source, perhaps to the neighbors next door where there are no transmission charges. Mr. Romney referred to testimony about buying solar power from large solar farms at 3.5 cents, pointing out the fact that energy generated elsewhere incurs transmission charges in order to deliver it to where it can be used by residences. On the contrary, rooftop solar necessarily generates power used by local residences and at times when most needed, such as during the day when air conditioners are running. Raising Senator Ford's comment that S.B. 374 is to encourage private investment, he said the actions and decisions by the PUCN have killed the rooftop solar business.

Mr. Romney referred to newspaper articles that mention a 97 percent reduction in rooftop solar applications and sales since the passage of the additional tariffs and commissions. The day after the PUCN made its decision, he said his company's financing partners halted financing of any pending jobs because people will no longer save money in Nevada with the additional rates. Mr. Romney stated the PUCN has not encouraged private investment; on the contrary, it caused private investment to flee the State. He said his company has partially completed rooftop solar jobs with no financing to complete them, and he cannot pay his suppliers. In closing, he respectfully disagrees with the PUCN's decision, and he is of the opinion individuals need to be grandfathered in under the new rate plan. Unfortunately, he does not see the PUCN doing that. He suggested relief for solar customers through the legislative process because under the new punitive rates, customers are not going to recoup their investment.

Responding to Senator Ford's request for NVE's position on the environmental components of solar energy relative to whether there is a subsidy, Mr. Elicegui said the PUCN adopted an 11-factor test to evaluate and value excess energy credits; the solar industry produced no evidence of long- or short-term environmental benefits. There were only two factors for which there was evidence, which is how the PUCN set the excess energy credit. He said NVE evaluated long-term environmental benefits in the resource planning process. The PUCN's decision sets up a two-channel analysis; one channel is for the cost-of-service, noting environmental benefits should never be considered in the cost-of-service test because NVE does not look at customers' emissions or at customers who do not emit. Mr. Elicegui added that NVE does not look at the societal value of whether a hospital is for profit or not in setting rates. In the second channel that the PUCN set up, which is the assessment of the value of excess energy, there is room for the analysis of benefits. All of those benefits should be evaluated compared to alternatives so that one should not value rooftop solar generation any differently than one values large, utility-scale generation, except with the one specific item that the PUCN actually did take into consideration, which were avoided losses. To the extent energy is being generated close to the source, the PUCN actually took into account-avoided distribution system losses.

Assemblyman Hansen asked Mr. Romney how—after the passage of S.B. 374, which has an undefined grandfather clause—the solar industry was able to convince 18,000 people to sign up for what appears to be an extremely risky investment. Mr. Romney clarified his previous comment by stating since the rate increase on December 22, 2015, the rooftop solar industry has been decimated, not since the passage of S.B. 374. He added there were many individuals who invested in solar during that period. Nevada is the only State that has not grandfathered solar customers when it has made a rate change. In his opinion, customers who signed up for solar need to be grandfathered so they can realize the return on their expected investments.

In response to Assemblyman Hansen's questions of whether customers, while being presented with contracts, were made aware of: (1) the variable rate; and (2) past subsidies were not guaranteed, Mr. Romney stated he could not speak for other solar entities, but those items had been discussed with his company's customers.

In his response to Senator Denis's question of whether he could address the comment made by Mr. Thomsen regarding the PUCN's repeated requests for jobs information, Mr. Romney said nobody asked his company about job losses, and his company issued a press release stating it had to dismiss about 90 percent of its workforce, which amounted to about 15 people. Assemblyman Denis replied he did not understand Mr. Thomsen was referring to job losses, but rather how many jobs had been created as part of that process. Mr. Romney said he could not speak to that, as he was not involved in generating those numbers.

A conversation took place between Assemblywoman Bustamante Adams and Mr. Romney about his business sales and installations for rooftop solar systems from June 5, 2015, until December 2015, which he said remained steady. Mr. Romney stated rooftop solar industry studies show there is a net benefit of $144 per year to nonsolar users for having solar in the network making the case for the solar industry that there is no subsidy. He said rooftop solar brings many benefits to the grid, and he is unsure whether those benefits have been taken into account in subsidy calculations by NVE and the PUCN.

Assemblywoman Bustamante Adams agreed with Mr. Thomsen's previous suggestion that another consumer protection bill should be brought forth next session.

C. Investigation of the Regulation of Taxicabs and Other Transportation Services, Including Discussion and Evaluation of Procedures, Administration and Regulation by the Taxicab Authority and Whether to Direct the Legislative Auditor to Make and Audit or Investigation Regarding Such Regulation or Whether Possible Future Legislative Action Regarding Such Regulation May be Necessary or Advisable

Chair Roberson stated the subject matter in agenda item IV.C. had been discussed during a recent meeting of the Sunset Subcommittee, of which Senator Settelmeyer is chair. He deemed it appropriate to have a similar hearing today with a wider array of legislators. Chair Roberson said the Division of Internal Audits (DIA), Office of Finance, Office of the Governor, conducted an audit on the TA. Some of the results of the audit report (Report) surprised many people regarding fuel charges, credit card fees, and other issues; therefore, it is fair to bring forward the chair of the Taxicab Authority Board (Board) in order to provide the next steps of the Board in response to the Report. Thereafter, the Legislature will consider whether it needs to conduct its own audit.

Rick Combs, previously identified, swore in, under oath, Ileana Drobkin, Chair, Board, TA, DBI.

Ms. Drobkin explained there has been much confusion and misinformation regarding the Report, noting it is detrimental to the industry and Nevada's economy. Ms. Drobkin clarified she is in a per diem, appointed position that carries out certain functions. The administrator executes the day-to-day operations of the TA. She stated the Board is responsible for adjusting rates, charges, and fares for taxicab services and handles appeals of final decisions made by the administrator.

Ms. Drobkin proceeded to address the deficiencies found in the Report:

1. In regard to adhering to statutory rules and responsibilities, Ms. Drobkin told the Commission that all actions by the TA referenced in the Report were done within the Board's statutory authority. At all times, the Board acts with the advice and legal counsel of the AG. She said the role of the assigned deputy AG is to confer with the Board, accompany the Board to meetings, and provide legal advice;

2. As far as the Board overstepping its role by prioritizing taxicab inspections, the Report references a specific event on New Year's Eve in 2014. The Board does not interfere in or dictate schedules to TA staff. The Board is unaware of any members who interfered in that particular event; the Board has no direct control over staff. She noted the auditor did not ask Ms. Drobkin about this specific issue; and

3. Regarding the Board's appellate decisions possibly exposing the State to liabilities, Ms. Drobkin said subsection 2 of *Nevada Administrative Code* 706.516 is a discretionary denial. The Board does not rubberstamp the administrator's decisions—the auditors drew unsupported legal conclusions. The Report stated the Board overruled the administrator regarding the possession of a gun in a driver's personal vehicle. Ms. Drobkin explained that due to a misunderstanding, the driver missed the hearing, and a decision had been made. Afterward, during testimony, the driver described the

circumstances to the Board, and it decided to reschedule the driver's hearing date.

Chair Roberson interjected that the Board's authority regarding actions taken by the TA is not being questioned. He expressed concern over some of the findings in the Report and whether the Board agrees with them. The findings include an increase in the mileage rate, the per-mile fuel surcharge, and the $3 credit card fee ($3 fee). According to the Report, reducing or eliminating those fees would save $47 million for taxpayers and tourists. From a policy perspective, Chair Roberson asked whether these fees and charges make sense in their current form.

Ms. Drobkin replied that the fuel surcharge was adopted in 2010 by the NTA to help deal with the volatility of gas, which the Board dealt with later in 2011. She explained that the reason the Board adopted the same standards as the NTA was that several of the TNCs who own taxis also own limousines, and it allowed them parity on both sides. In addition, fuel and labor are the highest costs for transportation, particularly the taxi industry; the Board wanted to give them the ability to budget. The Board put in a trigger of $3.25 per gallon; therefore, if it hits that amount and stays on for more than thirty days, the fuel surcharge comes on. Ms. Drobkin said she has spearheaded many initiatives in the interest of the riding public by ensuring the industry is able to safely and effectively transport them in the manner in which they expect. She believes the surcharge is still relevant. If fuel costs spike, the Board is able to give the companies the ability to manage their assets better. Some drivers have to pay for a portion of their fuel costs, depending on the company. The surcharge provides some relief to the drivers, as well.

In addressing the credit card fee, Ms. Drobkin explained taxicab drivers were charging a $3 fee in 2004, which was unregulated at that time. In 2010, the industry acknowledged passengers' desire to pay by credit card. The taxicab companies presented the fee to the Board and recommended that it be regulated; the Board concluded the $3 fee was fair. In 2011, the taxicab industry approached the Legislature in an effort to get the fee legislated because some credit card companies were unwilling to process the cards. Following the 2011 Legislative Session, the subject of the $3 fee was brought before the Board where there were numerous deliberations from people on all sides, noting the drivers and unions were not opposed to it.

Chair Roberson asked whether the $3 fee is reflective of the costs incurred by taxicab companies to process a single credit card transaction and whether there is a profit margin error in that fee.

Ms. Drobkin stated the $3 fee is still relevant. She explained credit card companies take a significant portion of the fee, and taxicab companies increase their staff to process that fee. In addition, the law requires the amount of the surcharge be a

set rate and that the costs be equal. Ms. Drobkin noted approximately 25 percent of passengers use credit cards, and the $3 fee is openly posted and in view of customers.

Senator Atkinson stated he was the chair of the committee that heard testimony on the surcharge fee in 2011. He said one company was charging the credit card surcharge fee, but others would not unless they had stronger language to back them up because they did not want to start charging the fee and then have it taken away. Senator Atkinson said $2 out of the $3 fee was going to the credit card companies. In addition, while Nevada was not charging the fee, with the exception of one company, other states were and the fee was somewhat hidden. Although the industry initially proposed a $5 surcharge fee, that figure was negotiated down to $3. The vast majority of passengers paying by credit card were visitors, which helped justify the fee knowing, for the most part, constituents were not paying the fee.

Vice Chair Settelmeyer reiterated that in 2011, the Legislature approved charging a fee for the use of a credit card, noting there was no specific dollar amount stipulated by the Legislature. He stated the way it traditionally works is the Legislature passes a law, and the entity brings forth the regulation to implement the law. Vice Chair Settelmeyer expressed concern that the Board passed a $3 fee in April 2010 and began collecting the fee, but it was not authorized to do so by the Legislature until June 2011. At the time, the Board told him that the TA always had the authority to collect the fee; they approached the Legislature to ensure they had that authority.

Ms. Drobkin responded the Board is statutorily responsible for all fares, fees, and rates, of which it is required by statute to review annually. It is her opinion the Board has the authority to collect the fee.

In response to Vice Chair Settelmeyer's question of why the Board needed legislation in order to charge the fee if it was already of the opinion it had the authority to do so, Ms. Drobkin said the industry needed legislation in order to continue processing credit cards with the $3 fee.

Vice Chair Settelmeyer contemplated that being an ongoing question for him. He said the Sunset Subcommittee agrees the Board needs more time for the independent audit, conducted by Jeremy Aguero of Applied Analysis, to be completed, and he asked Ms. Drobkin for an estimation of when that would occur.

Ms. Drobkin stated she did not know when the audit would conclude since it is an independent audit in which she is not involved.

Vice Chair Settelmeyer cautioned not going too far into that audit until it is completed and the Commission members have had a chance to review it as well as

the DIA's Report. He expects that with recent competition from other sources, the Board is putting itself at an economic disadvantage with a $3 fee, taking into consideration advertising funds from using the application.

Ms. Drobkin replied that is a question for the industry as she is not involved in that aspect.

Referring to companies' whose costs are less than the $3 fee, Senator Denis asked who tracks that money and where it goes.

Ms. Drobkin stated she is unaware of whether it is tracked, and that the rest of the money goes to the companies. She explained the necessity in setting the same rate for all companies.

Senator Ford summarized that prior to enacting legislation to allow for the credit card surcharge fee, the Board's position was it already had the authority; however, due to resistance from the credit card companies, the Board needed confirmation from the Legislature that the fee could be charged.

Ron Grogan, Administrator, TA, DBI, confirmed Senator Ford's statement.

Senator Ford asked whether the argument being made by the TA was they had the authority to impose the surcharge fee and others were saying they did not.

According to Ms. Drobkin, there never was an argument that the TA did not have the authority to impose the fee; the issue was brought to the Legislature by the taxicab industry in an effort to combat the credit card companies.

Responding to Senator Ford's question regarding whether the argument was the TA needed a governmental body to approve the surcharge fee, Ms. Drobkin said the credit card companies were claiming it was a breach of contract.

Chair Roberson stated the DIA's Report is specific in its assessment regarding the fee structures lack of transparency to the public because it contains unsupported revenue for the industry of $14.2 to $20.3 million, annually. He mentioned surveys of other cities show the public is provided the convenience of using a credit card but without paying the fee because the industry considers credit card costs to be part of the price to do business. In addition, the surveys show taxicab industries in other cities are charged between 3.8 and 5 percent per transaction. Compared to an average taxicab trip in the County, that would equate to about .5 percent of the fare, noting that 25 percent of the flat $3 fee is allowed for covering vendor costs. These fees and charges paid by other taxicab companies include all the other elements of a credit card fee allowances for equipment and infrastructure, administration, and uncollectibles. Chair Roberson said, as an

example, assuming the highest rate of 5 percent, the maximum credit card fee should be 90 cents per transaction.

Chair Roberson stated the report says over 40 percent of the $3 fee is to cover the cost of equipment, and that during testimony before the Legislature in 2011, taxicab industry officials noted the return on investment of credit card equipment would be four months. As a result, during the remaining months of the year of accepting credit cards, the allowance for equipment is unsupported revenue for the industry. In other words, 67 percent of the annual allowance for equipment and infrastructure is unsupported revenue. In addition, credit card fee processing equipment in taxicabs may also be used for advertising revenues. The public is paying for equipment the taxicab industry uses, in turn, to maximize other revenues from that same equipment

Ms. Drobkin responded, to her understanding, that other jurisdictions imbed the fee, while taxicabs openly display the $3 fee; therefore, passengers have a choice to pay either by cash or by credit card. She admitted her limited understanding on the subject pending the release of the independent audit, but she noted she does not agree with the DIA's Report.

Mr. Grogan, having been with the TA for only four months, could only respond to the DIA's Report. He agreed with Ms. Drobkin's comments and added that other taxicab companies do imbed the fee by increasing the meter rate, which covers the fee. He said you could make the argument whether that is the proper way of collecting the surcharge fee because it is being spread to people who are not using a credit card, and the fee is hidden. He was unable to comment on the $3 fee because he did not know how that amount was decided.

In response to Vice Settelmeyer's question whether the $3 fee has been rereviewed, Ms. Drobkin said all fees and rates are reviewed annually as part of a general review, and the $3 fee has not been raised as a concern.

Ms. Drobkin confirmed for Senator Atkinson that the $3 fee is displayed both on the outside of the vehicle and on the processing machine.

Senator Atkinson likened that scenario to an argument heard during the 2015 Session about Uber and surge pricing. He said passengers knew about it beforehand, illustrating if it was acceptable then, it should also be acceptable in this circumstance. Senator Atkinson asked whether industry representatives had been consulted during the DIA's Report concerning how the $3 fee was determined.

Ms. Drobkin replied auditors spoke with her for approximately one and one-half hours, but the $3 fee was not discussed. She understood that a brief discussion transpired over the telephone with one of the larger companies, and

another company found the questions to be so bizarre that there was very little discussion, which explains why so many people were surprised when the Report was released. Ms. Drobkin recalled the conversation with the auditors consisted partly of questions regarding the Board and its relationship with TA staff, but the $3 fee was never brought up.

Chair Roberson stated he was glad there was transparency and that the charges are itemized for the passengers' sake. Recalling testimony from 2011, wherein the taxicab industry said the return on investment of the credit card equipment, which they attribute to 40 percent of the $3 fee, would have been recouped within four months, he said that he would be more concerned if there was no competition in the marketplace. Now that there is competition, consumers can decide how they want to be transported in southern Nevada. However, if taxicab industry officials said they needed $3 to recoup credit card equipment costs and they would be recovered within months, he asked why is it that five years later the TA has not revisited the fee.

Ms. Drobkin disputed the figures from the report. Her understanding is the industry leases its credit card equipment. Ms. Drobkin said now that the $3 fee has become an issue, it would be included in the Board's annual review.

Assemblywoman Bustamante Adams justified the question of why the $3 surcharge fee has not been reanalyzed by the Board by recalling that during the Sunset Subcommittee meeting some agencies reported they have not reviewed their fees for the last 20 years. The agency reaches a critical point where the fee can no longer cover the cost of regulating the body for which it is responsible. The Board not reviewing its fees is another example of that. As a body, the Commission needs to force that review; if not, the result could be more situations such as this. She expressed concern that the Report was not conducted by LCB staff, which raises more questions, adding the fact that Ms. Drobkin was not asked about the $3 fee raises a red flag.

Ms. Drobkin clarified the TA was audited in 2013 by LCB staff. She did not recall the fee ever being questioned.

Senator Atkinson stated he understands the costs for maintaining electronic equipment. He opined, however, that the figures in the Report are convoluted.

Assemblyman Hansen compared the Legislative Auditor's 2013 TA report with the DIA's Report pointing out that some of the same issues are raised in both, specifically that of overcharging. In his opinion, the DIA's Report is thorough and the TA's assessment of it is inaccurate. He said it reveals why substantial competition needs to be introduced into the industry.

Mr. Grogan restated the DIA's Report was performed prior to his employment with the TA; therefore, his opinion is limited, particularly regarding the rates and other issues being discussed. His focus on the Report has been on the relationship between the Board and TA staff since he is responsible for the day-to-day operations of TA staff. It is also the job of TA staff to advise the Board on decisions, such as rate increases, credit card fees, et cetera. During the last session, the Legislature gave the TA approximately $130,000 in expenditure authority to improve operations. To that end, the TA has recently sent out a request for proposal for assistance in identifying the metrics the TA ought to be looking at, which will be used to advise the Board when making decisions pertaining to rates and fees. Mr. Grogan concluded he is not discarding the DIA Report; however, he is also interested in the results of the independent audit and in the study proposed by the TA, which will include observing other jurisdictions to see how they arrive at these types of decisions.

Ms. Drobkin informed the Commission that she will be termed-out at the end of 2016, after six years as its chair, and shared some of the TA's accomplishments in the last five years. For the first time, the TA has a relationship with the Strip, which was surprising since it is the hub of passenger transportation. Ms. Drobkin imparted that over time she was able to coalesce the Strip property executives, representatives from McCarran, and the taxicab industry to hold a summit for the first time since the formation of the taxicab industry. The result was a dialogue about where the population is and how it needs to be transported. The second summit, which included the Nevada Gaming Control Board and the Regional Transportation Commission of Southern Nevada, was cosponsored by two main Strip properties and focused on infrastructure, which resulted in collaboration between the different entities. She stressed the Board's focus has been the interest of the riding public, regardless of how it may appear from the Report.

Brent Bell, President, Whittlesea Blue Cab and Henderson Taxi, and President, Livery Operators Association of Las Vegas, stated Jeremy Aguero has identified preliminary findings, which he is discussing with the DIA before being released. Mr. Bell provided a brief background about the credit card surcharge fee in an effort to clarify the issue. He said the issue is technology is advancing at a faster pace than regulations. In the mid 2000s, a credit card company approached the industry with machines that work off of cellular data, which can charge credit cards. That was tested early on by another company who was of the opinion it did not need TA approval because it was a third party charging the $3 fee. That scenario worked well for a while and customers were demanding it.

Mr. Bell said he decided to start testing the machines in about 20 percent of his company's taxicabs, which, he noted, was expensive. The result was the same in that the public demanded the use of credit cards. As the industry recognized the increased demand, some industry members were of the opinion the TA needed to charge the $3 fee. Therefore, they went before the TA and presented a 128-page

document with information regarding credit card fees and the costs for equipment in an effort to make the case they should be allowed to charge the fee. The TA approved it, which encouraged more taxicab companies to accept credit cards. At that point, one of the industry members expressed concern about potential actions by the credit card companies, which led to the taxicab industry seeking legislation. Mr. Bell said he and other industry members did not think legislation was necessary because it was a third party charging the fee, and the TA had made the fee a set rate.

Michael D. Hillerby, representing MasterCard, stated Mr. Bell provided an excellent explanation of how the industry arrived at the $3 fee, recounting his representation of MasterCard at that time. He also said the impetus of A.B. 176 was to get around the contracts between the merchants (taxicab companies) and the banks that issue the credit cards. MasterCard had a standard rule that prohibited merchants from surcharging, which was an enforceable part of the contract, in an effort to avoid discriminating against customers because they chose that method of payment. The taxicab industry then took the position that that portion of the contract could not be enforced, of which MasterCard was adamantly opposed. Mr. Hillerby said A.B. 176 also gave the TA the authority to regulate the credit card surcharge fee. To his knowledge, there has been no specific review of the credit card rates. If, in fact, the $3 fee is justifiable under the authority given by the Legislature to the TA, the fee should be disclosed in order to assure the customer the fee is accurate.

Mr. Hillerby identified a section of the DIA Report that states the public could be saved $14.2 million, which is comparable to the nearly $13 million MasterCard projected in excess fees during the 2011 Session. In closing, he encouraged the TA to use the authority given to them by the Legislature. If an LCB audit is performed, he suggested looking closely at not only expenses, but also at the revenue, including advertising revenue, which goes to the merchant or to the company that provides the machine. About two years ago, as a result of a longstanding major lawsuit between large retailers and the credit card networks, the rules have changed and credit card companies no longer prohibit merchants from credit card surcharging, as long as that charge corresponds with the cost.

Chair Roberson stated the amount of evidence and testimony heard today weighs heavily on the TA on taking another look at this matter. After reviewing the eventual audit by Jeremy Aguero, the Legislature will determine what steps it needs to take in regard to the issues raised in the DIA Report, including whether the LCB needs to conduct its own audit.

APPOINTMENT OF MEMBER TO THE GAMING POLICY COMMITTEE (NRS 463.021)

Chair Roberson stated Senator Brower's resignation created a vacancy on the Gaming Policy Committee, and he asked for a motion to appoint a replacement.

> VICE CHAIR SETTELMEYER MOVED APPROVAL OF THE APPOINTMENT OF SENATOR LIPPARELLI TO REPLACE SENATOR BROWER ON THE GAMING POLICY COMMITTEE.
>
> SENATOR FORD SECONDED THE MOTION.
>
> THE MOTION CARRIED.

LEGISLATIVE AUDITOR—Request from the Sunset Subcommittee for an Audit of the Board of Dental Examiners of Nevada—Rocky J. Cooper, Legislative Auditor

Vice Chair Settelmeyer, Chair, Sunset Subcommittee, said that during the Sunset Subcommittee's review of the Board of Dental Examiners of Nevada (Dental Board) (NRS 631.120), a lot of discussion centered on the Dental Board's legal fees. The Sunset Subcommittee was unable to determine whether the legal fees are excessive and, therefore requests an audit (Exhibit K).

Senator Ford asked for the impetus behind auditing the legal fees of the Dental Board.

Vice Chair Settelmeyer said there were individuals who had various violations and problems with the Dental Board on a recurring basis. Concerns have been raised that legal fees are possibly being used to discourage litigation and to get people to settle prematurely. The question arose whether those fees are comparable to other boards. In his opinion, the request for an audit appeared to be reasonable in order to assist the Sunset Subcommittee in making a radical decision relating to only the Dental Board or whether to make a radical change to the process for all boards relating to legal fees.

Given the timing and request of the audit, Senator Ford stated it is going to have a chilling effect on the accusations against the Dental Board, as well as the possibility of undermining the Dental Board's legal counsel. He said if the current situation with the Dental Board did not exist, he may be interested in supporting an audit, but presently, he does not support it.

VICE CHAIR SETTELMEYER MOVED APPROVAL OF A REQUEST FOR AN AUDIT OF THE LEGAL FEES OF THE BOARD OF DENTAL EXAMINERS OF NEVADA ON BEHALF OF THE SUNSET SUBCOMMITTEE OF THE LEGISLATIVE COMMISSION.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED. SENATOR FORD VOTED NO.

LEGISLATIVE COMMISSION POLICY

A. Approval of a Resolution Congratulating the People of the Republic of China (Taiwan) on Their Free and Open Election of Dr. Tsai Ing-wen and Dr. Chen Chien-jen, as President and Vice President—Rick Combs, Director

Rick Combs, previously identified, stated Nevada has enjoyed a sister-state relationship between the people and the government of the Republic of China (Taiwan) for over 30 years. On January 16, 2016, the people of Taiwan elected its first female president and its vice president of the Republic of China (Taiwan). He referred to the proposed Resolution (Exhibit L), which congratulates the Republic of China (Taiwan) on its election of the new president and vice president.

ASSEMBLYMAN STEWART MOVED APPROVAL OF THE RESOLUTION CONGRATULATING THE PEOPLE OF THE REPUBLIC OF CHINA (TAIWAN) ON THEIR FREE AND OPEN ELECTION OF DR. TSAI ING-WEN AND DR. CHEN CHIEN-JEN AS PRESIDENT AND VICE PRESIDENT.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED.

B. Review of Administrative Regulations—Brenda J. Erdoes, Legislative Counsel

Chair Roberson stated the Commission was going to defer the review of administrative regulations to the next Commission meeting.

PUBLIC COMMENT

Chair Roberson called for public comment.

Fred Voltz, previously identified, said it seems the best way to frame the issue of net metering is "renewable energy at what cost." He opined that the $255 million in State subsidies from charges to all ratepayers and over $2.5 billion of federal tax

credits for just 3 percent of electricity demand in the State is not a good investment from a public policy perspective. In addition to the $3 billion, he suggested looking at the costs of installation for the solar generator systems. A distinction worth looking at is payback of the original investment that somebody might make to buy a solar system versus return on investment. If people invest in corporate bonds, they know they will get back their principle, plus a return, but in the case of solar systems, the individual does not get back to zero until the stated period of nearly two decades, depending on the level of credits given. Nobody is prohibiting anyone from installing a solar system in Nevada, and anyone can go off the grid; however, the technology is such right now that battery storage cannot accommodate that safely for someone who would be a high user of electricity.

Speaking to the point of gradualism and ratemaking, Mr. Voltz said that two years ago in northern Nevada, basic service charges were increased by 69 percent all at once, which hit the low-income and low-usage ratepayers the most. The gradualism of the 12-year phase-in period does not seem to be a consistent policy at the PUCN. In addressing some of the PUCN's operational issues, Mr. Voltz said ratepayers are not able to see all of the documents, including reports, data requests, and answers in the case of individual dockets, noting that this is not a transparent procedure. Similarly, consumer complaint functions at the PUCN offer little information about the NEM process; in fact, they have offloaded that disclosure requirement to the utility and have not taken the responsibility themselves. In addition, there is no ongoing mechanism for ratepayer input regarding the way the PUCN conducts business. They do have a general consumer session, but that has not led to any visible operating changes. He suggested the creation of an ongoing ratepayer oversight board created for input from ratepayers. The PUCN also needs to regulate the solar industry, which is within the Legislature's purview. In closing, Mr. Voltz said the PUCN's Consumer's Bill of Rights has not been updated in 30 years, and the general rate case in the north is in 2016 and the one for the south is in 2017.

Marco Henry, resident, Las Vegas, Nevada, stated that as a solar panel owner and consumer, he has had to become an expert in the ways of the PUCN. He said he has spent dozens of hours at PUCN hearings over the last few months, and has read hundreds of pages of dockets; it was a shock and surprise to find exactly how the process works. Public representation and involvement in a case on the PUCN docket requires tracking every docket as it is issued and intervening within the stated timeframe, which requires legal counsel. Individual consumers are unable to speak to the PUCN in any meaningful way, and they must rely on the Bureau of Consumer Protection (BCP) to do this on the public's behalf. Sometimes the BCP is split between representing different interests of Nevada's population who may have competing interests in a rate case. Mr. Henry said he has made several attempts in person, with BCP counsel, to point out at the meetings certain items not being mentioned in the hearings, but without any success. He echoed the observation

that some kind of neutral public advocate ought to be an intervener in every PUCN case because the PUCN's process is astonishing. For example, at the February 8, 2016, hearing where public comment was not allowed, but testimony was taken and cross examination was made, the PUCN staff confessed their computers were so underpowered that they were unable to model the new price structure suggested by NVE and come up with any type of conclusion on the impact to consumers. He expressed frustration with not having a public advocate able to challenge those numbers.

Mr. Henry said that in the prior net metering structure, there was a netting agreement—no dollar value was associated with the kilowatt hours banked. The PUCN calls the new arrangement a "buy/sell arrangement," which means the NEM customer now buys at a retail rate and sells at a rate substantially lower than retail. He stated he is now receiving taxable income from the utility and speculated whether he would have tax implications from the new arrangement. The PUCN staff said this is a unique structure across the nation, and no other state has left a net metering arrangement and gone to a buy/sell arrangement. He stated he is forced to be an unregulated producer of electricity. Mr. Henry opined there are now tax implications for every solar consumer in Nevada that nobody has thought about, nor has anyone proposed a way to manage those implications.

The following individuals provided written testimony in opposition to the PUCN:

- Loretta Tancredi/St. John, private citizen, Nevada (Exhibit M);
- Robin O'Neal, resident, Carson City, Nevada (Exhibit N); and
- Anthony Charles, resident, Las Vegas, Nevada (Exhibit O).

Chair Roberson acknowledged Senator Greg Brower's resignation becomes effective on February 20, 2016. Chair Roberson thanked Senator Brower for his years of fine, public service to Nevada.

There being no further business to come before the Commission, the meeting was adjourned at 4:34 p.m.

Respectfully submitted,

Debbie Gleason
Secretary for Minutes

APPROVED BY:

Senator Michael Roberson, Chair
Legislative Commission

EXHIBITS

EXHIBIT	WITNESS/ENTITY	DESCRIPTION
Exhibit A	Rick Combs, Director, Legislative Counsel Bureau (LCB)	Meeting Notice and Agenda
Exhibit B	Sylvia A. Wiese, Executive Assistant, Administrative Division, LCB	Attendance sign-in sheets dated February 19, 2016, from Carson City and Las Vegas, Nevada
Exhibit C	Legal Division, LCB	Adopted Regulation of the Public Utilities Commission of Nevada (PUCN), LCB File No. R116-15
Exhibit D	K. Neena Laxalt, lobbyist, Nevada Propane Dealers Association, Reno, Nevada	Letter regarding R116-15
Exhibit E	Jana Wright, resident, Clark County, Nevada	Letter regarding R087-14
Exhibit F	Legal Division, LCB	Adopted Regulation of the Board of Wildlife Commissioners, LCB File No. R087-14
Exhibit G	A.R. Fairman, private citizen, Nevada	Packet-Category II Peace Officer
Exhibit H	Fred Voltz, resident, Carson City, Nevada	Written testimony in opposition to R116-15 and R087-14
Exhibit I	Naomi Duerr, Councilwoman, Ward 2, Reno City Council	Written testimony in opposition to the PUCN
Exhibit J	Legal Division, LCB, Brenda J. Erdoes, Legislative Counsel, Kevin C. Powers, Chief Litigation Counsel, and Asher A. Killian, Senior Deputy Legislative Counsel	Legal opinion-City of Las Vegas
Exhibit K	Senator James A. Settelmeyer, Chair, Sunset Subcommittee of the Legislative Commission	Letter requesting audit of the Board of Dental Examiners of Nevada
Exhibit L	Senator Michael Roberson, Chair, Legislative Commission, and Richard S. Combs, Director, LCB	Legislative Resolution
Exhibit M	Loretta Tancredi/St. John, private citizen, Nevada	Written testimony in opposition to the PUCN

Exhibit N	Robin O'Neal, resident, Carson City, Nevada	Written testimony in opposition to the PUCN
Exhibit O	Anthony Charles, resident, Las Vegas, Nevada	Written testimony in opposition to the PUCN