Present: Chairman Gibson
Vice Chairman Keith Ashworth
Senator Dodge
Senator Echols
Senator Ford
Senator Kosinski
Senator Raggio

Also Present: See Attached Guest Register

Chairman Gibson called the twenty-seventh meeting of the Government Affairs committee to order at 2:00 p.m. with all members present. Chairman Gibson asked Senator Ford for a reporting on SB-251 (heard on March 2, 1979) At the March 2nd meeting the committee held the bill because it would affect SB-84 dealing with the Division of Archives.

SB-251 Requires approval of local government advisory committees as prerequisite to adoption of certain regulations of division of archives.

Senator Ford stated that since SB-84 has passed both houses SB-251 is not needed at this point.

Senator Ford moved to "Indefinitely Postpone" SB-251
Seconded by Senator Raggio
Motion carried unanimously.

The following bill draft requests deal with the general agreement of the committee to introduce the various city and county bills. Chairman Gibson wanted to inform the committee of the requests and determine if there was any objection to having them introduced.

(1) BDR 20-1191* - Requested by Clark County and deals with longevity pay of county officers.

(2) BDR 21-1591** - Requested by Clark County and will provided for the elimination of annexation procedures in certain counties.

(3) BDR 23-1576† - This bill concerns the local government bargaining act.

There was no objection by the committee members to having the above introduced as committee bills.

Prior to hearing SB-253 and SB-254 the Chairman asked the committee to review the bills on Friday's agenda and be prepared to move the bills out of committee.

* SB 428
** SB 427
† SB 426

SB-253 Adapts County Economic Development Revenue Bond Law to certain projects for generating and transmitting electricity.

SB-254 Provides for payments in lieu of taxes on certain power projects.

Chairman Gibson informed those present that in the joint meeting it was the request of the people to get Mr. Heber Hardy of the Public Service Commission to testify regarding the potential public utility regulatory implications of SB-253, Mr. Hardy was present to give the requested information.

Heber Hardy, Chairman of the Public Service Commission, read his prepared testimony to the committee on SB-253. (See Attachment #1) Mr. Hardy introduced those present to Mr. George Keele, legal representative who helped prepare the document read to the committee.

Senator Dodge stated that from Mr. Hardy's testimony it appeared that with the passage of SB-253 the Public Service Commission would not have any regulatory powers over the rate structure.

Mr. Hardy informed Senator Dodge that this was correct, they would not have jurisdiction over the regulatory procedures of the power plant.

Senator Dodge then asked Mr. Hardy about the possibilities of over-running the cost factor in building the power plant. Would the rates be increased in order to compensate for the higher costs was one question the Senator asked and further stated his concern for the citizens of Nevada. The Senator was concerned about safeguards in the laws to protect the people from exhorbitant rates.

Mr. Hardy responded that in Nevada they would not have any authority to make the power company keep within a particular rate structure. He further stated that White Pine County might be able to protect their citizens as well as the citizens of the whole state in their contract agreement with the participants.

Senator Echols was also concerned about getting the funds available for the entire project without jeopardizing the citizens of Nevada.

Chairman Gibson noted that the cost of the Seabrook Nuclear facility in New Hampshire has gone over the original estimate at least four times. He also added that the federal regulations have added significantly to the cost factor. At this point Chairman Gibson asked Mr. Hardy if there is no regulatory authority in the setting of rates does the Public Service Commission feel that the state of Nevada will be liable with the present language in SB-253.

Mr. Hardy stated that those who are involved in the contract will be responsible for the type of commitment made but beyond that Mr. Hardy could not comment.

Senator Ashworth stated that after reviewing Mr. Hardy's testimony with regard to the rate structure would it be possible for the Public Service Commission to deny a permit on the grounds that the rate structure was too high.

Mr. Hardy felt that this was a possiblity but there were too many things unknown at this time to make a positive statement about the jurisdiction and regulatory powers that the Public Service Commission would have.

Chairman Gibson stated that all committee members were concerned about the safeguards that must be available to Nevada. The Chairman also asked Mr. Hardy if he was familiar with the procedures used in New Mexico and how they tax the energy that is used outside the state. He noted that this would be in regard to the in lieu of tax portion in SB-253. They were also on a "take or pay" basis.

Mr. Hardy was not familiar with the taxing structure or the "take or pay" basis used in New Mexico.

Roy Nixon, Taxation Department, testified on SB-254. Noted that on page 1, line 9 the reference to "others" might include Sierra Pacific Power Company and Nevada Power Company. If this is true there will be problems on the valuation utilizing the unitary approach as authorized in NRS 361.320. Line 17, on page 1, calls for a situs assessment by individual county assessors and the Department of Taxation utilizes the income, cost and market approach on any given utility company on a unitary basis. Using these approaches it would be almost impossible to exclude a portion of the value of a generating plant. Mr. Nixon felt that the valuation of a generating plant was a highly technical process and one that would be extremely difficult for a county assessor to do accurately. This assessment should be done by the Department of Taxation.

Mr. Nixon was also concerned about the sale of electricity to Los Angeles. Ne noted that approximately 50% or more of the power generated would be exported and sold. These cities are paying taxes under protest (Pasadena was specifically named) from the power generated at Hoover Dam. The taxpayers plan to sue Nevada after this year for those taxes paid. (approximately $57,000) Mr. Nixon questioned the amount of taxes that could be added to these California consumers if the White Pine power plant becomes a reality.

Mr. Nixon stated that he read the proposed changes to the bill and feels that it will give no control to the Department of Taxation in Nevada to collect taxes.

Chairman Gibson asked Mr. Nixon with the present laws and Mr. Nixon's understanding of the bill, if the project is constructed and operated by White Pine County would there be any obligation to the taxes.

Mr. Nixon stated that the taxes would be obligated. The taxes not collected from California would be a loss to Nevada residents living in the White Pine area. Mr. Nixon also felt that there was an in-lieu tax liability.

Tom Barr, Bond counsel for White Pine County and Dave Hagen, legal counsel for White Pine County, testified together and Mr. Barr responded to statements made by Mr. Hardy and Mr. Nixon

(1) Re. Financing for construction: 100% of the output will be sold pursuant to the sale of contracts. This will include the cost to construct and finance charges. If the rates go up it will be to cover the increased costs for construction.

(2) The county will get someone else to operate the plant and it will be provided that the operator, as a participant, will run the plant as inexpensively as possible as he will be responsible for a portion of the payments. The participant involved in operating the plant would, therefore, be particularly interested in keeping costs down.

(3) The state of Nevada is not liable on these bonds, the state can also enter into joint ownership, negotiating or bidding construction is left up to the county and the county is exempt from doing both.

Senator Ashworth wanted more flexibility to bidding or negotiating for the construction of the power plant and felt that the language should be clear in this area.

Tom Barr also noted that these will be revenue bonds not tax bonds. There would be no liens on the project. He further stated that there was no intent to remove the Tax Department from the project or take away any of its authority.

Senator Dodge asked Mr. Barr what the state's position would be in the event of a default.

Mr. Barr responded by stating that it would be a civil matter and since the sales and use tax is a state tax, the way it has been drafted there could not be any action to go in and sieze county property.

At this time, due to a time constraint, Mr. Barr proceeded to go over the suggested amendments they propose. (See Attachment #3) These suggested amendments were provided by the bond counsel to be inserted in the NRS where appropriate. Specific insertions were left up to the discretion of the committee.

Chairman Gibson stated that they were concerned about getting into the authority of the Public Service Commission, noting that it should be separate. Mr. Barr stated that this would be corrected and they would make sure that the powers were separated.

Mr. Hagen, legal counsel representing Los Angeles Power Company and White Pine County, testified to the committee and stated that with respect to NRS 372 and 374, the principle section is the one referring to 372.325 and 743.330 taking away the county's exemption from sales and use taxation for a project of this kind. Mr. Hagen responded to one of Mr. Nixon's criticisms stating that there were no means of enforcement for the Department of Taxation. Mr. Hagen stated that the amendments to NRS 372 provide that if a county enters into a contract for the sale of electricity, the contracting party must agree and contain the engagement of the allotee's to pay the sales and use tax. This a most definitely a third party beneficiary contract that is in the favor of the State of Nevada.

Mr. Hagen addressed the question posed by Mr. Nixon on the litigation against this legislation by California and whether or not they would sue Nevada for those amounts paid. The city of Los Angeles is absolutely committeed to this method of sales and use taxation being paid by the power allotees.

Chairman Gibson stated that Mr. Nixon's concern was if the Bureau of Power and Light was successful in challenging the existing sections, would it raise doubt as to the modifications that were made. The Chairman further stated that from Mr. Hagen's testimony it would appear that this a separate agreement, outside of the law itself, enforceable by the contract agreed upon.

Mr. Hagen agreed with Chairman Gibson's observations and further noted that it was first an agreement and secondly it was a sales and use tax. Also the litigation proposed is contemplated by the City of Los Angeles against Clark County, not the State of Nevada. It is in regard to the imposition of an ad valorum property tax. That litigation will not take any money away from the State of Nevada, Clark County has already done this by the imposition of a tax. The money will be taken back from Clark County and be placed into the State of Nevada. The amount of tax involved is used to effectively operates to reduce the $300,000. the State gets from the federal government. He concluded by stating that the city of Los Angeles pays $1,110,000. in ad valorum property taxes to the State of Nevada. The amount in dispute is $57,000.

Chairman Gibson also asked Mr. Hagen to comment on Mr. Nixon's statement regarding the taxing being subject to referendum.

Mr. Hagen stated that 372. can be passed by the legislature but must be ratified by a vote of the people in November, 1980. NRS 374 can be amended by the legislature and needs no vote of the people. (NRS 372 is the 2¢ tax and NRS 374 is the 1¢ tax)

At this time the meeting was adjourned due to a joint meeting scheduled with both Senate and Assembly Government Affairs committees. Chairman Gibson asked that those present who have suggested amendments to present return on Thursday, April 5, to continue the meeting. The meeting time was set upon adjournment of the Senate. (Adjourned at 4:05 p.m.)

Chairman Gibson called the meeting back to order on April 5, 1979 at 12:20 p.m. Mr. Hagen was called upon at this time to continue testimony from the previous meeting.

David Hagen provided the committee with suggested amendments and a letter from the Utah Tax Commission. (See Attachments #4, 5, 6, 7 & 8) Mr. Hagen went over same for the committee.

Joe Gremban, President of Sierra Pacific Power Company, presented the committee with their proposed amendments and provided corresponding explanations for each change. (See Attachment 9A). Mr. Gremban read same to the committee.

Senator Kosinski questioned the reason for having the Public Service Commission having jurisdiction over the power plant and the requirement of audits. Senator Kosinski asked Mr. Gremban if they were under the jurisdiction of the Public Service Commission.

Mr. Gremban stated that they, as a privately owned power company, were not under the jurisdiction of the Public Service Commission with regard to operations. Mr. Gremban further informed those present that the costs of the Seabrook Nuclear facility. He stated that the plant was proposed in 1969, after numerous delays they began construction in 1977. The present estimation date for completion is 1983. Costs on the plant due to these delays, etc. went from 1.2 billion to 2.6 billion dollars.

Senator Keith Ashworth asked Mr. Gremban if a privately owned power plant could live under the jurisdiction of the Public Service Commission. Mr. Gremban responed that they could but they also are under the Federal Regulatory Commision for the rates they charge to power going outside the State of Nevada.

Sue Oldham, attorney for Sierra Pacific Power Company, stated that absent that provision on out of state power sales, that the Public Service Commission can't regulate a municipality. Miss Oldham stated that Commissioner Hardy testified that they have never regulated a municipality. The reason was because with present laws they can not regulate a municipality.

Senator Kosinski stated that this is only because the legislature can take away that power or extend it. This is within the powers of the legislative branch of government through the statutes.

Miss Oldham agreed but felt that no state or federal regulation does give jurisdiction to a public service commission over a municipal public utility.

Mr. Gremban continued going through their suggested amendments, previously designated as Attachment 9A. The above comments were made with regard to Page 1 of Attachment 9A.

Senator Dodge questioned the proposed language on page 9 regarding the acquisition of the water, not being able to acquire water within or without the county. Section 20 will preclude the acquisition of water.

Sue Oldham felt that you could not condemn water and the bill provides for the acquisition of water outside the county as well. It was felt that the legislature would not want to permit the county to use up water resources from other counties in the use of the power plant.

At this point Mr. Gremban concluded his testimony by reading a prepared statement to the committee on the Valmy #2 plant. (See Attachment #9B) Mr. Gremban also passed out copies of his concluding statements and a newspaper article for the committees information. (See Attachment #10 and 11) Mr. Gremban prefaced his concluding remarks by stating that he has been contacted by many California power plant companies indicating their interest in the White Pine Project and stating they would like to go into the development of such a power plant. A concluding statement to the committee from Mr. Gremban was to reiterate that they were not against the White Pine Power Plant but the legislation that is proposed to get that plant.

Senator Keith Ashworth asked Mr. Gremban how much power would Sierra Pacific Power Company use if the White Pine Power Plant is completed. Mr. Gremban stated that they would begin by using approximately 10% but noted that this would be under certain circumstances only. Mr. Gremban did not elaborate on the circumstances needed in order to use such power.

Senator Dodge was concerned about the percentage Sierra Pacific Power and other entities would eventually get. Mr. Gremban stated that they would eventually acquire about 33% and possibly another 25% to bring their participation up to approximately 50%.

Mr. Gremban stated that they would need additional power by 1987 and indicated that the White Pine site is a good location for a power plant.

Chairman Gibson asked what the cost would be for the state for the study and could it be done in a two year period. Mr. Gremban did not know how much it would cost but felt that it could be done in a two year period. He also noted that they were going ahead with their study of all phases of the power plant theory. Mr. Gremban felt that this should have been done years ago and it was long overdue. Mr. Gremban stated that he was not sure the tax issue was addressed properly in the bill and urged a thorough study on that matter.

Benny Mikkel, Vice President of Public Finance with Dean Witter, Inc. testified to the committee on questions regarding financing. Mr. Mikkel stated that Senator Raggio had a question on the credit of the participants being used to sell the bonds. Mr. Mikkel explained that their position was to finance the construction of the power plant through the use of tax exempt revenue bonds. This means that the interest that is earned or payed on the bonds is not taxable to the person who receives that interest. The cost of tax exempt financing is significantly lower than taxable financing. The percentage runs about 2-1/2 to 3% less than does taxable financing. Mr. Mikkel stated that when Sierra Pacific Power Company goes to the market they pay 2-1/2% to 3% more than does Los Angeles Department of Water and Power. The rating services who rate the bonds look at w h o the participants are. The rating is simply a shorthand method for an investor to know what the credit is. The Los Angeles Department of Water and Power get a AA rating.

Mr. Mikkel stated that if Mt. Wheeler were to be the primary sponsor the rating would be done in a completely different way than it is done for Los Angeles for obvious reasons. The participants rating is very important. Bond holders must know that the project is going to be completed and their rating will reflect the confidence a rating agency has in the project. He therefore concluded by stating that there must be a "hell or high water" provision regarding these bonds. Part of the operating agreement states that whomever participates will pay whether or not they receive power.

Senator Dodge asked if Mr. Mikkel or Mr. Barr knew of any other provisions in any other states, passed by any legislatures, that parallel the provisions that are in this proposal as far as trying to offer the bonds at the most attractive rate.

Mr. Tom Barr stated that with regard to the county being required to complete the financing,as per Senator Dodge's question, he was not aware of a similar law being utilized in other states. The reason is that this will be the first time that any project has ever been financed under an industrial development statute.

Senator Dodge continued with the following, are there any other instances where bond exempts are being used (to hold down interest costs) at the state level.

Mr. Barr indicated that it was not done primarily by the State. It is usually done by a joint action agency. A joint action agency would be a political subdivision created by other political subdivisions to perform common powers. [Example: a power to perform the construction of generating plants. The participants who make up the agency purchase power from that project. That agency is the one that will issue the bonds. This is done within the state's statutes.] Mr. Barr was unsure that a county, being a creature of the state and having only those powers designated by statute, can obligate itself in the power of sales contracts to complete the financing.

Senator Dodge asked Mr. Barr if, in his intensive studies of the economic revenue bond law, there was no language which could confer the authority to implement the purpose to which the bonds are being sold.

Mr. Barr stated that to compell counties to do something you must have very specific language. General language will not give the authority you need. Mr. Barr concluded by stating that absent the amending language they have provided there is no authority in the economic revenue bond law to confer the authority to the county, by contract, to agree flately to continue the project.

Mr. Mikkel wanted to reflect the difference between competitive versus negotiated sales. One of the basic differences between a negotiated sales of tax exempt bonds and competitive is that the issuer of the bonds knows that he has a purchaser when he negotiates the sale of those bonds. What if the issuer goes to market on a competitive sale (happened in Calif. two weeks ago) and nobody bids? With a new entity such as White Pine County Power Company it would be better to negotiate the sale. Mr. Mikkel concluded by stating that it would be a mistake, in his opinion, to limit the county to only the competitive sale market.

Chairman Gibson stated that since most of the committee members have other commitments for committee meetings at 2 p.m. the testimony on these two bills would be concluded at this time.

A sub-committee would be appointed to work on the bills and review all the suggested amendments and testimony given in the joint meeting as well as the present meeting. Chairman Gibson stated that he would get an opinion from Noel Clark, Energy Commission Administrator. The cooperation of all those concerned was essential to getting the bill processed in a timely manner.

Senator Keith Ashworth stated that the bills need careful consideration but there is a great need to generate more power for the future and something should be done for that need in this session.

With no further business the meeting was adjourned at 2:10 p.m.

Respectfully submitted,

Janice M. Peck
Committee Secretary

Approved:

Chairman
Senator James I. Gibson

SENATE GOVERNMENT AFFAIRS COMMITTEE

GUEST REGISTER

DATE April 4, 1979

PLEASE SIGN - EVEN IF YOU ARE NOT HERE TO TESTIFY.....

NAME	WILL YOU TESTIFY	BILL NO	REPRESENTING
Betty Whitehurst		253	Ely
[illegible]		253	Ely
[illegible]		253	Comm Cj
H. W. Young Jr	if necessary	253	White Pine County
[illegible]			White Pine County
Tom Batt	Yes	253	W P Co Power
Susan L Oldham	if necessary	253	SPPCo
Bernard J Mitell Jr	if necessary	253	White Pine County
[illegible]		253	Ely
Jeri L Shenton	yes	253	SPPCo.
[illegible]	No	53	KCC
Fr. John Coen	No	253	Catholic Church Ely
HERBERT P HARDY	YES	253	P S C.
George M. Keele	if necessary	253	PSC
[illegible]	No	353	PSC
[illegible]	NO	253	SPPCo.
[illegible]	NO	253	W.P.Co
[illegible]		253	Nev Comm on Cons

SENATE GOVERNMENT AFFAIRS COMMITTEE

GUEST REGISTER

DATE 4-5

PLEASE SIGN - EVEN IF YOU ARE NOT HERE TO TESTIFY.....

NAME	WILL YOU TESTIFY	BILL NO	REPRESENTING
Larry W Young Jr			White Pine County
Betty Gubatayao			Chamber of Commerce
Dee Gipson			Rep. Cons Com. Ch.
Stan Olsen			C. C.
R.M. Adams			
Tom Beatty			WP Power Power
Ernest J Mitchell		253	" " " Dean Witter
Mike Marick		253	W.P. Co Comm.

TESTIMONY OF HEBER P. HARDY
ON SB 253

Mr. Chairman , members of the committee. I am Heber Hardy, Chairman of the Public Service Commission of Nevada. At the request of Senator Gibson I have appeared here today to testify regarding the potential public utility regulatory implications of Senate Bill 253, if enacted, as I perceive them.

The two regulatory agencies principally involved with siting and rate-making aspects of large electric utilities are the Federal Energy Regulatory Commission (formerly the Federal Power Commission) and the state utility regulatory agency, which, in Nevada, is the Public Service Commission of Nevada.

FEDERAL ENERGY REGULATORY COMMISSION

The Federal Energy Regulatory Agency (FERC) derives its authority from the provisions of the Federal Power Act (16 United States Code Section 824 and following), enacted in 1935. The Federal Power Act dictates that any wholesale sales, or sales for resale, of electric energy transmitted from a state and consumed at any point outside the state are subject to exclusive FERC rate regulation unless they are exempted by specific provisions of the Act. One of the specific exemptions, located at 16 U.S.C.A. Section 824(f), provides that no provision of Subchapter II of the Federal Power Act, which relates to regulation of electric utility companies engaged in interstate commerce, applies to or includes the United States, a state or any political subdivision of a state. A county is, of course, a political subdivision of the state. Accordingly, to the extent that Senate Bill 253 contemplates county ownership of an electric generating plant which will generate and transmit energy for consumption out of state, the provisions of Section 824(f) of the Act would totally exempt such an entity from FERC jurisdiction. Nevertheless, the Congress has not decreed that rate-making jurisdiction reverts to the state regulatory agency where a

EXHIBIT 1 620

utility is specifically exempted from FERC jurisdiction. Thus, prices for any sale for resale out-of-state, in such a case, would be established simply by agreement between the Nevada county or its operator and the out-of-state wholesale customer.

PUBLIC SERVICE COMMISSION OF NEVADA

The Public Service Commission of Nevada has statutory authority to regulate retail sales by public utilities to intrastate customers. A county becomes a public utility by furnishing power to other persons, firms, associations or corporations. Nevertheless, municipalities are exempt from the requirement of obtaining a certificate of public convenience and necessity from the commission. (NRS 704.340) And a municipality has been defined to include counties in various provisions of Nevada law. (See NRS 350.538.) Therefore, it may be inferred that the commission has no authority to assert rate-making authority over a county public utility, although there is no specific statutory exemption from rate regulation even though the entity is non-certificated. Commission practice has been not to exercise rate making jurisdiction over public utilities exempted by statute from obtaining a certificate of public convenience and necessity.

In addition to the rate-making duties of the Public Service Commission of Nevada, the Commission, upon application by any new public utility to construct a generating plant, has the following statutory responsibilities:

1. To determine whether the public convenience or necessity requires or will require construction of the proposed project (NRS 704.330);
2. To determine
   a. The basis of the need for the facility;
   b. The nature of the probable environmental impact;
   c. That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the alternatives;

EXHIBIT 1

d. That the location of the proposed facility conforms to applicable state and local laws and regulations;

e. That the facility will serve the public interest; (704.890(1)) and, in view of these determinations, and where all or a part of the energy is to be generated for export outside the State of Nevada, to determine whether

f. To grant or deny the construction permit; or

g. To condition the granting of the construction permit on the public utility's making available for use within the State of Nevada an amount of electrical energy equal to or less than the amount exported, according to the Commission's discretion. (704.892)

Of course, Section 24 of the proposed act would render this last Commission prerogative inapplicable to a project for the generation of electricity proposed pursuant to the new language of the statutes affected by the act if enacted. Simply stated, if Section 24 and the rest of the act were enacted, the Commission would not have authority to require that an amount of electrical energy equal to or less than that exported from the state be made available for use within the state.

3. To determine or to authorize means of financing employed by utilities commencing construction projects.

The following is my conception of these three responsibilities as they relate to the provisions of the proposed act.

NRS 704.330

As previously indicated hereinabove, municipalities are exempt from the certification requirements of the public utility regulation chapters of NRS. Therefore, unless any county should propose to sell a part ownership of its plant to a

private entity, that county's project would not require issuance of a certificate of public convenience and necessity by the Commission.

NRS 704.820-704.900

(Utility Environmental Protection Act)

With the exception of the proposed exemption from the discretionary restriction upon exportation of energy (NRS 704.892), as proposed in Section 24 of the Act, the provisions of the Utility Environmental Protection Act will apply in all respects to any county utility operating under the proposed act. Again, as previously mentioned, environmental protection review by the Public Service Commission, together with review by the State Environmental Commission, in addition to scrutiny of environmental considerations, would involve a determination as to the need for the facility and the public interest to be served, all of which is tantamount to review for purposes of granting a certificate of public convenience and necessity.

NRS 704.322-.328

(Security Transactions)

NRS 704.328 exempts Public Service Commission regulation of financing issues of any public utility engaged in interstate commerce if 25 percent or more of the operating revenues of such public utility are derived from interstate commerce. There is no indication of the inter-intrastate breakdown of source of operating revenues in the proposed legislation; thus, whether NRS 704.322 et seq. will apply must await actual experience. However, if the county retains exclusive ownership of the plant, the Public Service Commission will have no regulatory jurisdiction over financing because NRS 704.323 and following apply only to privately owned utilities.

ASIDE: 75% or more owned outside Nev. thus we would have NO CONTROL OR AUTHORITY

SB-257

Section 22(8) of the proposed act states that existing statutory methods of achieving the objectives to be accomplished by the act would not be impaired by

EXHIBIT 1 623

enactment of the proposal but would constitute alternate methods of achieving the same result. The existing statutory method of construction of electric power-plants by counties is embodied in NRS 710.160-.280, inclusive, and, upon proper application of the provisions of Chapter 710 of NRS, the security transactions provisions of Chapter 704 would appear to be totally superseded.

NRS 710.160-.280

(County Electrical Powerplants and Powerlines)

Where the provisions of NRS 710.160 et seq. are properly invoked, i.e. by the filing ". . . with the board of county commissioners of any county a petition signed by at least two-thirds of the taxpayers of such county requesting. . . the board so to do, . . ." the county is authorized to finance and construct ". . . electrical powerplants and powerlines within the limits of the county and thereafter operate, maintain and extend the same as a public utility." (Emphasis added; the words "as a public utility" are underscored.)

The bonding provisions of these statutes appear to vest exclusive discretion in the board of county commissioners to make all determinations concerning financing of the project.

Additionally, a literal reading of the first section of the law, NRS 710.160, imports the strong suggestion that the filing of a valid petition activates the authority of the county to commence the construction activities. However, an alternate reading of the above-referenced underscored language, "as a public utility," could suggest that the county would be a public utility and, thus, would still be required to comply with all provisions of the Utility Environmental Protection Act (NRS 704.820 et seq.) except those changed by Section 24 of the proposed act. This reading is further buttressed by the language of NRS 710.280 which says that "the provisions of existing laws respecting the manner of acquisition of public utilities, duties of

boards of county commissioners to act upon proper applications and petitions, the collection and enforcement of rates for services, and all other provisions not superseded by NRS 710.160 to 710.270, inclusive, shall apply to the acquisition, management, financing, control and extension of such system." Furthermore, it is doubtful that the legislature intended in its enactment of NRS 710.160 et seq. to give counties carte blanche to commence their projects merely upon filing of the required petition irrespective of the legitimate concerns of the duly-appointed state regulatory agencies to make preliminary determinations concerning the public interest to be served by the plant, environmental concerns, and availability of natural resources to support the proposed construction and operation.

It is, thus, my perception that although the Public Service Commission of Nevada would neither regulate the rates charged by a project commenced under the proposed act nor require the county involved to obtain a certificate of public convenience and necessity, it would still exercise its statutory authority to require the county to qualify for a permit to construct by participating in a Commission proceeding conducted under the extant provisions of the Utility Environmental Protection Act.

ADDITIONAL AMENDMENTS TO
S. B. 253 REGARDING ADDITIONAL UNITS

Add the following new sections to S. B. 253:

SEC. ___. "Additional Electric Project" means an additional electrical generating unit, associated necessary transmission facilities and other facilities required for use therewith, which is to be constructed at or near the site of an existing completed project for the generation and transmission of electricity that is owned by a county under and pursuant to NRS 244.9191 to 244.9219, inclusive. If a county is to finance and own all or any part of an additional electric project, then such additional electric project or the county's ownership interest therein shall be a project for all purposes of NRS 244.9191 to 244.9219, inclusive, and such additional electric project may consist of any of the items enumerated under NRS 244.9196.

SEC. ___. "Domestic Utility" shall mean a company, corporation, association or other entity, public or private, domiciled in the state whose business includes furnishing electric power and energy primarily to customers in the state.

SEC. ___. 1. Subsequent to the completion of a project for the generation and transmission of electricity (hereinafter, together with any planned additions thereto not covered by this section, referred to as a "completed project"), the county shall be required to cooperate with a domestic utility in planning, financing, acquiring, constructing, operating and maintaining an additional electric project in accordance with the following provisions of this section.

2. Prior to the county taking any action under this section, the domestic utility (i) shall have obtained from the Nevada Public Service Commission an order, after a hearing, indicating that there is a need for such utility to obtain electricity generated and transmission usage (which need not be the entire amount of electricity generated or transmission usage of such additional electric project) from such additional electric project to service its customers in this state and that there is a need by the domestic utility to begin, at the time of such order, the initial procedures leading up to the acquisition and construction of such additional electric project and (ii) shall have requested in writing that the county cooperate with it in the planning, financing, acquiring, constructing, operating and maintaining of such additional electric project.

3. Upon receipt of the items mentioned in subsection 2, the county shall use its best efforts to assist, upon mutually agreeable terms, the domestic utility in the planning, financing, acquiring, constructing, operating and maintaining of such additional electric project. Any ownership and financing by the county of the additional electric project or any interest therein or part thereof shall be done pursuant to, and only pursuant to, the provisions of NRS 244.9191 to 244.9219, inclusive and such ownership and financing shall in all respects comply fully with the provisions of such sections.

4. The county shall not be obligated to, and shall not, take any action provided for by this section if and to the extent such action would or might result in the loss of the exemption from federal income taxation of interest on bonds issued pursuant to NRS 244.9191 to 244.9219, inclusive; jeopardizing the current or future use, operation, reliability, maintenance, repair, replacement or expansion of the completed project; the impairment of any rights under any contract or agreement with any of the participants in the completed project or any contract which relates to the completed project or of the rights of the holder of, or security for, any bonds issued under NRS 244.9191 to 244.9219, inclusive; or the violation of or default under any law, rule or regulation or under any agreement, contract, resolution or other instrument relating to such bonds or the completed project.

5. Any expenses incurred by the county in carrying out the provisions of this section which are not otherwise provided for by the participants in the additional electric project shall be paid by the domestic public utility. The county shall not pay any such expenses from its general funds or any other fund of the county.

6. It is the intent that the provisions of this section are in addition and supplemental to, and not in substitution for, and that the limitations imposed by this section, do not affect the powers otherwise provided for by NRS 244.9191 to 244.9219, inclusive, relating to additional electric projects, it being further the intent that such additional electric projects may be acquired, constructed, financed, owned and operated in accordance with the provisions of the sections, other than this section, of NRS 244.9191 to 244.9219, inclusive.

SEC. ___. If any section, subsection, sentence, clause or phrase of NRS 244.9191 to 244.9219, inclusive, or the application thereof to any person or circumstance, is held invalid, the remainder of NRS 244.9191 to 244.9219, inclusive, shall not be affected thereby.

EXHIBIT 3

AMENDMENTS TO PROVIDE FOR
STATE APPROVAL OF POWER PLANTS
(To be inserted in NRS where appropriate)

Section 1. Commence Construction or Commencement of Construction shall mean excavation for the foundations for an electric power plant.

Section 2. Electric Power Plant means (i) any plant located within the state, owned or to be owned by a public or private entity, for the generation of electric energy to be furnished, within or without the state, for or to other persons, firms, association, corporations or entities, public or private and, (ii) any additional generating unit to be added to such a plant. The term electric power plant shall not include any additions, modifications, extensions, alterations, repairs, replacements or improvements to such plant or unit. The term electric power plant shall not include any such plant or unit for which contracts for the performance of any preliminary or final feasibility studies relating thereto shall have been entered into on or prior to the effective date of this Act.

Section 3. The legislature hereby finds and determines that there is a need and it is in the public interest for the legislature to approve electric power plants prior to the commencement of construction thereof in order that the resources of the state may, to the extent necessary, be preserved for use within the state, to insure that the environment of the state is protected, to insure the orderly growth of the electric resources within the state, to insure that any such electric power plant will not unduly interfere with the orderly development of the region wherein which such plant will be located and to insure that any adverse impact of any such electric power plant on the social and economic conditions and the health, safety and welfare of the inhabitants of this state will be at a minimum.

Section 4. No person, firm, association, company, corporation or entity, whether public or private, shall commence construction of an electric power plant unless such plant shall have been approved by either an act of the legislature of the state or, if the legislature is not in session at the time, by action of the legislative commission. Such approval shall be required in addition to all other permits, licenses and approvals required to be obtained in connection with such electric power plant, and such approval may be obtained at any time prior to commencement of construction of such plant.

Section 5. There is hereby approved an electric power plant of not to exceed 2000 megawatts to be owned by White Pine County or by White Pine County and one or more co-owners.

Section 6. If any provision or provisions of this Act shall be declared invalid, then all provisions of this Act shall become null and void.

EXHIBIT 4

There is hereby added to Chapter 372 the following:

1. Notwithstanding the limitation of the county exemption set forth in N.R.S. 372.325, subsection 4, no county shall be obligated to pay a sales tax imposed by this chapter or the excise tax imposed by N.R.S. 372.185, subsection 2:

(a) Unless the county has entered into an agreement with each purchaser or user of electricity generated or user of transmitting facilities, which agreement shall require that the purchaser or user, or all of them collectively, make payments to the county, whether or not the electricity is taken or available or the transmitting facility used or available, sufficient in time and amount to enable the county to make, to the extent not otherwise provided for, the required sales or excise tax payments;

(b) Only if and to the extent that the county receives the payments required under said agreements or otherwise has funds legally available therefor; and

(c) Only if and to the extent that the making of such sales tax or excise tax payment would not cause a deficiency in the money available to the county to make required payments of principal or of interest on any bonds or notes issued by the county to finance a project for the generation and transmission of electricity pursuant to N.R.S. 244.9191 to 244.9219, inclusive, or to make required payments to any funds established under the proceedings under which the bonds or notes were issued and secured.

2. Any sales tax or excise tax payable by a county shall:

(a) Not be paid from the general funds or from any other funds of such county, except that such taxes shall be paid from funds held under the aforementioned proceedings to the extent such proceedings provide for the payment of such taxes;

(b) Not constitute a debt or indebtedness of the county within the meaning of any provision or limitation of the statutes of this state and shall not constitute or give rise to a pecuniary liability of the county or a charge against its general credit or taxing powers; and

(c) Not constitute an obligation of the holders of bonds issued pursuant to N.R.S. 244.9191 to 244.9219, inclusive.

There is hereby added to Chapter 374 the following:

1. Notwithstanding the limitation of the county exemption set forth in N.R.S. 374.330, subsection 4, no county shall be obligated to pay a sales tax imposed by this chapter or the excise tax imposed by N.R.S. 374.190, subsection 2:

(a) Unless the county has entered into an agreement with each purchaser or user of electricity generated or user of transmitting facilities, which agreement shall require that the purchaser or user, or all of them collectively, make payments to the county, whether or not the electricity is taken or available or the transmitting facility used or available, sufficient in time and amount to enable the county to make, to the extent not otherwise provided for, the required sales or excise tax payments;

(b) Only if and to the extent that the county receives the payments required under said agreements or otherwise has funds legally available therefor; and

(c) Only if and to the extent that the making of such sales tax or excise tax payment would not cause a deficiency in the money available to the county to make required payments of principal or of interest on any bonds or notes issued by the county to finance a project for the generation and transmission of electricity pursuant to N.R.S. 244.9191 to 244.9219, inclusive, or to make required payments to any funds established under the proceedings under which the bonds or notes were issued and secured.

2. Any sales tax or excise tax payable by a county shall:

(a) Not be paid from the general funds or from any other funds of such county, except that such taxes shall be paid from funds held under the aforementioned proceedings to the extent such proceedings provide for the payment of such taxes;

(b) Not constitute a debt or indebtedness of the county within the meaning of any provision or limitation of the statutes of this state and shall not constitute or give rise to a pecuniary liability of the county or a charge against its general credit or taxing powers; and

(c) Not constitute an obligation of the holders of bonds issued pursuant to N.R.S. 244.9191 to 244.9219, inclusive.

NRS 372.325 is hereby amended to read as follows:

There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of any tangible personal property to:

1. The United States, its unincorporated agencies and instrumentalities.

2. Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

3. The State of Nevada, its unincorporated agencies and instrumentalities.

4. Any county, city, district or other political subdivision of this state[.], except to the extent of such sales to a county or its agent in connection with the ownership, acquisition, construction, operation, maintenance, repair, extension, addition or improvement of a project for the generation and transmission of electricity undertaken pursuant to N.R.S. 244.9191 to 244.9219, inclusive.

EXHIBIT 7

NRS 374.330 is hereby amended to read as follows:

There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of any tangible personal property to:

1. The United States, its unincorporated agencies and instrumentalities.

2. Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

3. The State of Nevada, its unincorporated agencies and instrumentalities.

4. Any county, city, district or other political subdivision of this state[.], except to the extent of such sales to a county or its agent in connection with the ownership, acquisition, construction, operation, maintenance, repair, extension, addition or improvement of a project for the generation and transmission of electricity undertaken pursuant to N.R.S. 244.9191 to 244.9219, inclusive.

5. Any organization created for religious, charitable or eleemosynary purposes, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual.

EXHIBIT 7

NRS 372.185 is hereby amended to read as follows:

1. An excise tax is hereby imposed on the storage, use or other consumption in this state of tangible personal property purchased from any retailer on or after July 1, 1955, for storage, use or other consumption in this state at the rate of 2 percent of the sales price of the property.

2. An excise tax is imposed on the storage, use or other consumption in this state of tangible personal property purchased from a retailer by a county or its agent in connection with the ownership, acquisition, construction, operation, maintenance, repair, extension, addition or improvement of a project for the generation and transmission of electricity undertaken pursuant to N.R.S. 244.9191 to 244.9219, inclusive, at the rate of 2 percent of the sales price of the property.

3. Any county storing, using or otherwise consuming tangible personal property purchased from a retailer which is subject to an excise tax, as provided at section 2 above, shall be exempt from the provisions of N.R.S. 372.190, and N.R.S. 372.565 through 372.615, inclusive.

NRS 374.190 is hereby amended to read as follows:

1. An excise tax is hereby imposed on the storage, use or other consumption in a county of tangible personal property purchased from any retailer on or after July 1, 1967, for storage, use or other consumption in the county at the rate of 1 percent of the sales price of the property.

2. An excise tax is imposed on the storage, use or other consumption in a county of tangible personal property purchased from a retailer by a county or its agent in connection with the ownership, acquisition, construction, operation, maintenance, repair, extension, addition or improvement of a project for the generation and transmission of electricity undertaken pursuant to N.R.S. 244.9191 to 244.9219, inclusive, at the rate of 1 percent of the sales price of the property.

3. Any county storing, using or otherwise consuming tangible personal property purchased from a retailer which is subject to an excise tax, as provided at section 2 above, shall be exempt from the provisions of N.R.S. 374.195, and N.R.S. 374.570 through 374.620, inclusive.

THE STATE OF UTAH
STATE TAX COMMISSION
201 STATE OFFICE BUILDING
SALT LAKE CITY, UTAH 84134

March 30, 1979

IN REPLY REFER TO:

DIVISION:
Auditing-Sales
ATTENTION:
Donald R. Bosch

Guild, Hagen & Clark, Ltd.
P.O. Box 2838
102 Roff Way
Reno, Nevada 89505

Attn: David W. Hagen

Gentlemen:

In response to your inquiries of March 28, we will answer your questions in the order you presented them.

1. Coal consumed for the generation of electricity for resale is purchased for other than domestic or commercial use and, therefore, is exempt from Utah sales tax.

2. Answered in #1 above.

3. No, provided the electricity is produced for resale and not consumed by the producer thereof. In the event the power is consumed by the producer, the sale of coal would be exempt from Utah sales tax provided it qualifies as a sale in interstate commerce. In our opinion, the purchase of coal in Utah for transportation to Nevada would qualify as an exempt interstate sale if shipped by common carrier. If White Pine County takes possession of the coal in Utah, the interstate exemption would not apply.

4. The transactions as described would be governed by the Utah State Sales Tax Act and, therefore, are not subject to the Utah use tax.

Please feel free to contact us if further information is needed.

Respectfully,

STATE TAX COMMISSION

Donald R. Bosch, Supervisor
Sales & Use Taxes
Auditing Division

#1292:bb

EXHIBIT 8

GUILD, HAGEN & CLARK, LTD.
A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW

CLARK J. GUILD, JR
DAVID WARNER HAGEN
DRENNAN ANTHONY CLARK
THOMAS J. HALL
CHARLES DAVID RUSSELL
THOMAS A. COLLINS

P. O. BOX 2838
102 ROFF WAY
RENO, NEVADA 89505
AREA CODE (702) 786-2366

SUITE 1010, 302 EAST CARSON
LAS VEGAS, NEVADA 89101
AREA CODE (702) 384-1096

REPLY TO: Reno

March 28, 1979

Mr. J. H. Hopes
State Tax Commission
State of Utah
201 State Office Building
Salt Lake City, UT 84134

RE: Utah Sales and Use Tax

Dear Mr. Hopes:

I am the Nevada attorney for the City of Los Angeles Department of Water and Power who is interested in becoming a power allottee of a proposed coal-fired generator to be constructed and owned by White Pine County, Nevada pursuant to the Nevada County Economic Development Revenue Bond Act.

Certain legislation is contemplated to remove the exempt status of counties from sales and use taxation for purchases of property in the operation of projects of this type. Thus, it is expected that the use tax would be assessed against White Pine County by the State of Nevada in connection with coal purchases. I have been requested to provide certain legislators with information concerning the Utah Sales and Use Tax aspects of purchases by the County of Utah coal.

The Utah coal would be transported by rail directly to the project site in White Pine County, Nevada. It is not presently known whether this will be under contract with a common carrier for all equipment or whether White Pine County would own the rolling stock and contract with a common carrier for the haul over the carrier's rails. The principal question deals with §59-15-4(a) and (b) of the Utah statutes. As I understand it, the Utah Legislature in 1943 exempted coal from the sales tax and simultaneously, imposed a tax equivalent on "domestic" and "commercial" coal. In what appears to be dictum in Union Portland Cement Co. v. The Utah State Tax Commission, 170 P.2d 164,

EXHIBIT 8A

modified 176 P.2d 879, this was taken to mean that "industrial" coal was intended to be exempted from the sales tax by that enactment. I say dictum because it does not seem that this conclusion as to legislative intent was essential to the decision (viz., to uphold the imposition of the use tax in that case).

Our questions are:

1. Is coal consumed for the generation of electricity considered to be industrial coal?

2. Does the Utah State Tax Commission regard industrial coal as exempt from the Utah sales tax?

3. Would the coal purchases in the example given above be subject to Utah sales taxation in any event?

4. In the event there were no sales tax applicable, would the coal purchases and transportation in the example described above be subject to the Utah use tax?

The Nevada Legislature will be considering its taxation legislation on April 4, 1979 and have asked me to supply the answers to these questions, if at all possible, in advance of that time.

Thank you for your kind assistance and cooperation.

Very truly yours,

of GUILD, HAGEN & CLARK, LTD.

DWH/jh
cc: Thomas Barr IV, Esq.
Albert Pagni, Esq.
Mike Bourn
Bernard Mikell, Jr.
Charles Montoya

AMENDMENTS TO SB 253
SIERRA PACIFIC POWER COMPANY
April 5, 1979

Proposed Changes

Sec. 4. A county may issue bonds to finance solely the cost of studies, surveys and options with respect to a project for the generation and transmission of electricity. Before doing so, the county shall arrange for the repayment of those costs under an agreement or agreements which may provide for the purchase by the obligor or obligors thereunder of the studies, surveys and options through payments sufficient to pay the principal of and interest on the bonds issued to finance those costs if and to the extent the principal of and interest on such bonds are not paid from the proceeds of additional bonds issued to finance the remaining costs of the project. In the event the project is not deemed feasible, the obligor or obligors shall pay the costs of the aforementioned studies, surveys, and options within a time certain of one (1) year. Prior to any financing of a utility project or transmission facilities of the project any and all agreements applicable to the construction, operation, and sale of electricity generated by the project, and use of transmitting facilities of the project to be entered into by the county shall be subject to review and approval of the Nevada Public Service Commission. The project shall be operated by a Nevada electric utility subject to the jurisdiction of the Nevada Public Service Commission. [Such agreements may also include a commitment or agreement by the county to enter into contracts at a later date for the sale of all or a portion of the electricity generated by the project to or for the use of the transmitting facilities of the project by the obligors and for the construction and operation of such project by one or more purchasers of the electricity or users of the transmitting facilities. The terms and provisions of such contracts to be executed at a later date must be approved by the board of county commissioners at the time of or before the first issuance of bonds.] The county and the purchasers of electricity generated by the project shall jointly select a nationally recognized architect-engineering firm to design and manage the construction of the project. All materials and construction shall be competitively bid and awarded to the lowest bidder.

Explanation

Should a project not develop after the completion of studies financed by the County, we believe the proposed law provides for the repayment of the bonds issued over their life. We feel that since the commitment for such studies would be small compared to the total project costs, all participants should be required to pay the total costs of such studies within one year, and relieve the County of any obligations.

The present proposed act does not provide for any federal or state regulation over these matters. All arrangements should have prior approval by the Nevada Public Service Commission just as is required today of privately owned utilities.

The operation of a Nevada electric generating facility by a Nevada public utility insures the control of operating costs by the Nevada Public Service Commission as well as adherence to other Nevada state regulations.

Because of the magnitude of the project, it is essential that costs be effectively controlled since it impacts on the rates to be charged Nevada consumers. It is therefore imperative that an experienced architect-engineer be retained to insure the design of a reliable and efficient project. It is an equally sound business practice to insure effective cost controls by competitively bidding all materials and construction.

EXHIBIT 94639

AMENDMENTS TO SB 253
SIERRA PACIFIC POWER COMPANY
April 5, 1979

Proposed Changes	Explanation
Sec. 5. Any lessee, purchaser, obligor, trustee or other representative of bondholders or any other interested party is entitled as of right to the enforcement of the obligations, if any, of the county to sell and issue additional bonds to finance the remaining costs of acquiring, improving, and equipping a project, however, should a county at any time decide for any reason to be freed from the project, the participating utilities shall be obligated to purchase the constructed portion of the project at the same ratio as participating utilities have agreed to purchase energy. [*or to contract for the sale of the electricity generated or for the transmission of electricity by a project or for the construction and operation of a project, by mandamus or other suit, action or proceeding at law or in equity to compel the county, its board of county commissioners or other appropriate officers to perform those obligations.*]	We do not believe the County or the State should be unconditionally committed to a project. A county should be given the flexibility of being freed from all obligations of a project at any time it desires. Our bond counsel, Kutak, Rock & Huie, have informed us that the language proposed in SB 253 is most extraordinary and should be considered only if absolutely necessary to accomplish objectives vital to the State of Nevada.

EXHIBIT 94 6.40

AMENDMENTS TO SB 253
SIERRA PACIFIC POWER COMPANY
April 5, 1979

Proposed Changes

Explanation

Sec. 6. Should the state repeal, amend, or modify NRS 244.9191 to 244.9219, inclusive, and sections 2 to 7, inclusive, of this act, impairing any outstanding bonds or any revenues pledged to their payment, or to impair, limit or alter the rights or powers vested in a county to acquire, finance, improve and equip a project in any way that would jeopardize the interest of any lessee, purchaser or other obligor, or to limit or alter the rights or powers vested in the county to perform any agreement made with any lessee, purchaser or other obligor, before all bonds have been discharged in full or provision for their payment and redemption has been fully made, the participating utilities shall have the option to purchase the then constructed portion of the project at the same ratio as the participating utilities have agreed to purchase energy. **[***The faith of the state is hereby pledged that NRS 244.9191 to 244.9219, inclusive, and sections 2 to 7, inclusive, of this act, will not be repealed, amended or modified to impair any outstanding bonds or any revenues pledged to their payment, or to impair, limit or alter the rights or powers vested in a county to acquire, finance, improve and equip a project in any way that would jeopardize the interest of any lessee, purchaser or other obligor, or to limit or alter the rights or powers vested in the county to perform any agreement made with any lessee, purchaser or other obligor, until all bonds have been discharged in full or provision for their payment and redemption has been fully made.***]*

If the State should adopt the proposed legislation and subsequently discover it has erred and a modification is required, it should not be precluded from making such modification. In order to protect the participants in the project and their security holders, the participants should have the option of purchasing the then-constructed portion of the project.

EXHIBIT 96411 A

AMENDMENTS TO SB 253
SIERRA PACIFIC POWER COMPANY
April 5, 1979

Proposed Changes	Explanation
Sec. 7. The board of county commissioners may enter into any contract, lease or other agreement or transaction appropriate to carry out the provisions of NRS 244.9191 to 244.9219, inclusive, and sections 2 to 7, inclusive, of this act even though it extends beyond their terms of office. [*, without setting forth in detail in any notice the proposed terms or conditions thereof.*]	Contracts, leases or other agreements should be subject to the same requirements as any other county contract.

EXHIBIT 9A
SB 253

AMENDMENTS TO SB 253
SIERRA PACIFIC POWER COMPANY
April 5, 1979

Proposed Changes

Sec. 10. NRS 244.9196 is hereby amended to read as follows:

244.9196 "Project" means:

1. Any land, building or other improvement and all real and personal properties necessary in connection therewith, whether or not in existence, suitable for manufacturing, industrial, warehousing or research and development enterprises.

2. Any land, building, structure, facility, system, fixture, improvement, appurtenance, machinery, equipment, or any combination thereof or any interest therein, used by any individual, partnership, firm, company, corporation (including a public utility), association, trust, estate, political subdivision, state agency or any other legal entity, or its legal representative, agent or assigns:

(a) For the reduction, abatement or prevention of pollution or for the removal or treatment of any substance in a processed material which otherwise would cause pollution when such material is used.

(b) In connection with furnishing of water if available on reasonable demand to members of the general public.

3. Any undertaking by a public utility, in addition to that allowed by subsection 2, which is solely for the purpose of making capital improvements to property, whether or not in existence, or a public utility.

4. In addition to the kinds of property described in subsection 2, if the project is for the generation and transmission of electricity, the generation facilities shall consist of one or more generating units using common facilities located at an environmentally acceptable specific site within a county of the State of Nevada as approved pursuant to NRS 704.820 to 704.900, inclusive, (Utility Environmental Protection Act). [any other property necessary or useful for that purpose, including without limitation any leases and any rights to take water or fuel.]

Explanation

We believe that the proposed law should clearly define a project and unambiguously state that the project is subject to the provisions of the Nevada Environmental Protection Act.

EXHIBIT 9A 643

AMENDMENTS TO SB 253
SIERRA PACIFIC POWER COMPANY
April 5, 1979

Proposed Changes

Sec. 12. NRS 244.9198 is hereby amended to read as follows:

244.9198 In addition to any other powers, [which it may now have,] each county [shall have] *has* the following powers:

1. To finance or acquire, whether by construction, purchase, gift, devise, lease or sublease or any one or more of such methods, and to improve and equip one or more projects or parts thereof, which [shall] *shall* [except as otherwise provided in this subsection must] be located within this state, and which may be located within or partially within [such] [*that*] *such* county. *If a project is for the generation and transmission of electricity, only the electrical transmission lines may be located outside of the county which provides the financing.* [*and the county deems it necessary to connect the project with facilities located outside this state, a part of the project necessary for that inter-connection may be located outside this state.*]

2. To finance, sell, lease or otherwise dispose of any or all its projects upon such terms and conditions as the board considers advisable.

3. To issue revenue bonds for the purpose of financing or defraying *all or any portion of* the cost of acquiring, improving and equipping any project as set forth in NRS 244.9213. *All such securities shall be issued on a competitive bid basis and awarded to the bidder with the lowest cost of money.*

4. To secure ..... (to end of Section 12).

Explanation

This provision insures that the generation facility associated with the project must be located within the county providing the financing.

For generation projects involving massive financing, we strongly urge this requirement be included in whatever statute is finally agreed upon. This is the only way all future customers can be assured of the lowest possible cost of money. A difference of one-tenth of one percent in the bond interest rate on a $2 billion project, would cost consumers $2 million additionally per year or an additional $70 million over the life of the project. Similarly, a difference of one-quarter of one percent, which would not be uncommon, would cost consumers an additional $5 million per year, or $175 million over the life of the project.

EXHIBIT 9A

S.B. 253

AMENDMENTS TO SB 253
SIERRA PACIFIC POWER COMPANY
April 5, 1979

Proposed Changes	Explanation
Sec. 17, Subsection 2(g) *(g) Acquisition of water resources and rights thereto [, facilities and suppiles (sic), including rights thereto, for fuel, fuel transportation and water];*	We believe that remote from the proj defined and should b operator of the faci
Sec. 17, Subsection 2(j) [(h)] *(j)* All other necessary and incidental expenses[.] *[, including expenses incurred to assist in meeting the financial demands placed by a project upon the population of, or services furnished by, this state, a county, city or town, or any political subdivision, agency or district thereof or created thereby, and capital contributions made by the county to, or facilities provided by the county for the use of, any corporation or other legal entity to minimize pollution in the vicinity of the project, if that pollution relates to the simultaneous operations of the project and the corporation or other legal entity in those areas].*	Financing should be limited to the construction of plant facilities. Taxes generated during the course of construction should be more than adequate to cover the impacts on governmental entities.

EXHIBIT 6A

S-45

AMENDMENTS TO SB 253
SIERRA PACIFIC POWER COMPANY
April 5, 1979

Proposed Changes	Explanation
Sec. 18, Subsection 2 2. No county may operate any project as a business or in any other manner except as a lessor or seller thereof. *If the project is for the generation and transmission of electricity, and the county retains ownership and sells the electricity generated or charges for the use of the transmitting facilities, the responsibility for the construction and the direct operation of the project shall be by a Nevada electric utility subject to the jurisdiction of the Nevada Public Service Commission. [the project must be constructed and operated by one or more of the purchasers of that electricity or users by the transmitting facilities pursuant to agreement with the county.]*	**The operation of a Nevada electric generating facility by a Nevada public utility insures the control of operating costs by the Nevada Public Service Commission as well as adherence to other Nevada state regulations.**

EXHIBIT 94-646

AMENDMENTS TO SB 253
SIERRA PACIFIC POWER COMPANY
April 5, 1979

Proposed Changes	Explanation
Sec. 20, Subsection 2 2. *If the project is for the generation and transmission of electricity, the county financing the project may acquire land or rights of way [for transmission facilities,] for the transportation of fuel or water, or for production facilities within such county and may acquire land or rights of way for transmission facilities within and without said county by the exercise of condemnation through eminent domain, unless the property to be acquired is owned or otherwise subject to use or control by public utilities within the state.*	**The county should not be able to locate a generating project in another county through the use of eminent domain. Under the proposed SB 253, a county can obtain lands through condemnation in any other county in the state.**

EXHIBIT 9

617

AMENDMENTS TO SB 253
SIERRA PACIFIC POWER COMPANY
April 5, 1979

Proposed Changes	Explanation
Sec. 22, Subsection 3	
3. The provisions of no other law, either general or local, except as provided in NRS 244.9191 to 244.9219, inclusive, [shall] *and sections 2 to 7, inclusive, of this act* apply to doing of the things authorized in [NRS 244.9191 to 244.9219, inclusive,] *those sections* to be done, *excepting if a project is for the generation and transmission of electricity, the project shall be subject to the review and approval of the following Nevada regulatory agencies, including but not limited to the Nevada Public Service Commission (NRS 704.010 to 704.900, inclusive), the Nevada State Environmental Commission (NRS 455.401 to 455.601, inclusive, and NRS 704.820 to 704.900, inclusive), the Nevada State Department of Conservation and Natural Resources (NRS 232.010 to 232.158, inclusive).* [and no board, agency, bureau, commission or official not designated in [NRS 244.9191 to 244.9219, inclusive, shall have] *those sections has* any authority or jurisdiction over the doing of any of the acts authorized in [NRS 241.9191 to 244.9219, inclusive,] *those sections* to be done, except as otherwise provided in [NRS 244.9191 to 244.9219, inclusive.] *those sections.*]	We believe it should be clearly stated and understood that the project shall fall under the jurisdiction of the appropriate state regulatory agencies.

EXHIBIT 6

859

AMENDMENTS TO SB 253
SIERRA PACIFIC POWER COMPANY
April 5, 1979

Proposed Changes

Sec. 24. NRS 704.892 is hereby amended to read as follows:

704.892 [When] [*Except as provided in subsection 2, when*] *When* application is made *by a Nevada electric utility, out-of-state electric utility, or any governmental entity* for the construction of a plant for the generation of electrical energy using any natural resource of this state, including but not limited to coal, geothermal steam and water resources, for export outside this state, the commission [may]:

[1.] [*(a)* Grant] *1. May grant* or deny the construction permit.

[2.] [*(b)* Condition] *2. Shall condition* the granting *or denying* of the construction permit on the public utility's *or applicant's* making available *to public utilities within this state* [for use within this state] an amount of electrical energy equal to or less than the amount exported, [as the commission may prescribe.] *in one of the following manners:*

(a) Fifty percent (50%) of the capacity and energy from the project must be made available to Nevada utilities; or

(b) If less than fifty percent (50%) of capacity and energy initially is taken by Nevada utilities, provision must be made for recapture by Nevada utilities of up to fifty percent (50%) of the capacity and energy available from the project; and

(c) Provide for a reciprocity commitment by out-of-state participant agreeing to allow the Nevada utilities to participate in any future capacity and energy supply of such participants to the same extent that the out-of-state participants have participated in capacity and energy from Nevada projects.

[*2. This section does not apply to a project for the generation of electricity which is to be constructed pursuant to NRS 244.9191 to 244.9219, inclusive, and sections 2 to 7, inclusive, of this act.*]

Explanation

P. We believe that the future of the State of Nevada depends upon careful regulation of the development of our valuable natural resources so as to provide the people of Nevada with a reliable, efficient and inexpensive source of power. In order to accomplish this goal, it is essential to provide for the recapture and reciprocity of those resources exported from this state.

increase rather than in one large increase. This total plant expansion cost will be likewise spread over time until the completion of Valmy No. 2 and not included in the rate base in one large increase. Sierra Pacific witnesses estimated that the joint ownership proposal will reduce their revenue requirements charged to ratepayers by a total of $50 million (Tr. p. 129).

At the same time Joint Applicants benefit from increasing demand capacity in smaller unit steps, they still will take advantage of the existing economies of scale of a 250 MW unit. Applicant Sierra Pacific's research indicates that a 250 MW size generating unit would be the most efficient and economical size plant to construct. Certain fixed cost savings can be achieved by constructing one large unit rather than several smaller units (Tr. p. 104). Therefore, under the joint ownership method, Applicants can take advantage of the best of both worlds. They can recoup economies of scale and produce electricity at the lowest possible cost per unit of power and still increase their system's capacity at the smaller 125 MW increments and avoid the costly excess capacity problems.

Applicant Sierra Pacific witnesses explained additional advantages to Nevada ratepayers of joint ownership. As stated previously, Applicant's reserve requirements must contain additional capacity to at least survive the loss of their largest operating unit. This joint ownership proposal effectively lowers Applicants' necessary system demand capacity and eliminates Sierra Pacific's excess cost of demand capacity solely based on a reserve requirement (Tr. p. 104).

Another benefit to Nevada ratepayers of the proposed joint ownership method will be Sierra Pacific's right to participate in any new thermal generating unit built by Idaho Power in its operating area. Sierra Pacific will have the legal right to participate in any thermal units developed by Idaho

Power to the extent that Idaho Power is involved in the joint participation project with Applicant Sierra Pacific at the Valmy plant. Idaho Power's president, James Bruce, testified that Idaho Power is continually investigating new possibilities for thermal units and does presently have applications filed with the Idaho Public Utilities Commission for future generating units (Tr. p. 374). This contract clause assures Applicant Sierra Pacific the opportunity participate in additional future sources of power in Idaho Power's operating area. It was also established that this option to participate by Sierra Pacific would include any project Applicant Idaho Power would develop jointly with other third party utilities.

The joint ownership proposal also enables Applicants to take advantage of the regional differences in each other's operating areas. Idaho Power has a traditional summer peak demand period and Sierra Pacific Power exhibits a winter demand peak period (Tr. p. 363). This difference in peak demand time will enable the Applicants to transfer excess capacity to each other from the co-owned Valmy generating units at a minimal cost. Through this method both parties may more efficiently utilize their Valmy project investments. As an additional benefit to Nevada ratepayers, the power lines between the Valmy project and the Idaho operating area will provide Applicant Sierra Pacific unique opportunity to purchase Applicant Idaho Power's excess hydroelectric power which is produced at a relatively inexpensive cost (Tr. p. 381). Idaho Power president James Bruce testified that hydrosystems have an awesome capacity to generate electrical power during certain time periods at an extremely low cost. This unique production feature created large excess power capacity and allowed Idaho Power to sell up to 600 MW of electrical power to neighboring utilities. The new interconnect system could allow Nevada to take advantage of this inexpensive hydropower (Tr. p. 381).

White Pine County should be commended for bringing to the attention of the legislature a tremendous economic resource available to the State of Nevada. All of the utilities in California are extremely short of power supply and with the impacts of the recent nuclear accident in Harrisburg, Pennsylvania, could be critically short if this nuclear facility were shut down or subject to curtailed operations.

A recent Sacramento Bee news article quoted a study made for the Nevada Public Service Commission by David Mendive, presently with the State Department of Energy in Carson City, saying California utilities may be looking for as much as 6,636 more megawatts of power generated in Nevada--more than three times Nevada's present needs. "The people of the state and their government must begin to analyze such developments so that the question of whether or not it is desirable will be answered before it is too late", Mendive said.

No other commercial facility has as large a cost, thus a large tax base, as a generating plant. Each facility such as proposed for White Pine County is valued at approximately $1.5 to $2.0 billion, with a potential for generating a minimum of $156 million in sales taxes and $511 million in property taxes over the life of the plant, based on today's costs. If only 5 were constructed, there would be generated $3.3 billion in tax revenues over their lives.

The proposed legislation SB 253 is extremely complex as indicated by the numerous proposed changes we have suggested and as developed from

questions raised by members of this committee. There have been doubts cast as to county and state liabilities and legality of some provisions. Even going through and making amendments we have suggested, we cannot be absolutely sure we addressed every change required to be made in the proposed statutes. It has far-reaching impacts on all of the counties, the state and residents of Nevada.

I would strongly urge this committee to assign both SB 253 and 254 to a legislative subcommittee for careful review and analysis as to how to best protect the interests of the state, its environment, water resources, air quality, and to specifically locate and define generating sites for development and on how to encourage California or other our-of-state utilities to develop such sites while maximizing particularly the tax benefits to all of the people of the state. The tax statutes should be studied to determine that the huge amounts of taxes that could be generated are equitably distributed to all counties and the state.

I would recommend that the subcommittee retain the services of an attorney such as Russ McDonald, who is thoroughly knowledgeable of the Nevada Revised Statutes, to assist in drafting necessary legislation so that it would not be later overturned in the courts with possible detrimental effects to Nevada.

This committee could prepare legislation for consideration by the 1981 legislature.

In the interim, we recognize White Pine's economic problem..

Sierra Pacific will need additional capacity by 1987, as shown in

the attached exhibit recently filed with the Nevada Public Service Commission. Its Board of Directors has given management authorization to proceed with the necessary studies and the funding for construction of a facility as shown in the resolution attached. A preliminary socio-economic impact study has been completed and proposals received for environmental and site location work. The company is ready to meet with the White Pine County Commissioners and the White Pine Project Steering Committee to make the selection. Invitations would then be sent to other parties, including the Los Angeles Department of Water and Power, to jointly share in the facility. Sierra will also pick up the costs incurred by White Pine County in its present fail-safe study. In this manner, White Pine County's interests are preserved while the legislative committee makes its review.

Joe Gunter

SIERRA PACIFIC POWER COMPANY
1979-93 BUDGET FORECAST
SUMMER/WINTER CAPACITY PLANNING TABLES
WSCC RESERVE CRITERIA I

WINTER MEGAWATTS

Year	Peak[1] Demand	Reserve[2] Requirement	Total Capacity Requirement	Capacity Addition	Total Capacity	% Reserve
1978-79	555	127	682		820	48
1979-80	608	128	736		820	35
1980-81	655	127	782	50	870	33
1981-82	703	145	848	125(3) V1	995	42
1982-83	749	147	896		995	33
1983-84	796	149	945		995	25
1984-85	844	152	996	125(4) V2	1120	33
1985-86	893	154	1047		1120	25
1986-87	942	157	1099		1120	19
1987-88	993	159	1152	125(5)	1245	25
1988-89	1044	162	1206		1245	19
1989-90	1097	164	1261	125(6)	1370	25
1990-91	1151	167	1318	UNK.	1370	19
1991-92	1208	170	1378	125(7)	1495	24
1992-93	1266	173	1439		1495	18
1993-94	1326	176	1502	125(8)	1620	22

SUMMER MEGAWATTS

Year	Peak[1] Demand	Reserve[2] Requirement	Total Capacity Requirement	Capacity Addition	Total Capacity	% Reserve
1979	545	124	669		820	50
1980	592	127	719		820	39
1981	641	129	770		820	28
1982	688	147	835	125(3) V1	945	37
1983	734	149	859		945	29
1984	782	151	933		945	21
1985	831	154	985	125(4) V2	1070	29
1986	880	156	1036		1070	22
1987	930	159	1089	125(5)	1195	28
1988	981	161	1142		1195	22
1989	1034	164	1198	125(6) UNK.	1320	28
1990	1088	167	1255		1320	21
1991	1144	169	1313		1320	15
1992	1201	172	1373	125(7)	1445	20
1993	1261	175	1436		1445	15

NOTES:
1) Based upon normal weather and conservation forecast.
2) 5% of load responsibility plus largest unit.
3) Valmy #1 10/81
4) Valmy #2 10/84
5) Unknown #1 05/87
6) Unknown #2 05/89
7) Unknown #3 10/91
8) Unknown #4 10/93

} New Stations

GWC/DN:ms
Engr.
12/08/78
Revised 12/14/78

6555

EXHIBIT 10

SIERRA PACIFIC POWER COMPANY
TRANSCRIPT FROM MINUTES OF BOARD OF DIRECTORS MEETING
HELD ON JANUARY 5, 1979

* *

RESOLVED, that the officers of this Corporation be authorized to conduct feasibility studies including site selection, air and water quality, environmental and other factors for constructing a generating station in White Pine County.

* *

I, the undersigned, hereby certify that I am the Secretary of Sierra Pacific Power Company, a Nevada Corporation, and that the foregoing is a true, correct and complete copy of a certain resolution duly adopted by the Board of Directors of said Corporation at a Regular Meeting of said Board duly convened and held on January 5, 1979, at which meeting a quorum for the transaction of business was present and acting throughout.

I further certify that said resolution has not been amended or revoked and that the same is now in full force and effect.

IN WITNESS WHEREOF I have hereunto set my hand and have affixed the corporate seal of said Corporation this 2nd day of April, 1979.

Secretary
SIERRA PACIFIC POWER COMPANY

Sunday, April 1, 1979
The Sacramento Bee Superior California

Unusual Desert Plant Will Be Fired By Coal

By KEN PAYTON
Bee Staff Writer

VALMY, Nev. — Something rare is happening out in the Nevada sage brush, 200 miles east of Reno.

A coal-fired, 250-megawatt electric power generating plant is going up. When completed in 1981 it will be large enough to power the entire city of Winnemucca for a day and a half in only an hour's generating time.

Its 550-foot stack, twice as high as the MGM Grand Hotel-Casino in Reno, would just barely fit under the Golden Gate Bridge.

Sierra Pacific Power Co., the private firm that provides a third of Nevada and portions of east-central California with electricity, and the Idaho Power Co., are spending $187 million to build it. A second unit of the same size, also shared half and half by Idaho Power, is planned about 1984.

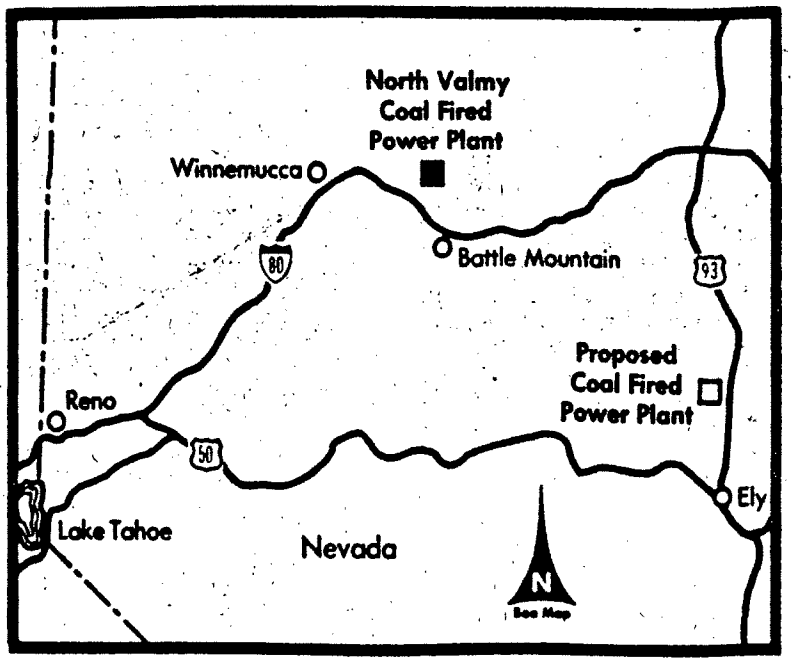
The second unit was approved only recently by the Nevada Public Service Commission.

The Valmy facility, largest in Sierra Pacific's system, is rare because there are so few coal-fired electric generating plants under construction in these days of environmental concerns. In fact, it has been 4½ years since any kind of power plant was approved in neighboring California, a state with an insatiable thirst for electric energy.

Presently, the only possibility for new electric energy in the Golden State is the proposed 1,600-megawatt Pacific Gas & Electric Co.'s coal-fired facility at one of four sites in the Sacramento Valley.

But in Nevada, not only is the Valmy coal-fired station under construction, there are plans for another, larger, far costlier and publicly financed coal plant in eastern Nevada's economically depressed White Pine County, 30 miles north of Ely. The Los Angeles Department of Water & Power and five other Southern California utilities hope to purchase 50 percent of the plant's 1,500 megawatts.

Legislation is now in committee that would make the project economically feasible to Southern California and White Pine County. Generation of any power, however, is four to five years away.



In addition, Nevada Power Co., serving a third of the state in the south, plans to build four 500-megawatt coal-fired plants by 1986.

Nevada and Utah, whose rich coal mines will provide most of the fuel for the Valmy plant, could provide future sites for power generation for many Californians. Someday, in Nevada at least, coal-fired power plants may no longer be rarities.

According to Sierra Pacific president Joe Gremban, the company decided on its first coal-fired plant at Valmy because of proven technology and availability in nearby Western states.

"Dwindling supplies of natural gas dictated that it be dedicated to higher and better uses," Gremban said. "Low-sulfur oil supplies were scarce and rising in price."

Nevada's present demand for power totals about 2,100 megawatts annually (compared to California's 34,000). Sierra Pacific's one-third of that — about 185,000 customers — should increase 5-7 percent annually, Gremban said, and the Valmy plant was sized accordingly.

Twelve potential sites were analyzed from the standpoints of water resources, air quality, socio-economic impacts and public opinion.

Sierra Pacific's favorite sites were near Fallon, some 40 miles east of Reno, where most of the Valmy power will go. They were rejected, however, because of water supply and environmental problems.

When Sierra Pacific representatives went to Valmy, three miles southeast of the plant site, and to nearby Battle Mountain and Winnemucca on Interstate 80, they found they had been preceded by rumors and some bad public opinion about a nuclear power generating plant.

Once Sierra Pacific chose the Valmy site, however, the rumors were eliminated and it took $2.5 million and two volumes of environmental reports

See POWER PLANT, Page B8

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Power Plant

Continued From Page B1

and water supply studies to win state approval.

Locally, according to Mark McMahon, owner-publisher of the Humboldt Sun, the plant was seen as a chance for more jobs. "If there was any local opposition, it was trivial," he said.

Because of the plant's isolation, the work site has been equipped with bachelor quarters for 200 workers and 150 recreational vehicle pads for those who provide their own housing. Facilities for dining, laundry, first aid and recreation were provided.

Television reception is being improved through efforts of commissioners of Lander and Humboldt counties, the jurisdictions that will benefit most from more taxes and more jobs.

Enormous amounts of coal — three 55-car trains a week for only the first unit — will be required. Sierra Pacific has a 22-year agreement with Coastal States Energy Co. for 17½ million tons of low-sulfur, high-heat coal from its Southern Utah Fuel Co. mine near Salina.

This supply, which, according to Sierra Pacific, can be burned within all federal and state air quality standards, comes from one of the largest underground coal mines in the West and is backed by renewal options for another 13 years.

Idaho Power has proposed supplying Black Butte coal from Wyoming, which it purchased for a coal-fired power plant project that has since been abandoned. The Nevada PUC, in approving Idaho Power's partnership, will require a letter confirming use of the Wyoming fuel.

"It may be different from our low-sulfur coal in Utah," said Sierra Pacific's Walt MacKenzie. "But if we have a problem with its sulfur content not meeting air quality standards, Sierra Pacific will blend its Utah coal to reach sulfur levels acceptable for all government regulations."

Each 250-megawatt generating unit will burn 80 tons of finely crushed coal an hour at full operation, or 20 carloads a day. The burning coal will fire a boiler 275 feet tall, converting purified water to 2,450 pounds per square inch of steam, which will drive a 267-ton turbine generator.

A giant "bag house," described as a huge vacuum cleaner designed to be 99 percent efficient, will be used to trap fly ash, the solid matter that is a byproduct of burning coal.

Other environmental protections include water treatment facilities, mechanical draft cooling towers, lined waste evaporative ponds and coal dust suppression systems, all designed to keep solid particulates and sulfur dioxides to a minimum and within environmental standards.

If plant construction manager Raymond Pidlypchak has anything to say about it, the buildings will be painted bright colors, too.

"You need colors in a coal plant," Pidlypchak said. "The place is going to be dreary, and pretty soon it's all black."

For power plant cooling, the power company has state permits to pump 7,150 gallons of water per minute from 10 wells located as far as 10 miles from the site. On a peak summer day, one of the 250-megawatt units will use (by evaporation) 2,500 gallons per minute, pumped at 7.2 feet per second through five-foot diameter pipes.

Because of the great amounts needed for cooling, water may be the most limiting factor in siting future power generating plants in Nevada, and this could limit California's ability to purchase electricity from its neighbor.

A recent Nevada study indicates about 477,000 acre-feet of non-allocated water lies under 15 Nevada valleys, where all of Nevada's potential power plant sites happen to be located.

"This water supply must meet all Nevada's future needs for farming, ranching, mining, manufacturing, power generation and domestic use," said Gremban.

He spoke recently in opposition to the two Nevada bills that would make it possible for White Pine County to sell tax-free municipal bonds to finance the proposed 1,500-megawatt facility in which Los Angeles would participate. Any utilities that wish to purchase power generated in Nevada should instead, Gremban said, organize a consortium and each pay its share of construction and generating costs in a plant.

Current estimates indicate California's power needs will increase by about 3 percent a year, he said, requiring 1,000 more megawatts of generating capacity annually.

"Relating the growth in California power requirements to Nevada's available water supply, all water resources would be depleted in only 25 years if this generation were to be built in our state," Gremban said.

"Any agreement to generate and export energy should contain a reciprocity agreement whereby exported energy may be re-captured to meet Nevada's growing power demands."

A study by David Mendive for the Nevada Public Service Commission says California utilities may be looking for as much as 6,636 more megawatts of power generated in Nevada — more than three times Nevada's present needs. "The people of the state and their government must begin to analyze such developments so that the question of whether or not it is desirable will be answered before it is too late," Mendive said.

Under S. B. 253, the existing property tax and Sales & Use Tax Statutes apply.

Sales & Use Tax

NRS 372.040 - defines "person" subject to the sales & use tax as excluding "....the United States, this state or any agency thereof, or any city, county, district or other political subdivision of this state." (Exhibit I)

NRS 372.190 - defines liability for tax. Pursuant to the Nevada Tax Commission, material purchased locally for use by the county on a project such as cement, would qualify for a tax. However, the turbine-generator and boiler which are fabricated outside of the State and represent the vast majority of costs subject to the tax would be tax exempt; also, all coal purchases are tax exempt. The State would have the potential loss of $33,425,000 on construction materials and $122,700,000 loss on purchases of coal over the life of the plant.

There is no statute providing in-lieu-of sales taxes on tax exempt utilities.

Property Tax

NRS 361.060 - specifically exempts property of political subdivisions from property taxes. (Exhibit II)

NRS 361.157(1) and NRS 361.159(1) (Exhibit III) - adopted in 1965 by the State Legislature, sought to tax previously exempted federally owned generators, turbines, and facilities used in the generation of electrical power at Hoover Dam. The City of Los Angeles Department of Water Power and others sued in District Court and subsequently in the State Supreme Court as to applicability, and on May 21, 1975, Decision No. 7577, the State Supreme Court ruled that the property was tax exempt. (Exhibit IV)

NRS 361.157(2) and NRS 361.159(2) (Exhibit III) - adopted in 1977 by the State Legislature, again sought to tax previously exempted federally owned property as noted above if such property is exempt because of public ownership. The Los Angeles Department of Water Power and several other southern California entities have informed the Nevada Tax Commission that they intend to challenge the assessment in court after exhausting administrative remedies. They have claimed that such tax is in violation of the Nevada Constitution (Exhibit V, article in the Las Vegas Review Journal).

If the Los Angeles Department of Water Power is successful in this suit as they were in the original suit, only NRS 361.060 would remain in effect, which specifically exempts property of political subdivisions from property taxes. This creates the risk of losing a potential $511,462,000 in property taxes over the life of the plant.

If still another attempt were made by the legislature to impose in-lieu-of property taxes, it could be assumed from past history that the Los Angeles Department of Water Power would also appeal that statute to the courts.

Exhibit I

372.190 Liability for tax; extinguishment of liability. Every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer is liable for the tax. His liability is not extinguished until the tax has been paid to this state, except that a receipt from a retailer maintaining a place of business in this state or from a retailer who is authorized by the tax commission, under such rules and regulations as it may prescribe, to collect the tax and who is, for the purposes of this chapter relating to the use tax, regarded as a retailer maintaining a place of business in this state, given to the purchaser pursuant to NRS 372.195 is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

[35:397:1955]

372.040 "Person." "Person" includes any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit, but shall not include the United States, this state or any agency thereof, or any city, county, district or other political subdivision of this state.

[3:397:1955]

EXHIBIT I

Exhibit H

real property is located in the proportion that the tax rate of each such political subdivision bears to the total combined tax rate in effect for such year.

[Part 1:344:1953; A 1954, 29; 1955, 340]—(NRS A 1959, 282; 1969, 997, 1560; 1977, 1400)

361.060 Property of political subdivisions, municipal corporations exempted. All lands and other property owned by any county, domestic municipal corporation, irrigation, drainage or reclamation district or town in this state shall be exempt from taxation, except as provided in NRS 539.213 with respect to certain community pastures.

[Part 1:344:1953; A 1954, 29; 1955, 340]—(NRS A 1967, 1125)

361.062 Property of trusts for furtherance of public functions exempted. All property, both real and personal, of a trust created for the benefit and furtherance of any public function pursuant to the provisions of general or special law is exempt from taxation; but moneys in lieu of taxes may be paid to the beneficiary pursuant to any agreement contained in the instrument creating the trust.

(Added to NRS by 1971, 1036; A 1975, 1408)

361.065 Public schoolhouses exempted. All public schoolhouses, with lots appurtenant thereto, owned by any legally created school district within the state shall be exempt from taxation.

[Part 1:344:1953; A 1954, 29; 1955, 340]

361.067 Vehicles exempted. All vehicles, as defined in NRS 371.020, shall be exempt from taxation under the provisions of this chapter.

(Added to NRS by 1963, 1121)

361.070 Drainage ditches, canals exempted. Drainage ditches and canals, together with the lands which are included in the rights-of-way of such, are exempted from taxation.

[Part 1:344:1953; A 1954, 29; 1955, 340]

361.073 Property of water users' nonprofit associations, nonprofit cooperative corporations exempted. All real and personal property of a water users' nonprofit association or of a water users' nonprofit cooperative corporation within the State of Nevada is exempt from taxation, but such property shall be taxed when it is used for any purpose other than carrying out the legitimate functions of such nonprofit association or of a water users' nonprofit cooperative corporation.

(Added to NRS by 1969, 1422)

361.075 Exemption of unpatented mines and mining claims. Unpatented mines and mining claims shall be exempt from taxation, but nothing in this section shall be so construed as to:

1. Exempt from taxation possessory claims to the public lands of the United States or of this state, or improvements thereon, or the proceeds of the mines; and

Exhibit III

361.157 Exempt real estate subject to taxation when leased to, used in business conducted for profit; exceptions; taxation of right to receive electric power from exempt real estate.

1. When any real estate which for any reason is exempt from taxation is leased, loaned or otherwise made available to and used by a natural person, association, partnership or corporation in connection with a business conducted for profit, it is subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of the real estate.

2. When any real estate which is exempt from taxation by reason of its public ownership is used for the generation of electric power, the value of any right to receive electric power directly from the exempt real estate by a natural person, association, partnership or corporation or by a political subdivision of any other state is taxable as though the holder of that right were the owner of the real estate in the same proportion which his right bears to the total of all rights to receive electric power generated through the use of that real estate.

3. Subsection 1 does not apply to:

(a) Property located upon or within the limits of a public airport, park, market, fairground or upon similar property which is available to the use of the general public;

(b) Federal property for which payments are made in lieu of taxes in amounts equivalent to taxes which might otherwise be lawfully assessed;

(c) Property of any state-supported educational institution;

(d) Property leased or otherwise made available to and used by a private individual, association, corporation, municipal corporation, quasi-municipal corporation or a political subdivision under the provisions of the Taylor Grazing Act or by the United States Forest Service or the Bureau of Reclamation of the United States Department of the Interior;

(e) Property of any Indian or of any Indian tribe, band or community which is held in trust by the United States or subject to a restriction against alienation by the United States; or

(f) Vending stand locations and facilities operated by blind persons under the auspices of the bureau of services to the blind of the rehabilitation division of the department of human resources, regardless of whether the property is owned by the federal, state or a local government.

4. Taxes shall be assessed to lessees or users of exempt real estate and collected in the same manner as taxes assessed to owners of other real estate, except that taxes due under this section do not become a lien against the property. When due, such taxes constitute a debt due from the lessee or user to the county for which the taxes were assessed and if unpaid are recoverable by the county in the proper court of the county.

(Added to NRS by 1965, 1157; A 1967, 154, 1224; 1971, 658; 1973, 1406; 1977, 1097)

361.159 Exempt personal property subject to taxation when leased to, used in business conducted for profit; taxation of right to receive electric power from exempt personal property.

1. Personal property exempt from taxation which is leased, loaned or otherwise made available to and used by a natural person, association or corporation in connection with a business conducted for profit is subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of the property, except for personal property used in vending stands operated by blind persons under the auspices of the bureau of services to the blind of the rehabilitation division of the department of human resources.

2. When any personal property which is exempt from taxation by reason of its public ownership is used for the generation of electric power, the value of any right to receive electric power directly from the exempt personal property by a natural person, association, partnership or corporation or by a political subdivision of any other state is taxable as though the holder of that right were the owner of the personal property in the same proportion which his right bears to the total of all rights to receive electric power generated through the use of that personal property.

3. Taxes shall be assessed to lessees or users of exempt personal property and collected in the same manner as taxes assessed to owners of other personal property, except that taxes due under this section do not become a lien against the personal property. When due, such taxes constitute a debt due from the lessee or user to the county for which the taxes were assessed and if unpaid are recoverable by the county in the proper court of the county.

(Added to NRS by 1965, 1157; A 1971, 659; 1973, 1406; 1977, 1098)

KITCHEN FACTORS, INC., APPELLANT, *v.* E. T. AND Y. S. BROWN, RESPONDENTS.

No. 7825

May 21, 1975 535 P.2d 677

Appeal from judgment of the Second Judicial District Court, Washoe County; Grant L. Bowen, Judge.

The Supreme Court held that respondents' failure to file answering brief would be treated as confession of error.

Reversed, with instructions.

Paul J. Williams, Reno, for Appellant.

Jack S. Grellman, Reno, for Respondents.

APPEAL AND ERROR.

Where affidavit attached to appellant's opening brief reflected service on respondents' counsel, no answering brief was filed, no extension of time to do so was sought or granted, and answering brief was more than five months overdue, failure to file answering brief would be treated as confession of error and judgment would be reversed with instruction to enter judgment in appellant's favor. NRAP 31(a), (c); NRS 18.060.

OPINION

Per Curiam:

Attached to appellant's opening brief, filed November 1, 1974, is an affidavit reflecting service that date upon respondents' counsel. No answering brief has been filed; no extension of time to do so has been sought or granted; thus respondents' answering brief is now more than five months overdue. See NRAP 31(a).

This appeal is set for hearing on October 14, 1975. To indulge respondents further would not only delay final resolution of appellant's claim, but would also preclude our assigning other, more concerned litigants the hearing time now scheduled for this cause. The number of matters we must accommodate on our hearing calendar no longer permits such indulgence.

Accordingly, we elect to treat respondents' failure to file their answering brief as a confession of error. NRAP 31(c); Paso Builders, Inc. v. Hebard, 83 Nev. 165, 426 P.2d 731 (1967); Toiyabe Supply Co. v. Arcade, 74 Nev. 314, 330 P.2d 121 (1958). The judgment in respondents' favor is reversed, with instructions to enter judgment in appellant's favor in the sum of $1,365.72, proper interest, costs, and such attorneys' fees as the district court finds appropriate in light of all services performed by appellant's counsel, including those rendered on appeal.

In accord with NRS 18.060, appellant will be allowed its costs on appeal, upon the proper filing of a cost bill.

CLARK COUNTY, NEVADA, APPELLANT, *v.* THE CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, AND THE DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES, THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, THE STATE OF NEVADA, AND THE NEVADA TAX COMMISSION, RESPONDENTS.

No. 7577

May 21, 1975 535 P.2d 158

Appeal from judgment denying Clark County the right to tax the use of federally owned property by municipal and public corporations of California. First Judicial District Court, Carson City; Richard L. Waters, Judge.

The Supreme Court, ZENOFF, J., held that where the sole function of the municipal and quasi-municipal corporations was to serve governmental needs through the mechanism of public corporations, and surplus funds were not distributed to private shareholders but rather used to retire indebtedness and to maintain and expand facilities, the federally owned generating equipment leased by the corporations was tax exempt.

Affirmed.

George Holt, District Attorney, *George F. Ogilvie*, Deputy District Attorney, Clark County, and *Ross, Hardies, O'Keefe, Babcock & Parsons*, and *Bruce J. McWhirter* and *William M. Freivogel*, of Chicago, Illinois, for Appellant.

Guild, Hagen & Clark, of Reno, *Burt Pines*, Los Angeles City Attorney, *Edward C. Farrell*, Chief Assistant, *Bruce J. Sottile*, Deputy Los Angeles City Attorney, *Robert P. Will* and *H. Kenneth Hutchinson*, of Los Angeles, for Respondents The City of Los Angeles, its Department of Water and Power, and The Metropolitan Water District of Southern California.

EXHIBIT IV

EXHIBIT III

Robert List, Attorney General, and *James D. Salo*, Deputy Attorney General, Carson City, for Respondents State of [redacted] and The Nevada Tax Commission.

TAXATION.

Where sole function of California municipal and quasi-municipal corporations was to serve governmental needs through mechanism of public corporations, and any surplus funds obtained through their furnishing electrical power were used to retire indebtedness and to maintain and expand facilities, federally owned electrical generating equipment leased by the corporations was exempt from property tax. NRS 361.050, 361.157, 361.159.

OPINION

By the Court, ZENOFF, J.:

The City of Los Angeles, its Department of Water and Power, and The Metropolitan Water District of Southern California protested the imposition of property taxes against them for their use of Hoover Dam power generating equipment which was located within the boundaries of Clark County. The trial court granted judgment that the taxes were illegally imposed from which Clark County appeals.

Hoover Dam is owned by the United States of America and is operated through the Bureau of Reclamation, Department of the Interior. The Dam straddles the Colorado River at a point where the river forms the boundary between Nevada and Arizona. The generators and related facilities involved in this action are on the Nevada side of the river in Clark County.

In 1941 the respondent corporations contracted with the Bureau of Reclamation for the exclusive furnishing of electrical power to the three entities and the City of Los Angeles in addition entered into a separate contractual relationship whereby it assumed the responsibility to supervise, operate and maintain specified generators and related facilities that furnish the power to the respondents.

In 1965 the Nevada Legislature enacted NRS 361.157 and NRS 361.159[1] which provide that real estate and personal property otherwise exempt from taxation may be taxed if it is leased, loaned or otherwise made available to and used by a private individual, association, partnership or corporation in connection with a business conducted for a profit. See United States v. State ex rel. Beko, 88 Nev. 76, 493 P.2d 1324 (1972).

With the enactment of NRS 361.157 and NRS 361.159, Clark County sought to tax the previously tax exempted federally owned generators, turbines and related facilities used in the generation of electrical power located at Hoover Dam. See NRS 361.050.[2] Clark County contends that an interest taxable under these statutes was created in the property based on the nature of the contracts between the respondents and the United States.

Whether or not there is a taxable interest under NRS 361.157 or NRS 361.159 and whether or not the respondents lose their public status upon entering the State of Nevada need not be determined for these statutes remove the prior tax exempt status of the property only if that property is being used "in connection with a business conducted for profit."

The respondents are not in the sense of NRS 361.157 and NRS 361.159 engaged in business to make profits. The chief

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[1]NRS 361.157:

Exempt real estate subject to taxation when leased to, used in business conducted for profit; exceptions.

1. When any real estate which for any reason is exempt from taxation is leased, loaned or otherwise made available to and used by a private individual, association, partnership or corporation in connection with a business conducted for profit, it shall be subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of such real estate. This section does not apply to:

. . .

(d) Property leased or otherwise made available to and used by a private individual, association, corporation, municipal corporation, quasi-municipal corporation or a political subdivision under the provisions of the Taylor Grazing Act or by the United States Forest Service or the Bureau of Reclamation of the United States Department of the Interior. . . .

NRS 361.159:

Exempt personal property subject to taxation when leased to, used in business conducted for profit.

1. Personal property exempt from taxation which is leased, loaned or otherwise made available to and used by a private individual, association or corporation in connection with a business conducted for profit is subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of such property, except for personal property used in vending stands operated by blind persons under the auspices of the bureau of services to the blind of the rehabilitation division of the department of human resources, regardless of whether such property is owned by the federal, state or local government.

[2]NRS 361.050:

United States property exempted. All lands and other property owned by the United States, not taxable because of the Constitution or laws of the United States, shall be exempt from taxation.

Exhibit III

and sole function of municipal and quasi-municipal corporations is to serve governmental needs through the mechanism of a public corporation. Although the respondents obtain surplus funds, these are not distributed to private shareholders as dividends, nor are there private shareholders. Instead, their funds are needed and used to retire indebtedness and to maintain and expand their facilities. Sutter Hospital of Sacramento v. City of Sacramento, 244 P.2d 390 (Cal. 1952); San Francisco Boys' Club, Inc. v. County of Mendocino, 62 Cal.Rptr. 294 (Cal. App.2d 1967); Sarah Dix Hamlin School v. City and County of San Francisco, 34 Cal.Rptr. 376 (Cal.App.2d 1963). Thus, the property in question retains its tax exempt status. NRS 361.050.

Other intriguing issues were asserted but since the foregoing is dispositive of the appeal additional discussion would only be advisory. The judgment of the trial court is affirmed. Clark County must return the tax monies assessed and collected under the protest from the respondents.

Affirmed.

GUNDERSON, C. J., and BATJER, MOWBRAY, and THOMPSON, JJ., concur.

RICHARD ALLENDER BABCOCK, APPELLANT, *v.* THE STATE OF NEVADA, RESPONDENT.

No. 7721

May 21, 1975 535 P.2d 786

Appeal from conviction of embezzlement. Second Judicial District Court, Washoe County; John W. Barrett, Judge.

The Supreme Court held that fact that defendant was a joint owner of money in question was not a defense.

Affirmed.

Samuel T. Bull, of Reno, for Appellant.

Robert List, Attorney General, Carson City; *Larry R. Hicks*, District Attorney, and *Kathleen M. Wall*, Assistant Chief Deputy District Attorney, Washoe County, for Respondent.

EMBEZZLEMENT.

That accused was a joint owner of money in question was not a defense to charge of embezzlement of such money. NRS 205.300.

OPINION

Per Curiam:

Richard Babcock was found guilty of embezzlement. The charge arose from his conduct as a supervisor in the Bingo Parlor in the Sparks Nugget.

On June 5, 1973, during the nighttime after the Bingo Parlor was closed and locked, Babcock obtained a key to the Bingo Parlor from the cashier's department, entered and forced open a drawer containing the tip money totaling $842.00 and proceeded to lose the money at gambling.

The record on appeal establishes that the supervisors, such as Babcock, were responsible for the collecting, holding and distribution twice each month of the gratuities taken, which were kept in the drawer from which Babcock removed the money. None of the employees had given Babcock his permission to take all of the money for himself. He contends on appeal, however, that he cannot be held for embezzlement because he was joint owner of the money and a person cannot steal from himself.

His argument is known only in early legal history. At one time the common-law rule was that a person could not commit an embezzlement of property that he co-owned. The old principle has been modified either by statute or by interpretation. Commonwealth v. Bovaird, 95 A.2d 173 (Pa. 1953). It shall be no defense to a prosecution for embezzlement that the property appropriated was partly the property of the accused and the property of another. The accused is still guilty of taking for his own use monies that belong to someone else. His portion is disregarded for this determination.

While Nevada has not included the foregoing recognition in the statutes pertaining to embezzlement (NRS 205.300), we do analogize to NRS 205.265 wherein part ownership is no defense to larceny.

Other discussions advanced by appellant are without merit.

Affirmed.

Exhibit BB

EXHIBIT V

Las Vegas REVIEW-JOURNAL

Thursday, January 25, 1979 Las Vegas Review-Journal—1B

Long electricity tax fight seen

By Kent Lauer
R-J Staff Writer

California users of Hoover Dam electricity are expected to wage a lengthy, complex legal battle over Nevada's attempt to collect property taxes on their contract right to receive dam power.

The city of Los Angeles and several other Southern California government entities are preparing to challenge the state's taxation attempt.

At issue is the state's taxation of the right to receive electricity from tax-exempt real estate — in this case, from Hoover Dam.

Besides the city of Los Angeles, other entities contesting the tax are the Metropolitan Water District of Southern California and the cities of Pasadena, Glendale and Burbank.

They were among those listed in the recently completed Clark County property tax assessment roll for 1978-79.

Attorneys for the Southern California entities (in this case, they are actually public utilities) filed petitions with the Clark County Assessor's Office, protesting the assessments.

However, the county Board of Equalization this week denied the appeals. The board has the authority to reduce the assessor's valuation.

An attorney for the Metropolitan Water District of Southern California told the board the right to tax the power contract would be challenged in court after all administrative remedies have been exhausted.

The state Board of Equalization is expected to hear the same appeal from the Southern California entities when its meets Feb. 5 in Carson City.

In a telephone interview Wednesday from Los Angeles, James Mountain, attorney for the water district, said: "Essentially, the only way it can be resolved is through litigation."

Mountain said California officials are really trying to demonstrate that the tax concerning the dam is illegal.

The case is unique in that no other government has ever tried to tax an item similar to the Hoover Dam power contract.

"To the best of our knowledge, there has never been a property tax levied against that kind of interest," Mountain said.

He described the state's action as a "novel attempt at taxation."

In petitions filed with the county assessor's office, attorneys for the Southern California entities claimed the valuation established by the Nevada Department of Taxation is arbitrary and capricious.

Basically, they argued that the electrical energy produced by the dam is personal property moving in interstate commerce through Nevada, and as such, Nevada has no jurisdiction to tax it.

To tax such an item is in violation of the Nevada Constitution, they claimed, citing an article in the Constitution which exempts personal property moving in interstate commerce from taxation.

They also said in the petitions that the taxing method employed by Nevada has no logical correlation to the property in question.

It also was argued that the special legislation providing for the taxing of the power contract also violates the Nevada Constitution. Such legislation was prepared by the 1977 state Legislature.

A spokesman for the state Department of Taxation said the tax is based on two factors: the contract right to receive the power and the option to renew that contract with the U.S. Bureau of Reclamation in 1987.

To arrive at the valuation, the state averages what the California entities pay for the dam power during a five-year period. A "present worth" factor or percentage is then applied to that amount.

Total valuation assessed against the Southern California governments in the 1978-79 tax roll was about $4.65 million.

Tax money generated from the valuation is about $232,000 or about .001 percent of the total amount of property taxes collected by the state last year.

Another factor in the case concerns a "computation" payment for the dam given to the state by the federal government.

Under the Boulder Canyon Project Adjustment Act, the state agreed in the late 1930s to accept $300,000 every year from the federal government instead of 18¾ percent of the dam's net revenue.

If the state should succeed in its attempt to collect the taxes on the dam power contract, the federal government theoretically could withhold that $300,000 payment to the extent of the taxes collected.

That's what happened between 1970 and 1975, when the state did collect taxes on the power contract. At that time, the Southern California governments paid the taxes under protest.

After a five-year court battle, the state Supreme Court ruled the state could not collect such taxes, and they were returned. With that court ruling, the federal government began making the $300,000 payment again.

Exhibit III