

MEMBERS PRESENT: Chairman Dini
 Vice Chairman Schofield
 Mr. Craddock
 Mr. DuBois
 Mr. Jeffrey
 Mr. May
 Mr. Mello
 Mr. Nicholas
 Mr. Polish
 Mr. Prengaman
 Mr. Redelsperger

MEMBERS ABSENT: None

GUESTS PRESENT: Please refer to attached Guest List.

Chairman Dini called the meeting to order at 8:07 A.M.

Mr. Dini stated that this was a public hearing on the Initiative Petition, AB 58 and AB 85. Mr. Dini indicated that he would like the general public to lead off in the testimony this morning and asked if anyone would like to testify.

Mr. Orlandt Outland who resides at 2675 Balmar Place in Reno. Mr. Outland rendered his apology to the committee because he stated it was his practice to prepare a written statement to aid the committee. He stated that he was on the Board of Equalization of Washoe County and they have been meeting 12 hours a day and he apologized to the committee for not having prepared the statement.

Mr. Outland stated that he was here today not to speak on behalf of the Coalition for Affordable Energy nor was he here to speak on behalf of the Governor. He indicated that he was here to speak on behalf of what he believes to be a sizeable number of citizens in Nevada who would like to have some sort of consumer advocate representation and he thought that many regards some of the personalities are clouding the issues.

Mr. Outland stated that he would try to restrict his comments to the material that the committee may not have known before or to put a perspective on it that perhaps someone else has not put on it. Mr. Outland indicated that in 1974, seven years ago, they started discussing consumer advocacy and the Public Service Commission. In 1975 he indicated that he had talked to a local attorney in Reno who asked that his name not be used then and he has not since released him so he could not use his name now.

Mr. Outland stated that it seemed in discussion with that attorney, from his background, that the division, such as the Governor is proposing today, was somewhat of a favorable proposal, not having any other proposals before us, he came before a special committee of this Legislature in 1975 and in one of those presentations recommended that.

Mr. Outland stated that the committee should also recall in that year, 1975, Senator Bryan submitted some legislation that, as the saying goes, didn't fly. Mr. Outland stated that they continued to pursue this and kept looking at it and that it finally became apparent and he will address about three different issues - he stated he was not going to get into the budgetary consideration or the financial considerations - but more from the operative conditions. It became apparent that it being under the Governor's office it would not function correctly or properly. Now, back to 1974 and 1975, we saw then that the Canadian natural gas supply was going to be a problem. As a matter of fact, Mr. Outland stated, that he believed it was in Bill 183 in 1975, when the then President of Sierra Pacific Power Company stated that there was going to be that problem and he urged us to write our congressman. In reply, in a hearing before the Public Service Commission, I stated he had greater leverage in writing to Congress than an individual homeowner such as I would have. That letter was never sent to his knowledge. Had we had a consumer advocate at that time, we would have had someone to pursue the voice on that issue.

Mr. Outland indicated that he had written a letter to the Governor at that time, in 1975, and he stated he had a copy of his letter and that he would submit copies to the committee if the committee so wished later, and he indicated that he had the reply from the Governor and Mr. Outland stated that the Governor said in his letter in essence that the PSC would adequately take care of his interests.

Mr. Outland stated that if the committee would note that last year in California the Public Utilities Commission there has directed their utilities to find an alternate source of natural gas other than Canadian gas because it is too high. Had we been functioning back in 1975, we for a change, might have led instead of following California in taking some positive action on behalf of the consumer.

Mr. Outland further stated that the essential ingredient of having the advocacy office over in the Attorney General's Office is a balance of power. If it is in the Attorney General's Office and he is not performing, the Governor can certainly direct his attention to his shortcomings. If it is under the Governor's Office, the Attorney General is going to have a little bit of difficulty pointing out to the Governor that he is not doing his job.

Mr. Outland further stated that being over in the Attorney General's Office with access to ancillary legal services and support, he will be given additional support and functioning capability and this is marginal between the two offices, but he felt that it certainly would be better over in the Attorney General's Office.

Mr. Outland stated that lastly but not least, what political appointee that is appointed by the Governor is going to criticize a Governor's appointee. Mr. Outland indicated that the Public Service Commission that is appointed by the Governor.

Mr. Outland indicated that one thing he wanted to make clear to the committee was that he was not talking about Governor List. He stated that he was talking about any governor. He was talking about an issue and not personalities. He stated that he was not talking about Randolph Townsend. He was talking about an Initiative Petition and he stated that we have to get around the personalities. He stated that any Governor, if he says I am going to appoint you John, as a consumer advocate and I want you to watch the Public Service Commission and see that they are doing a good job, but I want you to remember, and this is implicit, I appointed those people. Mr. Outland asked what appointee is going to go over and criticize the appointee of the Governor and perhaps embarrass that appointee or embarrass the governor. From a politically pragmatic point of view, it just doesn't function and he stated that the committee knew that as well as he did that it will not happen.

Another thing Mr. Outland pointed out is that in June of 1980 the Public Service Commission of Nevada Report of a Comprehensive Management Study was generated. In this Management Study and as an example for a point of reference solely, he referred the Committee to Part 3, Page 23. Major management and operating systems, opportunities for improvement. Mr. Outland read the following sentence from that Study to the committee:

"PSC ends operational effectiveness is hindered by appositve of well defined and documented management systems".

Mr. Outland stated that had we had back in 1975 the consumer advocate who could have given some oversight to this, perhaps the Public Service Commission could have been assisted. He indicated that he was not saying that they were at fault. He stated that they may be operating under a handicap. They could have been assisted in bringing in other perspective - to bringing in the help that they needed; the quality of help that they needed; the quality of auditors that are needed. He stated that you have auditors coming in there in 1975 at \$15,000 to \$18,000 a year trying to combat a major international consulting firm, Stone and Webster, who at that time was the consulting firm for Sierra

Pacific Power Company and it was a mismatch. Mr. Outland stated with regard to power bills, that every municipality in this state, every city, every county and the state itself uses power and any savings does not accrue just to the homeowner such as himself, but it accrues to the budget.

Mr. Outland stated that this was the end of his testimony. He ask if there were any questions with regard to his testimony.

Mr. Outland then indicated that in the Coalition proposal there was a flaw in it on the mill. He indicated that to his knowledge, to this date, he has not seen a solid budget figure presented by the Governor on what the overall cost of that division would be.

Mr. Dini asked Mr. Outland in the rate making process, in what other areas did he think the consumer advocate would be of value to the consumer.

Mr. Outland stated that the two points he raised - bringing an external view for example, and he cited the Canadian natural gas problem which has existed for 7 years now, and the other is in a review in an outside perspective. He stated that what he was saying was that we have had two governors who had problems both in Canadian natural gas pricing and both in management who have, in effect, until the public - he stated that he understood that Mr. Townsend has put this forth as the Petition and he has done that, but nevertheless it is not Mr. Townsend's voice that you are hearing, it is the voice of all of the people in Nevada. Mr. Outland stated that with that viewpoint, you would have someone to go to who would be in a position because the people who go to these hearings work 9 to 5 or 8 to 8 in odd shifts and they can't attend these meetings - they can't educate themselves. They do not have the capability to go to the libraries to emass the data. There has to be a knowledgeable individual full time to take a general idea and see whether or not it has substance. Mr. Outland stated that much of the material that is brought before the committee really does not have substance. It is an emotional thing. Mr. Outland stated that these people were handicapped in not having a knowledgeable individual who can pursue that, so in that regard, in management, not only in rate setting, but in supplying and in advancing some legitimate consumer complaints and Mr. Spitzer has been before you and there have been some others that have been before you, over seven years we have been before different committees trying to find some representative voice. The Public Service Commission itself has said to the public in their evening meetings, in effect, we don't give much weight to what you tell us. They look to expert witnesses and that has been stated in the last meeting that was held in Reno when the Acorn group asked specifically how much weight is given. They were told in effect there is not much weight given. We hear you and we listen to you, however, in weighing this they must deal

expert testimony, they must deal with facts and data and counter-data. That's where the consumer advocate can function. That means also no restraint on rates has been accomplished before any public service hearing that has not been endorsed or supported by an entity and the two that he knew of were Washoe County - once they came in in concert with the City of Reno and the City of Sparks and some other municipalities. In both cases they had to find expert testimony from out of state and brought it in and what he was saying was that that capability does not exist to the average homeowner/consumer in this state. With the consumer advocate he can find that person and he can bring them in. He stated that if you take an appointee of the governor and set him as a watchdog over another appointee of the governor and you are not going to have an effective overseer. It just will not work.

Mr. Outland stated that there was another allegation that Mr. Townsend has some political aspirations. He indicated that he did not doubt that for one minute. He indicated that he had some. He stated the committee members had some too and the governor has some. Mr. Outland stated that he had come back to be a volunteer and a consumer advocate in the best way that he possibly can and he asked the committee to view this in the perspective - remove the personalities - look at it in the abstract, not who is governor today, but as the function of any governor - a governor - and how the mechanics of this would apply. Mr. Outland further stated that he thought in that perspective the committee would find that this office really and truly belongs over in the Attorney General's Office.

Mr. Outland asked if there were any other questions the committee had.

Mr. Mello asked Mr. Outland if he had any objections to it being placed any where else than government.

Mr. Outland stated anyplace. He stated that he would take it out of the PSC and out of the executive branch. He stated that he would have to give that some thought and he stated that he was not hidebound to the Attorney General's office, but he said that it has to be in some sort of a counterbalance situation or a balance of power type situation and he just did not think the executive branch was the way to go.

Mr. Mello asked what about the legislature.

Mr. Outland stated that they had a hearing some time ago and he stated that he thought that was good, but the point was raised then about some mechanics of the problem on a biennium basis. The interim committees then would have the oversight and the timing and continuity. He stated that he was not against that by any means if you can find the framework for it to function through the biennium through the interim.

Mr. Mello compared the operation of the NIC. He indicated that we could see how this could operate. Under the Public Service Commission just as the attorney and the judge - like the NIC works. He asked Mr. Outland if he was familiar with that.

Mr. Outland said he was, roughly, and stated that you have some small element of that in the governor's plan in the division of the commissioners to function as a judge. The staff is moved off to the side.

Mr. Mello stated that that was not what he was talking about.

Mr. Outland asked if he was talking about the judiciary itself.

Mr. Mello stated that no he was not.

Mr. Dini then asked if there was any other consumer testimony.

Ms. Rosalie Beasley of 25 East Richards Way, Sparks, Nevada, testified next. Ms. Beasley's testimony is attached to the minutes of this meeting as EXHIBIT A.

Dr. David Schwartz of Bethesda, Maryland testified next. Dr. Schwartz' Statement of Qualifications and a copy of his testimony are attached to the minutes of this meeting as EXHIBIT B.

The committee had several questions to ask of Dr. Schwartz, as follows:

Mr. May: How much will it save an average family, or an average customer. How does that break down. What was the average savings?

Dr. Schwartz: Well, let's look at Arkansas, which is a small state. That is not a state such as Massachusetts or one of these more massive states. You will find that for Arkansas, the saving was \$7.8 million dollars. All I am saying is that obviously the consumer advocate offices haven't been here that long. Most of them got started in 1974/1975. Very few got started in 1974/1975 right after the embargo and they really didn't get rolling until 1977/1978. I am saying this is an impressive record given the very short period of time that we have had offices for consumer advocacy.

Mr. Nicholas: In reference to the fact that you have many subjects to cover and some of the questions may get lost in the testimony, let me ask this one if I may. You just mentioned that the first offices were established in 1974/1975 and later in 1977/1978. In reference to the establishment of such offices in other states, is there any relationship between the date of the establishment of the office and

the location of the office in state government?

Dr. Schwartz: Well some of the earlier ones, Missouri, for one, got started back in 1974 with \$30,000.00 and they happen to attract an exceptionally good public counsel, Bill Barvick, and he ran a little bit over his budget and he had to go in for an emergency request, but he did a remarkable job there. Savings of millions of dollars. It is really unique to the particular state and the circumstances in that state. I think the citizens were very much aroused in Missouri about some very massive rate increases, particularly by Union Electric and it was due to this type of public upheaval that the response of the legislature was to set up the office of consumer counsel. So I am saying what we really are getting into is a question of whether or not you can handle the question - what are the pivotal forces - what are the viable forces for consumer advocacy on a generic basis or do we have to handle it on a unique basis and I honestly think the inflationary pressures are there. You sort of can discuss it on two levels. That it is due to the ever escalating rates that you get a response by the public where there is great pressure to do something. What can be done to hold rates down. That commissions in fact are being exceptionally generous and maybe in this regard, and I don't want to go off on too many tangents, but I should mention this because I think it is quite germane to the question you raised.

After I resigned from the Federal Power Commission in May of 1975, for two years I was involved on a National Science Foundation grant with another professor at Michigan State University, and the area of our study was regulatory reform and the role of competition in regulatory reform of the regulated energy utilities. We were looking as to what happened to regulation in terms of the traditional approach to regulating so called across the service rate breaks approach, and many departures from the traditional approach to regulation. What had happened over the years after the tremendous meteoratic rise of rate increases by electric, gas, telephone and water companies, what had happened was that the commissions deviated from the normal approach to cost of service regulation. They started introducing all sorts of automatic flow throughs whether they were using a projected test year or a year end rate base or whether they were using the fuel adjustment clause or gas adjustment clause the procedures and policies promulgated rates upward and the consumers at this point are confronted with a whole set of regulatory procedures which are very deviational from the old traditional conventional cost of service regulation, which has a bias towards upward increases in rates. And this is the

result of our two year effort in terms of trying to find out what took place in terms of regulatory evolution and what are some of the solutions to these departures to the traditional rate of return regulation.

Mr. Nicholas: I believe that what I am attempting to determine should be directed to the witness at a later time.

Dr. Schwartz: Perhaps I didn't understand the question.

Mr. Dini: Was there a differential when they went to the Attorney General's Office or to the Governor's Office or the other alternative?

Dr. Schwartz: I am sorry, I misunderstook your question and I apologize. I would say this, the most effective offices is the Michigan Attorney General's Office, the Arkansas Attorney General's Office, the Florida Consumer Council and the Ohio Consumer Council and the Massachusetts Attorney General's Office. So that there is sort of a split. And I am saying that effective representation in terms of concrete savings to consumers are found in both contexts and I don't think you can say one or the other seems to be preferable or has performed better. I think perhaps that is the answer to your question and I am sorry that I did not understand it.

Mr. Dini: Then it really doesn't matter where you put the office, as long as you make it an effective office.

Dr. Schwartz: I would not agree to that. I was just trying to review what took place in terms of historical reality. I do not agree to that statement and I'll indicate why in just a moment.

Mr. Mello: Dr. Schwartz, in reviewing the Initiative Petition, do you find any pitfalls in it or any areas where it does not go far enough?

Dr. Schwartz: Well, very truthfully, I have looked at it in terms of its fundamental structure. How can the organizational entity and the structural aspects provide for the most effective representation for consumers? The initiative itself really doesn't go beyond just saying we need an office, let's put it in the Attorney General's Office and let's have a separation of powers. There isn't a very detailed organizational chart, there isn't any great discussion of procedural approaches, so there isn't any way to look at the specific thing - shall it just intervene in rates, shall it intervene in licensing and certificate applications as well, I mean it really doesn't go to that - that is discretionary within the Attorney General's Office once the office

would be established, so that, in fact, you can't go to any of the procedural evaluations under the initiative plan because they haven't been flushed out so I really can't respond to more than in the sense that I have.

Mr. Mello: One other question that I have, Mr. Chairman, I see the savings. It appears that most of the savings you are us are under the Attorney General's plan and not under the independent public council.

Dr. Schwartz: Except Ohio which is a legislative body. They report to the General Assembly.

Mr. Mello: My question to you is this, under the independent public council is what I actually am looking at, the question that I asked Mr. Outland that he did not understand, who makes the appointments. We have 19 states under that plan and 22 under the Attorney General.

Dr. Schwartz: They are split, some are under the legislature. In Ohio they are under the legislature, for example. The legislature sets up their budget, and, by the way, the Ohio budget is \$3,000,000.

Mr. Mello: The savings - was it \$53,000,000?

Dr. Schwartz: No, it was \$60,000,000 or \$63,000,000, and what I am suggesting to you is that in the independent councils it can either be in terms of the legislature setting up the office or it could be the governor setting up the office under those independent councils, but in most instances, it is the legislature

Mr. Mello: Could you tell me if confirmation is through the Senate?

Dr. Schwartz: It is usually through the Senate. The usual procedure is approval by the Senate.

Mr. Mello: It is something for the committee to think about as far as Nevada.

Mr. May: So you may answer this in the correct context, let me assure you (1) I have no qualms about the advocacy office, I think it is needed and I don't care whether it is the attorney general's office, but I do have a question. Taking your example of New Mexico, a savings of \$3.2 and a savings of \$2,000,000, if the Public Utility Companies are denied an asked for rate increase, they simply go back and continue providing the service, accumulating the costs they had asked for and then they come back and ask for another rate increase. At some

point it would appear to me the advocate is going to lose some of his effectiveness because I don't care what public sentiment might be or how effective an advocate might be, he could not reject rate increases one after another, year after year. Where does an advocate's role fit in that kind of a situation?

Dr. Schwartz: Well, obviously, you can't answer it in the abstract. The only way you would know is to determine the type or cost of service and revenue requirement filings that are being made. In other words, my life's work is appearing as an expert witness, and what happens - the company comes in with its filing and you have auditors and engineers and economists who go through the rationale and support for "x" number of dollars for rate increases. So, as I say, relate to rate of return, and you have to have expertise, and I was a rate of return witness myself when I first started out and I was young and foolish. Then, in addition to that, you have a question of whether or not the depreciation rates on different categories are appropriate. I am saying that I think it may be misplaced to just say what you have is a continuum of rate filings and ultimately you are going to have the whole consumer advocate's efforts eviscerated because the companies can come in and file without their being any ceiling. Well, I can answer that in two ways. Firstly the commission can say you can only file once a year and you just can't file as often as you want. Secondly, and I know you are saying what happens when you get continual inflationary pressures and this will, in fact, cause a great deal of hardship and perhaps an erosion of earnings. I am saying that also has a flip side. It can also cause some efforts on the part of the firm becoming more efficient and innovative. So there is a benefit to regulatory lag. Where the firm is placed in the posture that it has got to perform better in order to maintain its profit margins, instead of a regulatory profit reassuring a pass through of all costs without any effort on the part of the utility to try to reduce its costs. So there are a lot of facets to that particular issue that you raised, but I don't foresee that to just look at the whole issue of a continuum of rate increases therefore sort of minimizes the importance of the consumer advocate intervention before the commission. Because, first of all, you have the initial impacts which in fact can result in very substantial savings and then as you develop the expertise over time as this office begins to really function as a seasoned and experienced office, their efforts can be much more effective than

they have been in the past, so I really don't necessarily feel that we have to be as sanguine as you suggested on this issue.

Mr. May: I do appreciate your background and your expertise and that was the reason I wanted to take advantage of your presence here and I appreciate it.

Dr. Schwartz: Thank you.

Mr. Polish: I have one question. Dr. Schwartz, as a member of the Federal Power Commission, you did mention that we are getting a lot of our oil from foreign nations. We do get some gas from Canada, what percent of the power plants that we have have nuclear generation - you mentioned Ohio and some of these others - how does this compare with the savings that you have here in your testimony? I don't see any charts here that show us that.

Dr. Schwartz: Well, you don't break out savings according to fuel as a basic source for electric generation. All that is - that is a physical fact of life - you either are generating with oil or nuclear or coal fired or geothermal and all that does is indicate what the costs are of generation, and those particular costs then get into this whole cost of service. You have to have the transmission costs and the distribution costs all incorporated in the cost going to a cost of service. So you see, you are down at the very basic level of where the particular generating unit begins to generate power and what the fuel source is for that power and you really don't break out savings which really go to the entire cost of service and the commission determining that the company's rate of return request was too high, its administrative expenses were too high, etc. So, I really can't tie the two pieces together. The fuel costs in generation and the overall savings resulting from commission decision making which are broad and go across the board. I don't think you really can tie it back just the fuel source for generating purposes.

Mr. Polish: It is always the number one item on there. It says the cost of fuel is the reason why we are going up. Gasoline goes up and yet like I said, here we have nuclear plants who are stocked with their fuel and in Ohio they not only have one nuclear plant but probably ten.

Dr. Schwartz: No, I wouldn't agree with that. The state that has the largest nuclear generation is Illinois. Commonwealth Edison generation is about 40% nuclear, but I don't think that is germane as to how to measure savings associated with consumer intervention.

Mr. Craddock: I think most of the committee knows where Mr. Polish is coming from, the overall cost of electricity concerns us all, and with the massive reductions in rate requests that the advocacy has brought about, it would have resulted in a reduction of some of the easy income of the utility companies. I am wondering if any effort has been made to determine what the status of the depletion cost or what the status of the capital improvement funds today are. I am getting at what portion of this easy revenue, for a lack of a better term, has really resulted in a long-term savings.

Dr. Schwartz: I think that is a really inciteful question. It really provides, I think, some of the most fundamental considerations in terms of the type of costs that are impacting on consumers and costs which really the public is not aware of. And that is, are there ways to avoid construction of new capacity and better utilization of existing capacity either through coordination and inter-connection with other utilities through pooling efforts or other means of meeting your peaks, because that's the big problem. You build capacity to meet your peak load. You need a certain reserve margin above your peak and the question arises - the biggest savings to consumers of all, and the biggest cost to consumers relate to the construction of new facilities. If we can in fact better utilize existing facilities, there is a cost avoidance associated with postponed plans which can result in tremendous savings and this is an area which I think ultimately consumer advocates will have to get into - the projection of demand and the growth and demand which ties into the growth of new plant requirements and the potential for using existing plants more efficiently and more economically and I think these are the issues which you have suggested which I think ultimately can result in massive savings by consumers once you get a consumer advocate's office who begins to sense where important savings can be made beyond just the cost of service presentation in the revenue requirements.

Mr. Craddock: Let me ask you something a little bit more directly. Are capital improvement funds keeping pace with the inflationary rate?

Dr. Schwartz: Capital improvement funds aren't isolated. What you do is you don't raise money and then set it aside for capital improvement. When a utility goes out to raise money either for the issuance of debt or equity that

goes into a general cash flow for all corporate needs. You don't set aside funds specifically. You may do it on a book basis, you may in fact, set up reserves on a book basis, but you don't take that money and put it aside in escrow for capital improvements. There is no question that when they come in and they need funds for new construction that that is part of the rate request. The necessity of going out to raise new moneies and what they do is therefore say we have to have a high enough rate of return to attract capital and we need this capital for "x", "y" and "z" new plant because this is what our demand growth is like and that's why we need these new facilities. And so I am saying to you, I don't think you can tie that item down in its unique sense, that do they have enough capital improvement. I would say in general the answer is yes. That I don't know of an example where in fact the utility said, you know we haven't got any access to funds. They can say, well, the rate of return is too low and it is going to cost us more because you are keeping our return low, because it will give us a different bond rating and it will cost us more money to raise debt, but what I am saying to you is that I don't know the situation where they said we don't really have the funds for capital improvement and service is really going to decline to the point where we are going to get brown-outs, blackouts and very serious problems relative to the delivery of power.

Mr. Prengaman: Before you leave I would like to ask a quick question. If we adopt the initiative petition, we cannot change the set up - or we cannot effectively change it for a three year period. Do you see any liabilities with this?

Dr. Schwartz: The only liability I see is postponement. While you worry about whether we can change it, I think you ought to ask yourself what are the benefits if we can implement it as quickly as possible. In fact, do we have an Attorney General and can we foresee other attorney generals who will try to recoup and expert staff who can speak for the consumer before the commission. I think if you bend over backwards to try to be too pure and pristene on how you approach this thing, you sacrifice the immediate potential of an effective consumer office for the theoretical potential - well can we improve this ad infinitum. So very frankly, my answer would be get a consumer office as quickly as you can, make sure you get expert staff, make sure you have enough funds in there for outside experts and go to work. That would be my answer.

Mr. Mello: What role does the consumer advocacy division in

government play in the other states as far as management, utilities or labor and management and as far as insisting upon the utility companies buying from the lowest bidder.

Dr. Schwartz: I will put it this way. I think this whole question of the lowest bidder and that is does the consumer advocate's office get involved in the whole issue of competitive bidding against private placement. In most states that has been resolved. Most state commissions insist upon competitive bidding so that's a non issue.

Mr. Mello: Have you looked at it in the State of Nevada?

Dr. Schwartz: I am going to appear this afternoon before another committee on this very issue so hopefully I can address that at the committee meeting this afternoon, the whole issue of competitive bidding - its liabilities and advantages or turn it the other way, its advantages and liabilities depending on whether you are standing on your head or on your feet.

The other part of your question which goes to what other areas other than cost of service I assume that consumer advocate offices get into. They have primarily been involved in bread and butter issues. They have a very small staff, they have rather limited funds and what you do is you try to get the dollars where you can. The problem of trying to go into the fundamental issues such as - is this new plant proposed really needed - are there alternatives to this billion dollar facility - really requires a very large staff or significant amounts of money so that you can go out and hire engineering staff so you can address that type of issue and that unfortunately means that the efforts of a consumer advocate's office is definitely proscribed. My hope is that as they prove themselves the legislature will see fit to add funds to these offices so that they can address these more fundamental problems.

Mr. Mello: What I am getting at though, Dr. Schwartz, is that if a utility company is poorly managed, overstaffed, too much equipment, obviously it must reflect in their rates. Don't you believe that this office should be looking at that or should that solely be the responsibility of the Public Service Commission?

Dr. Schwartz: No, I believe that the Consumer Advocate's Office has to examine the question of managerial efficiency, effectiveness and cost. As I say, that becomes quite a complex issue. It isn't the normal cost of service

issue. Usually what you have to have done is to have a management study made and you would then have to have full cooperation of the utility for the consumer advocate's office to in fact hire its own management consulting firm to examine that particular utility, and the costs of running that particular utility. So, I am saying that sort of is a fairly sophisticated area which they have not gotten into as yet, but I think it is fully appropriate that they do.

Mr. Mello: Let me give you an example. Where a water pipe breaks - a 3/4 inch pipe - from the street to the sidewalk, the utility company sends 4 trucks and 5 people to work on it, after they dig the hole, they stand there waiting for somebody to fix it because they are working somewhere else.

Dr. Schwartz: I would say that's wasteful and inefficient.

Mr. Mello: It must be a cost factor to the consumer.

Dr. Schwartz: You can be sure that the cost associated with that particular incident are fully included and there is no reason why. In fact, we should not hold the utility since it has a monopoly franchise to efficient operations. No question whatsoever that there should be disallowances, if in fact you have costs included in rates which are not justified.

Mr. Dini: In regard to the Initiative Petition, what special qualifications for the Director of the office would you recommend.

Dr. Schwartz: Well, frankly, I know personally the head of the consumer council in Ohio, Bill Spratley, I know Bill Barvick who is head of the Missouri office, I know the head of the attorney general's office Nixon - in Arkansas and these people are highly motivated, extremely intelligent and hard-working human beings. They didn't originally - these are all lawyers - the director is usually a lawyer - and what they have available to them are economists, engineers, and accountants, usually a chief accountant - I know the chief economist at the Missouri commission, Stephen Anderson, who is exceptionally bright and highly motivated person, and I think that is what you have to do. You know that you are going to have a small office - you have to provide an adequate budget so you are going to get top flight people. You can't have depth so you have to have an individual whose experienced, that you can bring in because he has worked in utility rate matters elsewhere, but that the salary is attractive enough. In other words, you can't bring a good economist

in, for example, and since I am an economist, I can speak to that particular professional area - you can't expect to get a good economist and offer him \$20,000.00 and say, come on in you are going to work in the consumer advocate's office. He will probably be a masters graduate. You've got to set it up somewhere in the mid-thirty range so that in fact you can get someone who has background and experience in regulatory matters and in regulation in general. That's what I am suggesting to you is that you need a small office of experienced professional people.

Mr. Dini: Another question I had is there any conflict if the Attorney General's Office represents both the Public Service Commission and the consumer representation office?

Dr. Schwartz: Well, I understood that the commission could go out and get its own legal counsel, but let me say this, that I am aware that our attorney generals' offices, for example, New Mexico, where two different sections of the attorney general's office function, one to represent the commission before the courts, but the energy unit within the New Mexico AG's office does not. They represent the consumer rate paying interests and you could have that as long as you have a separation of functions. And I think that problem could be solved either way.

Mr. Prengaman: If we were to adopt the Initiative Petition is there any supplemental legislation which we should also pass at the same time? Is there anything else that we should do to give it the best chance to give this consumer advocate the best chance of getting off the ground? I mean you obviously have examined the Petition, and the question has already been asked "do you see any flaws in it" - but this is another question, is there anything that we can do to strengthen it?

Dr. Schwartz: Just make sure you give it a decent budget, particularly for outside consultants. I don't want a feather my own nest, you can say excluding Schwartz if you like, all I am saying is that you really have to - what you want is the office to get started and running - you know the typical phrase - hit the ground running. Well I would like them to get to the air running. You see, since you have a very small indigenous staff in the office, you have to have enough funds in there to get experienced outside professional experts to come in to really challenge the utility or any other intervenor who in fact does not represent the general ratepayers interest. So I would say if there is any one thing which is critical here, is that you have enough funds in there so that they can hire outside experts to really do a job because there you are getting experience.

Mr. Prengaman: As I understand it there is a federal grant that the state can get up to \$400,000 for start up costs of a consumer advocate's office. There is a federal program. Do you have any experience with that?

Dr. Schwartz: Well a couple of the states, if you look at my table 1, have received funds and in my table 1 there are budgets for some consumer advocate offices and next to that budget you have state money and DOE money. Those are the states that receive federal grants for consumer advocate offices and I know that for example in Idaho that \$200,000 to set up the consumer advocate's office there came from DOE. And if you note, for example in Georgia, \$120,000 was funded by the State and \$229,000 came from DOE. There are federal monies available for that, yes.

Mr. Mello: This office that we are referring to - in most states do they take complaints from the consumer? You see, right now we have a consumer representative within -

Dr. Schwartz: I am fully aware of that. No they do not. The complaints are still within the perview of the commission and I think that is where they belong. Unless the nature of the complaint is such that in fact the consumer advocate perceives that there really is a class action here, rather than an individual complaint. I don't think that the focus or the efforts in energy of the consumer advocate's office should be drained by responding to individual complaints. Given a small office and a small staff, they've got to direct themselves to the issues where there are big dollars involved, and therefore I would advocate that the complaints be handled within the commission unless the nature of the complaint reflects ratepayers generally at which point I think what they would have to do is in fact file a complaint before the commission to order an investigation and I think that is an entirely different than the one you have suggested.

Mr. DuBois: In states that have a consumer advocacy office, where does the consumer advocate get his raw material? Where does he get his audit? Does he have his own auditors that go in?

Dr. Schwartz: Yes, that's a very critical area. I think you have put your hand right on the pulse of some very important problems. The consumer advocate has to depend upon the commission ordering discovery. In other words, I am working with a consumer group now in North Dakota involving a case involving Northern States Power. I am going home now and hopefully tomorrow morning and work out some interrogatories specific questions and requests for information which they then will file with the commission

in North Dakota. The commission at that point has to order the utility to answer those questions and to provide the detailed information. Its reports, its internal documents, its records. That's the only way it could be done. Then you have to have sufficient expertise either on your own staff or you have to go out and hire expertise, if for example, auditors, who will then be able to go through the company data. But you see there has to be a melding of both the right of discovery and access to company information and the ability for professional assistance to evaluate and in some way address the specifics of that discovery.

Mr. Mello: This is a vital area. It has been a problem in the past though with the Public Service Commission that we have not had an appropriate number of auditors to do the job. Hopefully it was solved last session and I don't know whether it has been or not. If that has been corrected and the Chairman of the Public Service Commission has said that it has been, my question would be then, what is the cooperation in the other states between the Public Service Commission which is more of an arm of the governor - what cooperation does the consumer advocate have? Is there a time frame that they request an audit? Do they draft their case? What kind of problems have you found in other states?

Dr. Schwartz: Well, obviously, the question of effective and - what I am saying to you is that usually consumer advocate's work is in the context of specific rate increase filings. 99% of the work is there whether it is the telephone rate increase, gas or electric, water or whatever it may be. So the question of an audit sort of has to be tied to the question of is it for this case and has the company filed the necessary supporting data for the rate increase and the items which are reflected in that total increase or are you talking about a general audit of the company which - you are talking about a general audit of the company - now you realize as far as consumer advocacy is concerned, they are there to keep rates down, that's their job. The auditing function is more of a public -

Mr. Mello: They have all the information at their disposal - they are at a disadvantage. They will be at a disadvantage immediately if they do not have full cooperation.

Dr. Schwartz: But if we confuse the two objectives I don't think we are going to get clarity on either level and here is what I am saying. That if the need is to address rate increases, you need the audits related to the specific data in that cost of service filing. And there what you have to do is to get your commission to make sure through the discovery process that that information is provided

in a timely manner, and if not, what you do is at that point petition the commission not to pass through any interim increase or not to allow the increase to go into effect because the data has not been provided to support it, so that is one facet of the problem. The other facet of the problem is the general auditing function of the commission to in some way verify the annual reports and other reports that are filed with the commission. Well, there, as I said, the consumer advocate's offices don't have the funds or the staff to get into that more general surveillance function of the commission, and I think that's the distinction that I am making relative to the auditing function.

Mr. Mello: I believe that there is definitely a need for the consumer advocate. If sufficient audits and input that the staff of the public service commission has today at their disposal is presented to them at a time when they are hearing a rate increase and yet the rate increase is given such as an 80% increase, there is something radically wrong.

Dr. Schwartz: I agree. I think that's absolutely in error and I would think that the consumer advocate would challenge that and take the commission to court. Absolutely.

Mr. Mello: That's what you are talking about?

Dr. Schwartz: That is what I am talking about. Absolutely. In that context they do not have the basis to permit the increase.

Mr. Mello: That would be the job of the advocate?

Dr. Schwartz: And I would say that that's reversible error on the part of the commission. I agree with you 100%.

Mr. DuBois: Are there any indications where an audit is done by outside groups aside from the commission? Perhaps by a third group, but completely independent?

Dr. Schwartz: Not that I am aware of. Well I would have to look at it in the specific situation. I think it would be very hard to generalize about that. One of the difficulties is whether an outside office really is conversant enough with the uniform system of accounts. You have to understand the uniform system of accounts is unique. It is not the same accounting approach used by unregulated firms and if an outside office doesn't have the sensitivity to the uniform system of accounts, they can blunder, take more time and actually give you less assistance than if they never entered the picture. Now there are outside accounting firms who work for utilities, and assuming

you can find one which in fact can function independently and work for the commission as an outside auditor that's another question. One of the difficulties there is most of the outside accounting firms are in fact accountants for the utilities.

Mr. Dini thanked Dr. Schwartz for his presentation to the committee and asked if he would be available to our subcommittee if they should need to talk to him?

Dr. Schwartz indicated that he certainly would and that he would be happy to help in any way that he could and thanked the committee for the opportunity to talk to the committee.

The committee recessed at 9:50.

The committee reconvened at 10:08 A.M.

Mr. Dini asked if Randolph Townsend wished to speak and Mr. Townsend indicated that he did. A copy of Mr. Townsend's testimony is attached to the minutes of this meeting as EXHIBIT C.

Mr. DuBois asked Mr. Townsend where the proposed office would be set up to get its audit and raw material and its basic information concerning utility operations? Mr. DuBois asked if they would get that from the staff audit.

Mr. Townsend referred to Dr. Schwartz' response to Mr. DuBois' question. He stated that very simply they would be an examining arm - the advocacy would - and what they would do based on public service commission granting of their ability to see the information that's presented on an individual manner then they would examine that and they would get that from the PSC.

Mr. DuBois stated that it would be dependent upon the PSC audit staff.

Mr. John W. Capone of the Governor's Office testified next.

Mr. Capone indicated that what he would like to do for the committee's benefit is just to address first a couple of points that have been previously stated by prior speakers and respond to some questions he thought were raised at that point. He indicated that he had hoped that the committee received a copy of a handout that was not available at the first meeting of the committee but is basically a synopsis of his previous testimony with some information in answer to some specific questions.

Mr. Capone turned the committee's attention to Exhibit D of his previous testimony on January 28, 1981.

Mr. Capone stated that first of all Mr. Outland in his comments earlier indicated that to date there had been no formal statement of the overall budgetary impact, if you will, of the governor's proposal and as the committee will note on page 2 of his submission the fiscal notes currently under consideration, or that will be under consideration on this proposal, would reflect a total biennial budget for the Public Service Commission as \$2,325,444.00, and for the customer representative agency total biennial cost of \$5,994,367.00. Now, as Mr. Capone had indicated in earlier testimony, he stated, if he didn't he would indicate now, there has to be a distinction made between those figures which represent total budgets and another figure which would in effect be the actual start up cost of a few new positions that would exist under the proposal and some duplication costs as far as equipment and materials to get the new agency offices set up. The estimate on that is approximately \$200,000.00, so he thought that the easiest way to describe that difference would be to say that if the current structure were retained with the proposed salary increases, etc. for one public service commission with no movement of staff, then it would be the total of the two figures cited in his handout, less approximately \$200,000.00 in expenses. Mr. Capone indicated that that total amount in effect, in terms of mill assessment represents only about 2-1/2 mills. In other words, that is the amount of mill assessment that would be utilized in that budgetary scheme. The overall authorized mill assessment now by statute is 4 mills and that is not going to be exceeded in the Governor's proposal. The language of the proposal or the statute would indicate that a maximum of 2-3/4 mills would be available for assessment by the agency and a maximum of 1-1/4 mills would be available to the PSC as an assessment but not that those are specifically going to be utilized, just that those are caps on the two and that does not exceed the current statutory limit. I am sorry, it's 3-1/2 mills total not 2-1/2, excuse me.

Mr. Dini asked Mr. Capone to please repeat his statement.

Mr. Capone stated it was 3-1/2 mills authorized available to the agency and 1-1/2 authorized available to the commission. There is a typo in his handout. He stated that he had the wrong figure in there. He apologized to the committee. So the 2-3/4 - let me get a clarification on that.

Mr. Mello stated that he was totally confused with the presentation that Mr. Capone gave the last time he was here and with the one he is giving now. Mr. Mello asked Mr. Capone how long the Governor worked on the proposal?

Mr. Capone stated that as a committee, he had been working with the Governor's committee since June of last year, working on the preparation. The actual fiscal -

Mr. Mello stated that finalizing the bill must have been last week.

Mr. Capone stated that the fiscal note preparation of the actual proposal - the technical assistance on that was provided from Mr. Hardy's office, and that was about three weeks ago, he believed, that they submitted the fiscal.

Mr. Mello stated that he would say that the last time Mr. Capone was here was one of the worst presentations he had ever heard.

Mr. Capone stated that he apologized for that.

Mr. Dini asked Mr. Capone if the right figures were 2-1/2 and 1-1/2.

Mr. Heber Hardy of the Public Service Commission answered Mr. Dini's question and stated that we were talking about what was proposed as the maximum authorized to be assessed where the recommendation is 2-3/4 for the utility customer representative agency and 1-1/4 for the commission, for a total of 4 mill, which is the current authorized maximum. They had not proposed any change in the authorized maximum, however, the budgets which are being proposed, the commission budget is asking that we will assess 1 mill, not 1-1/4, for both years of the biennium, and that the new department or agency will assess 2-1/2 mills of the authorized report. Is that clear?

Mr. Capone stated that in the statements by Ms. Beasley, he recalled very well her visit to their office and discussion with the Governor on their proposal. He stated that he was present at that meeting. He stated that he thought that her concern about the inclusion of language in the bill to allow for a transition period between the actual signing or signature of the legislation by the Governor and the transition into full and independent operation of the two entities, the one year period that was placed in there was definitely an outside figure that the committee felt was appropriate, however, there was no feeling realistically that it will take that long a period of time to physically set up the new agency. As the committee knew, they could not simply snap their fingers and assume that that agency will be in place. They had to locate a separate facility for it and get the sufficient equipment, materials and supplies, etc. and the staff on board and operational and that is going to take a certain amount of time, but they certainly don't envision a full year period, and he hoped that that will clarify that point as far as the language in the bill.

Mr. Capone stated that turning to Mr. Schwartz' comments, following the last meeting of the committee, he recognized that there were some questions raised about various other states and the formats that they utilized for representation of the public in proceeding before regulatory commissions and he requested that Mr. Hardy's staff do an informal

poll or survey of the various states and the types of formats and the types of representation of the public that one would find today in those various jurisdictions. Just from some very informative data that came of that, there were approximately 46 states that were contacted by phone -

Mr. Dini asked if he had a list of those states.

Mr. Capone stated no he did not as this was just finalized yesterday and that he could obtain it for the committee today. Mr. Capone stated that there were 46 states that were contacted and there were basically two questions that were presented to them. First of all, was there a state agency, or is there a state agency which regularly appears on behalf of the public in utility general rate cases in that jurisdiction, and if so, is there also a commission staff that regularly participates in general rate case proceedings.

Mr. Capone indicated that in 27 of the 46 instances that were checked out, the answer to one or both of those questions was no that there was no regular representation before that regulatory body either by an independent advocate or by staff of that body on behalf of the public. There was some question raised about a couple of states in Mr. Schwartz' presentation, I believe Florida was one state that he mentioned and also I think Minnesota was another, and in both those instances the answer to the question was no, there was no regular form of representation such is envisioned by the Governor's proposal. There was a question raised by Mr. Prengaman regarding federal funding to set up offices of advocacy such as we are discussing here. In at least two states that were contacted, these being Arkansas and Colorado, federal monies had been made available to those states, however, both persons contacted indicated the feeling was that that federal source was going to dry up; that there was a serious concern that there might not be federal monies available in the future for that type of operation.

Mr. Capone stated that he did not want to rehash the elements of the Governor's proposal and that he thought that in general all of the people that were speaking before the committee today and the ones that have spoken to the committee in the past, have indicated that there is a need for some form of advocacy for the public. That certainly is the position that they still maintain. Mr. Capone further stated that as he previously indicated, if we are going to do it and do it right the first time, we need to do it in a comprehensive fashion. We need to do it in a fashion that is properly funded and is properly staffed, in order that an adequate job can be done of public representation. Mr. Capone stated that he believed that under the Governor's proposal, the staff - the independent agency - does have direct authority - does have the means to intervene on its own initiative with the commission on behalf of the public.

There is no petitioning process to the commission for some sort of order to get records or to get data or materials. They have that authority independently to do it, and he believed that that was the best way to do it and the most direct way to do it. Mr. Capone stated that in essence the public has that equal representation that we have all been talking about in regulatory proceedings.

Mr. Capone stated that he would also like to think that in terms of the Governor's concept, we are not really talking about old wine in a new bottle as Mr. Townsend referred to. We are simply talking about an effective utilization of some existing resources and expertise in an area that is essential, where it is essential to start and start running as Mr. Schwartz indicated to start moving to adequately represent the public now, rather than waiting to go out and hire a new staff of whatever size and trying to find people with expertise in these areas. We are talking about a program that can be implemented almost immediately and will be effective, because there are some well trained people currently on board. Mr. Capone stated that he would also remind the committee that when we talk about the results or the savings that might be achieved by an advocacy concept in a particular state, he thought there was a disservice being done to the public if they are led to believe that just because you set up an advocacy office, in whatever form you choose to take on, that there is going to be this overwhelming influx of savings to the public in utility rate cases specifically. It is very difficult to judge, as I indicated in previous testimony, whether some of the tightening up, if you will, in the regulatory area these days, is due solely to the input of independent advocates or is also contributed to by a general feeling on the part of regulatory bodies that this is a necessary approach to be taken. So I don't think we can necessarily assume hundreds of thousands or millions of dollars of savings to the public, simply by adopting a program, whatever program is elected.

Mr. Capone further stated that the North Carolina plan that was referred to by Mr. Schwartz in his statements - he indicated that that was used as a model for the Governor's proposal - there is to be no dispute that that was one of the proposals that was viewed and looked at and there are some similarities between our proposal and theirs. One big difference, I think, and something we did learn from contacting North Carolina people, was the fact that their offices were next door to each other on the same floor of the same building and there was, by necessity in some instances, a lot of interchange and running back and forth as Mr. Schwartz referred to between that office and the office of their public staff. As I indicated previously, the Governor's proposal is a clearly distinct and separate office and staff in structure, which I believe some of the problems Mr. Schwartz was alluding to.

Mr. Capone stated that Mr. Schwartz also mentioned in reference to the North Carolina experience, some statements regarding the

attorney general representation and the success of that program. In checking with the North Carolina offices and in speaking with the former deputy attorney general who was handling the regulatory proceedings on behalf of the public in front of this commission, he indicated (1) he no longer worked as a consumer advocate; he was now working for the commission and he indicated that although the attorney general does have the authority to appeal in general rate cases, they very rarely if at all did so now because of the level of customer representation provided by this public staff in North Carolina, the same kind of entity that we propose to set up here in Nevada.

Mr. Capone stated that he would say in conclusion of these remarks before any questions that you might have that we are talking basically about the same philosophy, the need for independent representation of the public. The Governor's proposal is a more comprehensive approach to that problem. It is a proposal, a plan if you will, that could almost immediately go into effect as soon as separate offices and equipment and so forth were set up for the new agency, and it would not take a year or anywhere close to that I think to come into effect. I think that it takes the right approach in that it makes sure that sufficient resources are available to do the job and do it right and I think that that is one of the biggest differences between our proposal and the initiative petition proposal. That and the fact that that staff will have an independent authority to intervene and do it in a comprehensive way.

Mr. Capone stated that he would be happy to answer any questions that the committee members had.

Mr. Capone's reference to the list of 46 states and the types of formats and representation of the public is attached to the minutes of this meeting as EXHIBIT D.

Mr. Prangaman stated to Mr. Capone that he was not sure that this was a question or a comment but in the minutes that you have given us you say ultimately the public will hold all of us in state government accountable for insuring that their interest are being properly considered in the area of utility regulations. I think, like it or not, we are dealing with a public mood for perception of mistrust on the part of the Public Service Commission. That's a reality and it is out there for the governor and it is out there for the state legislature. I find it difficult to sell the idea to the public that by taking "x" amount - 63 or whatever - staff members, present members of the PSC and transferring them into a new agency which is hopefully independent, that this is going to give them the representation they are requesting. I just have real difficulty with that. You've got the old and the new and there really are, as Dr. Schwartz pointed out, two problems here. One is consumers being represented at rate increase hearings and the other is having an effective Public Service Commission. I just have a lot of difficulty with the Governor's plan in that respect, taking the public mood or the public perception and rightly or wrongly - that is what we are dealing with and I would

just like to comment on that.

Mr. Copone stated that he thought that we have to get away from the idea that we're just simply moving bodies from one place to another. Obviously, in setting up this new agency and providing it with the expertise and the manpower to do the job, there are those elements to it and it is difficult to get away from, but I think the key to the Governor's proposal is that in setting up the new agency and severing the cord, if you will, of the PSC, that we are going to give that staff the independent right and the authority to go in and argue on behalf of the customer in situations where it can't do that at the present time. The last aspect or the last element of my hand-out is a chart which is a very short synopsis of some six rate cases over the past year that were heard by the commission. I think if you look at the figures showing the amount of increase recommended by the staff and the amount of increase ultimately awarded by the commission, you will see, in almost every case, that there was some difference between the staff's input and recommendations and what was finally approved, and no matter how we change this overall regulatory process the commission is still going to have the ultimate authority, the ultimate say in what is approved, but the difference will be that when there is a difference such as you see in the staff recommendations versus the commission recommendation, the staff will now have that voice, that authority, the wherewithall to come forward in the public's behalf and argue why theirs was the proper position to take in that particular case. The frustration is now is that they can make recommendations that they feel are good faith and yet they don't have that follow up process available to them to take that forward. They will have under our proposal.

Mr. Schofield asked Mr. Capone about two states that he had mentioned two states that he had done research on the federal funds and you said that the area was drying up.

Mr. Capone indicated that Arkansas and Colorado were the two jurisdictions that were involved, and the question did come up about whether or not - we have some indication from reports and so forth that we have been looking at that there was federal money provided to those states initially to set up an independent representative group. The indication now is that that funding - they are concerned about having that funding any longer. They didn't go into a lot of detail as to why other than feel the atmosphere is such that there may not be that kind of funding from the federal sector in the future. It really was not much more specific than that. I don't know the mechanism involved and if it is anything like a normal federal grant type program I am sure that they would probably have to initially submit a proposal as to what they want to set up and how they think it will work and probably meet some of the criteria that is set out by the federal entity that is issuing the funds, probably having reporting responsibilities, that kind of thing.

Exhibit D
from 1-28-81
meeting

Mr. Dini stated that Dr. Schwartz had an interesting comment about naming the consumer complaint division that you have now under the PSC and splitting it away from the consumer advocacy. They would only deal with rate making and that kind of thing. Can I have your comments on that?

Mr. Capone stated that he did not feel that you could retain that function in the PSC under our concept, because under our concept we really view the PSC in a quasi-judicial regulatory role if you will and we think that a public representative ought to have the authority to intervene for the public on complaint matters just as they would on a rate case or any other aspect of public representation. We don't see a distinction in those types of representations. We think they should be properly in the representative agency.

Mr. Dini asked Mr. Capone if in his concept do they make the PSC merely a quasi judicial agency and not regulatory?

Mr. Capone indicated that they are regulatory. They are regulatory in the sense that they issue orders and so forth relating to utility activities. There was a question earlier about the - I believe it was Mr. Townsend's comment - that we really are not divorcing the staff from the commission because the staff is there to carry out the orders of the commission. Technically when an order issues, it's an order that is for the benefit of the public and whom better to insure that that order is carried out than the staff that is being assigned, the agency that is being set up to represent the public. That's why we have that follow on oversight watchdog responsibility if you will with that agency.

Mr. Dini asked Mr. Capone if they had any kind of data on the track record for the existing consumer complaint division of the PSC? How effective it has been or what percentage of complaints they have answered and have been successful in helping the consumer?

Mr. Capone stated that he did not specifically but he stated that he was sure that Mr. Hardy might be able to answer that for the committee.

Mr. Dini asked Mr. Hardy if he could answer that question.

Mr. Heber Hardy of the Public Service Commission stated that he did not have that material with him, but that he could get it for the committee,

Mr. Dini stated that that would be okay.

Mr. Prengaman asked if he could respond to that. He indicated that he had occasions to deal with the consumer affairs division in the area of cable TV - it was a problem in my district. I found them to be most responsible. The Consumer Affairs Division - Bob Clark - in this situation really forced the two companies to sit down and to iron out the differences and while I can't speak for the total

picture, at least in this one instance I believe they really did a good job and I think they ought to be given credit where credit is due.

Mr. Dini asked Mr. Prengaman if he believed in that bill that came out of the subcommittee to take away control over the cable TV companies from the PSC and leave it to local jurisdictions.

Mr. Prengaman indicated that he would not like to comment on that.

Mr. Craddock indicated that they had an inquiry which relates to small water utilities. Does the advocacy group desire to get involved with that type of thing.

Mr. Capone indicated that he felt that the provision was there for them to be a representative in that respect as in many other respects of public representation.

Mr. Craddock indicated that another thing that kept bothering him was the over gist of the advocacy group. He indicated that he got the feeling that it is a short range plan or a planned concept that is being advanced rather than an overall problems as they relate to providing utility services. Do you have any remarks on whether or not we really plan on taking a long range approach to the solution of the problems or whether you plan on the spur of the moment type thing that brings some kind of immediate and personal satisfaction.

Mr. Capone stated that he thought that he could only speak personally from his perception of the concept that in terms of other benefits that this staff, this agency, could provide to the public, one would be in his estimation, receiving input from the public on their feelings on those kinds of matters in terms of long range planning and being able to present in a more formal way to the commission for their consideration, suggestions or recommendations regarding those types of problems as they hear them from the public. It would be, in essence, a more formalized voice in that respect.

Mr. Dini indicated that he had one more question he would like to ask. With the proposed split you were going to make with the consumer advocacy versus the PSC, will the consumer advocate have to go to the Public Service Commission for them to adopt the rules, regulations and procedures for them to use in their investigation or will that authority rest with that agency or will they be split in that manner?

Mr. Capone indicated that he could not cite to the specific language in the bill but I think the understanding is that independence means just that that they have to have the independence to run their own office in terms of setting up their office and the structure of their office. They have to act within the bounds of the statute in terms of intervention before the commission, but as far as office management and administration and those kinds of things I believe there is consideration for an independent approach under it.

Mr. Capone indicated that he wanted to point out that they are not providing for any quasi-legislative responsibility in the new agency. He indicated that he thought that they would have in terms of administration of their office and so forth, that they would have that independence, but as far as establishing quasi-legislative type responsibility, there is no provision for that in the bill and I am sorry if I was unclear on that.

Mr. Mello indicated that Mr. Capone had stated that upon passage of the Governor's bill the consumer would immediately start to be represented. Who would that be in the existing staff that would do that? Who would actually be the person that would stand before the Public Service Commission and represent the general public?

Mr. Capone stated that he would say that after appointment of an Executive Director.

Mr. Mello stated that Mr. Capone had already said that it would immediately start.

Mr. Capone stated that as far as the actual physical representation he thought that there is legal counsel in the current structure and under the Governor's proposal staff counsel, if you will, that will be responsible for preparing cases and presentations and so forth before the commission so that would be if you pointed to a place on the chart that staff counsel function would have that responsibility and be assisted by the other support personnel now on the staff.

Mr. Mello asked if Mr. Capone could tell him why there are 22 states that have consumer advocates under the jurisdiction of the Attorney General and 19 that are independent such as under the legislature and only 4 under the Governor's office?

Mr. Capone stated that he did not have any specific reasons why. That's just the election of those jurisdictions and perhaps it has something to do with the degree -

Mr. Mello asked if Mr. Capone would please find out why this is so.

Mr. Capone indicated that he would.

Mr. Mello stated that as the Chairman of the Subcommittee, he would appreciate if it Mr. Capone could have all of the necessary data that he needed to inform the Subcommittee in a very short period of time, and that the information not be given to the Subcommittee piecemeal.

Mr. Schofield stated that relative to Mr. Dini's questions on the bill, it mentions that the agency may make appropriate recommendations to the commission, but they are in fact an enforcement agency to carry out the regulations as set forth by the commission and along the lines of Mr. Mello's question concerning the data and information, I would ask you if you wouldn't further pursue the federal funding

mechanism.

Mr. Mello asked Mr. Capone if Mr. Herring was here at the meeting.

Mr. Capone stated that he was not.

Mr. Mello asked Mr. Capone what role Mr. Herring has played in gather the data. Mr. Mello indicated that Mr. Herring had testified at the public hearing the other day before this committee and he just wanted to know what role he played.

Mr. Capone stated that he was here as a representative of the committee that initially took a look at the concepts on behalf of the governor and that was his sole function for being here as he was also on that committee. He is no longer involved, if you will, on any further implementation of it - he was just here as a representative of that committee.

Mr. Mello asked Mr. Capone how much time he would say he put towards the development of that.

Mr. Capone asked if Mr. Mello meant towards the development of all of this data?

Mr. Mello stated yes and also of the Governor's bill.

Mr. Capone stated that he would say in terms of meeting as a member of the committee, he did not have any exact time frame. We held I would say a half a dozen or so meetings of the committee to go over various items in preparation of the Governor's proposal. He did not work in any respect on technical assistance or providing any of the input for the fiscal note or that kind of thing. A lot of that was handled by the Public Service Commission staff.

Mr. Mello stated that he obviously must have had quite a bit of input.

Mr. Capone stated that they all did to the extent that they were present at those meetings and offered their opinions and suggestions in that regard. He stated that he did not have a total number of hours as to -

Mr. Mello stated that the only reason he had asked the question was because he was reviewing his budget. Now obviously he has quite a case load, as they have always had. He is asking for nine new employees this first year of the biennium. He is asking for eleven in the second year - the Governor is recommending seven in the first year and eight in the second year - and I was wondering how a person that can be so overworked could have sufficient time to devote to this problem.

Mr. Capone stated that he would say that all of the members of the committee had other matters obviously directly involved with their responsibilities that they took care of in the meetings that we held,

often late in the afternoon or in times when they did not conflict with a specific duty that they were performing that day, we all put in overtime on this and Mr. Capone stated that he did not think that anybody was cheating on their other work to provide time for this particular role.

Mr. Mello stated that he did not say that he was cheating on his own work, but that obviously he was overworked, and perhaps -

Mr. Capone stated that he was even more overworked when this committee was in existence.

Mr. Dini stated that he did not feel that the committee should belabor that point and that we should proceed with additional questions.

Mr. Capone's testimony was concluded.

Mr. Dini indicated that the next speaker would be Bob Gagnier.

Mr. Bob Gagnier, Executive Director of the State of Nevada Employees Association testified next. Mr. Gagnier stated that he would be very brief.

Mr. Gagnier stated that the State of Nevada Employees Association takes not position on any of the proposals before the committee. They are not in the business of formulating state policy in the creation of new state departments and that they were not experts in the area of public service. However, they did take issue with one aspect of AB 58 and the executive budget as it has been prepared and presented to the legislature and that is the provision that would call for 37 unclassified positions in the new consumer affairs agency. Mr. Gagnier stated that this they found a point. He further stated that two years ago the legislature, particularly the two money committees, did, in fact, unclassify a number of positions in the Public Service Commission because of the failure of the State Personnel Division to provide adequate salaries for those positions. Mr. Gagnier stated that rather than unclassified positions in order to get them adequate salaries, they thought that the legislature should address the problem with the state personnel division which is required by law to provide proper salaries, proper job descriptions for all agencies in state government. Mr. Gagnier further stated that the excuse is used that the only way they can get qualified people is to unclassify them and raise their salaries. Mr. Gagnier stated that he thought that you could accomplish exactly the same thing - maybe even more forcefully - by letter of intent, or by specific legislation before this legislature. There is a provision to specifically increase the salaries of correctional officers and group supervisors in two of our juvenile facilities. Mr. Gagnier stated that it is not uncommon for the legislature to take a direct role in salary setting, but when you unclassify them, now we get into the area of politics.

Mr. Gagnier stated that Mr. Schwartz earlier said that you wanted less political interference. With unclassified employees you have more political interference. Their experience over the years, and he stated that he was talking long range, not short range, is that when you unclassify a position over the years you will decrease not only the salary, but the minimum qualifications of the individuals hired. They end up being political appointees and not experts in their field. Mr. Gagnier stated that in a short range situation you could do it. He stated that he suspected that the Public Service Commission can come before you and say since the legislature did this in the last session, 1979, they have really increased the quality of their auditors and some of their engineers. Gentlemen, those of you that have been in the legislature a long term, I will ask you, do unclassified employees, over a number of years, get the same salary benefits as classified employees? The answer is no. They do not. Normally the governor doesn't even ask for it. Every time we have had a trigger for classified employees, the unclassified employees have been excluded from that trigger. Mr. Gagnier stated that they thought this was totally unnecessary and asked that no matter which proposal the committee went with that the committee cut down substantially on the number of unclassified positions. He indicated that this is particularly important in an area of consumer advocacy. As soon as the consumer advocate tackles his job with enthusiasm, he becomes a target, a political target.

Mr. Gagnier indicated that his testimony was now concluded.

Mr. Mello asked Mr. Gagnier if what he was saying was that we should abolish the 95% factor.

Mr. Gagnier stated that too.

Mr. Prengaman stated that he was not clear on what Mr. Gagnier was saying. Mr. Prengaman stated that these positions were obviously being transferred from the existing PSC. Are they now unclassified?

Mr. Gagnier stated that some are unclassified and some are classified. Consumer service representatives as an example under the current system are classified. They would propose to go to unclassified status. Mr. Gagnier stated that he believed that there are seventeen of those positions to be established - and he cannot say that this is an absolute figure - are currently unclassified and 37 would be unclassified.

Mr. Polish stated that in the new budget we find that Governor List has with his staff members - are they in the unclassified category now?

Mr. Gagnier stated that all of the Governor's staff is unclassified.

Mr. Daryl Capurro testified next. Mr. Capurro is Managing Director of the Nevada Motor Transport Association. Mr. Capurro stated that he would keep his remarks brief, and general, in light of the fact that there would be a subcommittee studying this matter.

Mr. Capurro stated that with respect to AB 58, there are a number of things that the committee should keep in mind. First of all, all of the publicity, all of the problems that have been publicized and brought forth, both prior to the session and now during the session, revolve around utility rate relief and utility rate problems. Mr. Capurro stated that he hoped the committee would keep in mind that the Public Service Commission also regulates motor carrier transportation in the State of Nevada and that not as you have with the power company, and he was not really too worried about the power company from the standpoint of them being able to defend themselves, they have attorneys, they have the ability to hire consultants, accountants and the other type of people necessary in quasi-judicial proceeding to in effect defend their position, but when you are talking about motor carrier operations on intra-state basis, you are talking about small business people. You are talking about not a monopoly situation and you are talking about, in some cases, mama/papa operations, whose ability to stand up before a judicial or quasi-judicial proceeding is limited. Mr. Capurro stated that his concern is that in separating this agency, the individual who takes over this consumer - he stated he had a problems with calling it utility customers' representative agency too because that does say that you are talking about utilities only in his view - that it will be his job to justify his position and that is to enter into every rate case, irregardless of size, irregardless of who is regulated, and to, in effect, protest or recommend amendments, even in cases that can be eventually proven by public hearing. This would spread the process out. He further stated that we do have a problem with the current statutes relative to rate relief for motor carriers that do need to be addressed this session of the legislature and he would hope that we would be able to do that whether it is in this bill or in another bill.

Mr. Capurro further indicated that there will be, he was sure, at least one bill in that would be designed to transfer the inspectors that are now employed by the Public Service Commission through the funding mechanism of the \$3.00 per power unit fee charged against motor carriers that if those inspectors are indeed moved from the Public Service Commission to the Department of Motor Vehicles, then that funding should also be moved from the Public Service Commission to the Department of Motor Vehicles since they will be the one saddled with the enforcement and the responsibility. Again, that pretty much covers my remarks and I would be happy to answer any questions.

Assemblyman Peggy Westall testified next. Mrs. Westall stated that this is a very complicated issue. She stated that we all want to do the best for the state and she stated that it would take a considerable amount time for the committee to come up with a more comprehensive answer. She stated that she would hope that if you feel that an independent agency, not indicated in the bill that you may look at, that you would be sure that you amend with whatever it takes to assure that it is independent. She further stated that she would hope that the director does not serve a term, because she felt that it was one of the big problems in the view of the public at this time. She further stated that she hoped the staff contained adequate consumer expertise, adequate legal expertise to be sure that on the record it had adequate information to appeal to a higher court. Mrs. Westall further stated that she hoped that the agency would have ability to investigate, to do anything that they had to to obtain the information that they have, such as the ability to inspect the books. She further indicated that she hoped they would have the authority to intervene in any rate case without having to ask permission and she hoped that they would have the ability to initiate the appeal to a higher court, again, without having to get permission from anyone.

Mrs. Westall stated that to her knowledge, this bill does contain the abilities, and if you feel that it did not, I would hope that you would add it. She further indicated that she felt it would definitely not take a year to make a transfer and she would not like to see that in the bill because she thought that the amount of time that you allow is the amount of time that anyone would use.

Mrs. Westall pointed out that she is the Chairman of the Ways and Means subcommittee on the Public Service Commission and the new agency and she would hope to make sure that the positions that we do need for the agency to function properly are in the budget. Mrs. Westall stated that she did not feel that what we need is fully in the budget and she would make a recommendation to add them and she would hope to work closely with Mr. Mello and the subcommittee here to assure that that happens.

Mr. Heber Hardy of the Public Service Commission testified next. He stated that he would like to make a few brief remarks at this time and also to indicate that he would be happy to cooperate with Mr. Mello in making available any information which they possibly could to assist in the detailed analysis of the bills themselves.

Mr. Hardy stated that one general observation - it had been stated by several people - that public perception is the real problem related to the Public Service Commissions throughout the country. He further stated that they were not unique in being the target of criticism or of being the target of concern for being the bearer of bad news as it were, but nevertheless, public perception is a real

problem and when he was first asked to take a look at alternative proposals our present structure to see if there wasn't some better way to have better representation by the consumer, he was given or rather sent a copy through the mail of the North Carolina Commission and he has known several members of that commission for quite some time, so on one of his eastern trips associated with the National Association, he was close enough to Raleigh, North Carolina, that he went over and spent a day with them. I spent about half my time with the public staff which is a staff which is very similar to what is being proposed by the governor, totally independent, and also about half my time with various commissioners - about five of the seven commissioners, and the indication to me was that that was a political issue by the governor of that state - the Lt. Governor at that time who later became governor - that public perception was the real problem. He campaigned on that point as one of his major issues and after he became governor, began to put the bill together and to get the structure in place. In talking with the Chairman of the North Carolina Commission, Robert Koger, he indicated some real reservations about this proposal when it first came down the pike and when it first came to his attention, as did some of the other commissions. Mr. Hardy stated that the perception is now, to make a long story short, that this particular approach has been extremely successful in alleviating the concerns of many in the public, not all. I don't think in any case you are going to find where everyone is satisfied with what a Public Service Commission does in any case, but the perception of both the Chairman and several members of the commission and the executive director whom I spent considerable time with on the public staff, was that, in fact, there had been substantial improvement in the public perception of how regulations are being carried out.

Mr. Hardy further stated that after talking to these people, Minnesota is also going through the same process. He said that he did not go to Minneapolis, but he did talk on the telephone to key people there, both on the staff side and on the commission side. They gave me the same impression that they felt this was sort of a new approach which was possibly more effective even and better to alleviate or assuage public perception - bad public perception - than maybe even some of the approaches being taken in other states. Mr. Hardy stated that he did want to add that he had been involved very early in this process, asked to review in my own mind what would be a good way to go. He made recommendations and when the committee was formed, Mr. Hardy and the other two commissioners spent time with that committee answering questions and giving their perception of how it would work if it were separated and as a result of all of this, the three of them unanimously endorsed and support this approach as being the single best approach.

Mr. Hardy stated that as far as the initiative petition was concerned, he would just simply like to call the committee's attention to a few areas with which he had some concerns with AB 364 and his concerns are still there with some of these particular areas. The first one he

thought had been mentioned in previous testimony by others. Under the initiative petition as written, the consumer advocate office would be limited in its jurisdiction or in its authority to participate. For instance, they are limited to those cases which are filed by the public utility. That's what the words say. They can only participate in those cases and they can only intervene in those cases where the public utility has filed, the way I read the words. And so if the commission staff or the new agency, if it was a new agency, or a city or anybody else petitioned the commission or on a complaint or on any other basis to change the rules which may affect rates, line extension rules, for instance, is a very good area where it could affect charges to its customers, under this it would be limited and Mr. Hardy stated that he thought that's a problem. He said that he would not say that it is a fatal problem, but that he thought that it's a problem that is not evident in the governor's proposal.

Mr. Hardy stated that the same thing relates to their appeal process. They can only appeal from those cases wherein they have intervened before and they can only intervene in those cases where the public utility itself has made the application.

Mr. Hardy stated that he had some slight concern, and he just wanted it to bring it to the committee's attention, that under paragraph 3, there is a reference to participating actions in courts of competent jurisdiction. On line 17 after the "or", "or relating to any order or regulation of any other state or any federal agency", it seems to me that that's a little broad. In other words they are going to be using mill assessment money which is collected from public utility rate payers which is not all of the citizens of this state, but yet could use those funds to appear before any agency of this state or any federal agency. It seems to me that is not really a good feature, but again, he assumes that maybe in the budget process that could be handled.

Mr. Hardy stated that there is no provision anywhere in the bill, the initiative petition, for initiating any action before the commission. They have to react. They cannot act. They can only act when somebody else takes some action to change any rules, regulations or anything else which may affect service or rates or charges, other than rate cases. One of the major concerns he had last time, and he still has, if in fact they want to be totally independent, it is inconceivable to him, and he doesn't understand why then they want to have the Public Service Commission provide the funds through the mill assessment procedure, and then sign the claims. Mr. Hardy stated that he hoped he would not be a person who would be upset if this particular program got adopted, because he wouldn't. He would welcome any intervention by anybody and he certainly hoped he would be, if I am here, by the way, vindictive in any way. He stated that he should talk about the potential - the possibility. Does that mean that if the Attorney General were to submit the claims to the Commission, that's the way the will reads, that he would have to sign them perfunctorily, or would he have an obligation to look

into the propriety or the accuracy of that claim? Did he have to look at the contract, for instance, entered into with the consulting firm to make sure that they are within the terms and conditions of the contract before he signs them? He stated that he takes quite a burden on himself when he signs a claim and he is a little concerned about it - he is a little concerned about why they would even want it if they want to be independent from us, totally independent. Why would they want any connection whatsoever with the Public Service Commission? A better approach would be that they be independent and have a statutory right to assess directly and have their own funds and account for it. I am also concerned if they want us to do their accounting for them. I am not sure about that either. It is not clear here. At least we have to make the assessment, we have to collect it, we have to I assume, account for it in some way, and then sign the claims, and probably, I would imagine, be concerned that they don't overexpand any particular category. If the Attorney General sends a claim over, for instance, to sign and that particular claim exceeds category 4 or category 2 or whatever, would I be in an awkward position to deny that claim? He stated that he did not know. He further stated that it seems to him that it is not a very good approach in the long run. So if this type of a program is adopted, he hoped after the three year period, there might be some corrections made to make it totally independent so that there would be no connection between us whatsoever.

Mr. Hardy indicated that there had been some reference to an indication that the agency, the consumer advocate office, by the way, under the initiative petition, would make use of surplus funds in the Public Service Commission. I am not sure where the bill makes any reference to that or gives any authority for that. The bill makes reference to a 1/2 mill to 1 mill assessment on public utilities, and if, under the present law and the way it would have to work, is that there would be no funds available for that agency until the first payment is made after July 1st of the coming year. Now maybe that's enough to get under way, I don't know, but I don't see any authorization in that bill, for instance, to take any surplus funds which have been collected in any year prior to the preceding calendar year, and that's what the bill says. Mill assessment on gross revenues in the preceding calendar year - and contrary to what Mr. Townsend suggests, is if in fact this particular initiative is passed, there will be a requirement to increase mill assessment 1/2 to 1 mill, whatever the budget amount for that agency is, because we have built into our budget a hope that the surplus be reduced substantially. That was a major source of funds for the biennium. It is the surplus itself. Now I wouldn't want to kid Mr. Mello or anybody else. We had it in there last year. They tried to reduce it because in a sense I didn't think it's necessarily embarrassing to have to spend all of the money we are authorized to spend - that's not all bad. But, nevertheless, we have had problems in the past and we were fully staffed, we have also misjudged in estimating how much gross revenue would be produced by the utilities in producing mill assessment to us so we have had more revenues than we thought we'd have and we have had less expense than we thought we'd have in certain years because of problems in those areas, so

we're making an attempt again to reduce those surpluses down to rather minimum levels and in the case of the new agency, I think it is less than \$100,000 by the end of the second year if, in fact, they were to spend exactly as the budget is set out. Of course, that is not realistic to expect to be exactly. I would hope there would always be a little bit left over - you can't spend right up to the last dollar and then decide what you are going to do from then on. So that money is not available if our proposed budget is accepted. It is not laying there - it is included and provided for in our proposed budget, so if in fact this agency is established I think there would have to be an authorized increase in the total level of assessments above 4 mills or they simply would not have money to operate both our agency and the consumer advocate office. I am not sure what is meant by that 1/2 mill floor at all. I am not sure what that means. Maybe that could be clarified before we get through. Does that mean we must assess 1/2 mill for the benefit of that agency or we must merely find the funds and surplus or any other source we can and make the equivalent amount of 1/2 mill available to that agency. I don't think that is really very clear.

The same provision is also in this initiative petition as was in AB 364, that the commission may retain independent counsel when the consumer advocacy office is involved in legal action. In other words if the consumer advocate office were suing the commission on appeal and we then would, if we could not use our deputy attorney general assigned to us, we have authorization then to go outside and hire independent counsel. Well, that's fine in theory, but where do you find them except in the law firms that represent the utilities. If you are going to get somebody that really knows what they are talking about, there just simply are no people available unless they are in the business and who do they represent, the public utilities. So I think you would put a rather substantial burden on us to have to go out to the outside to hire outside counsel. There is information that maybe that wouldn't be a problem because that is not a conflict of interest, and if it's not a conflict of interest, it's no problem.

Under the governor's proposal, by the way, there has been some comment about the provision that the Public Service Commission would not be a party on appeals from its own orders. The North Carolina Commission operates like this. I talked specifically about this to see if that was any problem. They tell me it's working fine, that after all, if it's the utility that's being sued by the agency, they should defend that portion of the order which may have been favorable to them in the eyes of the agency and vice versa. They are the real parties and are in the best position to defend the position taken by the other party. It does put us more in the category similar to a court. A court does not have counsel to represent itself in an appeal from its decisions. The parties have counsel to represent the parties' interests in appeals.

In other words, we would be the ones who receive and analyze material presented to us. Now as far as the bill itself, I did have one other comment. As I see it, one of the major things that influenced me in this direction of the governor's proposal is what is the status of our staff at the present time? We treat them as a party before us in any rate proceeding. The staff counsels over there and other intervenors: the cities or Colorado River Resources whoever, and we look upon them as parties of equal standing of every other party before us. We have a bit of a problem then if they are a party before us, can we also consider them a part of us so that we can make use of them in helping to analyze the case. Well, I have a serious problem with that. No other party has to prove it, you might say, of trying to influence us or to persuade us that their position is the one we have to accept. The staff doesn't either and we don't go that way. We do not use the staff which appears before then to help us analyze the case after it is presented before us. So there would be absolutely no change in my opinion in posture. As a matter of fact there would be some improvement because we have provided for and after talking particularly to North Carolina and Minnesota, that you must have at least a limited professional staff with you on the commission side which is totally independent from the agency. To be left totally bare would be a tremendous problem. I am here to tell you today that's about what we are today, is almost totally bare now. We do analyze our own case, we have administrative assistants and we do on occasion, when we come up with some accounting where we want to know the effect of a proposed disallowance or a proposed acceptance of a particular presentation, I am not an accountant, so I tell my administrative assistant, you go to one of the accountants that wasn't involved in the case and ask them to tell us what the effect of this is so that we can put together a final opinion and order. We are barer now than anyone I could possibly think of, particularly with the open meeting laws applicable to the Public Service Commission. We don't have the privilege of talking with each other as commissioners. I opposed that before and I am certainly not going to get into a political hassle by coming back and trying to get you to exempt it. I would be very happy to but I am not going to get into that, because now we are left pretty much when we have a case presented to us the commissioner to whom the case is assigned is pretty much left to himself and his administrative assistant for technical expertise and I suggest that to have them clearly on the side of the commission, accountants, an engineer, a person who has some background in finance would be a tremendous improvement over our present existing structure right now. And it would avoid this problem of the commissioners dealing directly with those people who are a party before us with so called equal standing. We don't have any walls - but we don't have any floors between us and our commission - we deal with each other on a regular basis. It is almost impossible not to have that daily contact.

This point was raised by the way, and I discovered the same thing in North Carolina. That was the only major criticism I found with the way it was being done there is that they were on the same floor - one on one side and one on the other - but their offices right there - and the executive director of the public staff told me that he felt

they ought to be on a separate floor and I feel that way too. If necessary, if public perception is a problem, maybe even in a different building, but not too far away because of the burden of seeing that they get all the pleadings and all the paperwork which is required by our bill to see that they get what they want within one day and as far as I am concerned it ought to be if in the same building, on a different floor and possibly even in a different building, as long as it is not too far away so that it would not be that regular association and that suggestion that there is too close a relationship.

There has been an indication that if you take the old staff and make a new independent staff out of them that somehow they will act the same way they do now. Well, frankly, I hope so. Our staff, as far as I am concerned today, acts independent of the commission in making the determination as to what issues they are going to look at, what position they are going to take and they aggressively present their position before us, as that one chart Mr. Capone made reference to would indicate. They, in the last three major rate cases, have recommended substantial decreases from the amount the applicant had asked for and in all three cases the commission didn't go as far as the staff wanted us to go, but nevertheless they made a vigorous presentation in order to keep the rates as low as possible. Now the distinction is, however, under the present circumstance, I am sure that some people might feel a little hesitency about being openly critical of the commissioners who hire them and fire them. Well, we don't. We have a possibility. My chief auditor hires the auditors. Occasionally he will consult with me if he wants some advice on whether it should be that way or this way. We have been working toward a tremendous amount of independence over the past several years, and we are at the point now when the Cressap report came out and suggested that this is one of our major problems that there is too much inter-action from the commissioners and staff members directly, he recommended that we establish a position of director or regulatory operations, a strong position, who would direct all of the staff's activities and our only contact would be with that director as far as the professional staff would be. This is just one step further, the step being that the director isn't under our control either. We don't hire him; we have nothing to do with him. The director under the governor's proposal would be appointed by the governor for a fixed term.

I think I have covered most of the major points particularly the differences on the -

Mr. Dini asked Mr. Hardy if he would summarize and we will have Dr. Schwartz come back for some rebuttal testimony.

Mr. Hardy stated with the committee's permission, that he would not get into the details of the bill itself. He stated that they would probably want to do that in the subcommittee. He indicated that he would be glad to answer any questions about it, but he thought that rather than go into it in a lot of detail that he thought it

had been pretty well outlined that the rationale behind the governor's bill is to totally separate the commissions and its support staff with some limited professional help from the bulk of the professional staff who will continue to do basically what they do now and some of the fears of Mr. Capurro and fears I hear and rumbles from the utilities I don't think are going to be there - they are going to be non-responsible, an irresponsible agency. I don't think they are going to be for credibility and for workload purposes, I think they are going to be a responsible agency and of course there is going to be some control over those appointed. I'm not going to take any strong positions on who appoints and all that sort of thing but I will be glad to answer any questions and give you my views if asked.

Mr. Dini stated that what he would like Mr. Hardy to do is to state your analysis of AB 58 in writing to all members of the committee.

Mr. Hardy asked Mr. Dini if he meant on a section by section basis.

Mr. Hardy indicated that he had and would be glad to make it available today, a simplified index to the whole bill so that in one sentence it tells you what that section is about and if it is of any value to the committee he would be glad to leave a copy. Mr. Dini indicated that it would be of value to the committee. Mr. Hardy's index is attached to the minutes of this meeting as EXHIBIT F.

Mr. Mello asked Mr. Hardy if under the present staff makeup, does the support staff seem to work at the pleasure of the commission?

Mr. Hardy: Only those in the unclassified area.

Mr. Mello stated which was most of his expertise.

Mr. Hardy stated that this is the audit staff right now, basically the staff counsel.

Mr. Mello stated that most of those were being separated under this proposed plan from the commission.

Mr. Hardy stated that that was correct.

Mr. Mello asked if Mr. Hardy would say that the consumer advocate is not placed under the Governor's proposal, let's say, that we shouldn't take and divide your support staff away from you now? In other words, I don't think that really that some of your staff should be divided from the Public Service Commission mainly because some people such as yourself are very cautious. The last chairman of the Public Service Commission had 17 positions open almost all the time to find somebody qualified for the job. Wouldn't you recommend that no matter what we do that your support staff be separated from the Public Service Commission?

Mr. Hardy said yes, now to what degree - in other words our own proposal which we put together because of budget constraints we put our own budget in prior to the Governor's proposal coming out and in that one we followed the Cresap recommendations for a strong Director of Regulatory Operations that being the only person answerable to the commission and if you suggest that we even go one step further then you are to the Governor's proposal. That is the concept.

Mr. Mello stated that he knew that numerous times Mr. Hardy had felt that you made this conflict by directing staff to do something.

Mr. Hardy stated that he felt very comfortable about going to a separation of the staff from the commissioners.

Mr. Mello stated as long as Mr. Hardy had sufficient support?

Mr. Hardy indicated that it is a very strong point. We need those accountants and that engineer and that finance person because I think it will put us in a stronger position than we have ever been before. I would hope that you give consideration to not either or but if you feel strongly above the initiative Petition, I would hope that you don't scuttle the good concept that you are talking about.

Mr. Dini asked if any of the other committee members had any further questions for Mr. Hardy.

Mr. Dini then indicated that Dr. Schwartz would give the committee his rebuttal testimony.

Dr. Schwartz testified again. He stated that he would like to beg the committee's indulgence. He stated that he knew that he took a great deal of time and stated that he would keep his answers very brief and cryptic.

Dr. Schwartz stated that there are really just a couple of points that he wanted to cover. One is on a more general level and the others are specific. Dr. Schwartz stated that when Mr. Capone addressed this whole questions of the polling of the 46 states, he then indicated that with regard to Florida and Minnesota, that his information in some way varied from mine. Before I go to that specific, I want to indicate that Mr. Capone actually addressed some of the broader precepts which more or less challenged my contention that the offices of consumer advocacy in other states were very effective, and then he said that you know you should have not allusions about any assurance of savings. In fact you can't assume that there will be savings which really to me connotes a certain preconceived notion irrespective of what happened in other states, don't be too anxious that in fact it will happen here. I think that is an unfortunate orientation.

Secondly he said that under the governor's plan we are going to sever the cord and one of the problems in North Carolina is that they were physically located. It isn't a matter of severing the cord, it's a matter of intellectual orientation of thought processes. Staff members

are staff members. It's interesting that Mr. Hardy talked to the Commission Chairman in North Carolina. He talked to the Executive Director in North Carolina. I talked to the staff in North Carolina. You get a different perception when you talk to an Executive Director and a Chairman whose own vested interests are involved and saying sure things are going great. But when you talk to the staff members you get another perception of testimony they would like to have produced and couldn't introduce and things of that nature, so I am saying you have to determine what direction you are coming from in this matter of consumer advocacy. Geographically moving people from one floor to another it just floors me that that's the solution in terms of effective consumer advocacy. That's not it at all. It's independence, it's effectiveness, it's a staff that has a singular orientation and the truth of the matter is that the governor's plan doesn't offer that option, and it is inconceivable to me that Mr. Hardy says we will be better off if you take 46 people from us. We'll function more effectively as a commission. Well, I can't perceive of that, very honestly. You have less staff available to you and those whole question of whether or not you have an independent staff and it's a problem whether or not you can depend upon that independent staff because they are a party to the proceeding and must take an independent position that in fact, that is a difficulty. There's no difficulty there at all. The members who participate in the particular hearing are sequestered from the commission and all the other staff is available to the commission and that's a wonderful working base because you have more people available to you that way and the thing that has been lost here in the whole discussion is the fact that the staff still performs a balancing function. It is not a consumer advocate office. And just putting a new dress on that office and saying you are now a consumer advocate office does not change the internal content. That same body is there, the same thought processes are there, they are still used to functioning as a balancing organization.

The last general point that I want to make is that there has been no recognition in the discussion by either Mr. Capone or Mr. Heber that whether having both entities is still not serving the people of Nevada more fully and effectively rather than splitting the staff off and having a truncated commission staff with very few experts available to it. That's not adequate. I want to see a strong and effective commission as well as a strong and effective consumer advocate office and I think these proposals effectively do not address the benefits of having both. I think what they do is just nibble around the edges on a fairly detailed level without the conceptual benefits. Now those are my more general remarks.

Specifically, let me tell you what happened in Minnesota and let me tell you about Florida. The key to Mr. Capone's statement was that in Florida and Minnesota there is no regular representation.

That's the pivotal point. What he is saying is that they intervene from time to time and he says that's no big deal. Well the truth of the matter is if you refer to my table 6, for that intermittent intervention the office in Florida, and by the way I did speak with Jack Shraton in Florida, their intervention resulted in savings of \$86,000,000 so if in fact you feel this intervention on the basis of intermittent involvement is of insignificance, I would beg to differ. It is of great significance. Many times you can't involve yourself in every hearing. You choose your hearings. Those where the biggest dollars are involved and Jack Shraton and his office have done a tremendous job in Florida without the regular intervention and that's the catch word which is supposed to I think mislead you.

Let me tell you who I talked to specifically and you can check it. It's Chris Sandberg who is in Commissioner Katie Sasserville's office. What has happened in Minnesota is yes, they did split off the staff and they renamed the commission. It was formerly the Public Service Commission and they renamed it the Public Utilities Commission. The Department of Public Services represents the general interest. It does not represent the consumer interest and Chris Sandberg was very clear on this point. He said I want you to note that our function is to represent the general interest which is what the commission staff does. There is a separate office - the office of consumer services which has six people that represent the consumer interest so the Minnesota situation is not the way you depicted it at all. And that are the specifics as they relate to Florida and Minnesota and I thank you for your indulgence.

The committee asked the following questions of Dr. Schwartz:

Mr. Redelsperger: Dr. Schwartz, how many of these other states that you have surveyed have a consumer advocacy that goes as far as the governor's program? I respectfully disagree with Mr. Townsend who is talking about apples and oranges here. Basically the initiative petition addresses itself to utilities, i.e., electrical, natural gas, water and telephone and I noticed most of your statements in here are from those utilities, so I would like to go back and question how many of these other areas go as far as bringing in areas like railroads, motor vehicles, taxi cab operators, right on down the list to television antenna areas and so forth.

Dr. Schwartz: Well, they don't do very much there. Let me tell you what happened in North Carolina. Although they split the staff off and they formed a public staff, the transportation remained in the commission and the staff remained in the commission with the exception of rates where the public staff intervenes in transportation rates, but all the other functions with regard to taxi cabs and the railroads and all the rest of it, that stayed in the Public Service Commission per se, not in the public staff's function.

Mr. Redelsperger: I was hoping we would get some more testimony from the general public in regard to just how extensive they want this advocacy to be if they would want it to cover these other areas, and if so, where would you recommend that we could get the staff if it doesn't come from the Public Service Commission.

Dr. Schwartz: Well, if you note, my recommendation is you strengthen your commission. You don't weaken it and it's just amazing to me that Mr. Hardy is ready to commit harakiri. It just astounds me that he is ready at this point to collapse a functional, meaningful entity and so under my proposal the transportation and all these complaint functions and enforcement functions would stay with the commission and hopefully be strengthened. The consumer advocacy function would be a separate office whose main purpose and almost exclusive purpose is to protect the consumer against escalating rates, and I think once you begin to get all of this confusion, what happens is that we are beginning to dilute the focus on the function of both, one and two are beginning to get form over substance, and once you go to form over substance, you can be misled.

Mr. Prengaman: I will make this brief. Dr. Schwartz, I agree with you in terms of the two areas that we need; we need an effective voice and also an effective PSC, and as I look at the Governor's proposal here, his 60 member agency, I see really an administrator here, not an intervenor. I mean I see regulatory function. Could you list very quickly the key personnel and a small effective staff? You mentioned an economist.

Dr. Schwartz: Well, the answer to your question is already delineated in one of my tables where the various budgets for the consumer advocate's office are set out. The table on page 21 (a)* specifically gives you a proposal of a bare bones budget, an average budget, and an above-average budget. What you would have is a director under the AG, two legal assistants. If it's the bare bones budget, we propose that you only have one public utility specialist and a legal secretary. I would prefer to have an additional chief economist, chief engineer and a senior auditor. I think that is what you need as a fundamental basic staff within the AG's office, but then I think the other aspect is critical. That is, the ability to contract for outside expertise. In essence, I think is a model for a potentially very effective and meaningful consumer advocate's office.

Mr. DuBois: Mr. Hardy mentioned that it was difficult for a consumer advocate's office to obtain expert testimony that the utilities have.

Dr. Schwartz: I think he said in terms of legal staff and I disagree with Mr. Hardy but I at least think we ought to put the focus where he had it and that is, it is difficult to get outside legal staff to represent the commission if in fact the AG's office could not. The truth of the matter is that Mr. Hardy hasn't been dealing with law firms which represent the broader public interest, and I can give him a number of firms who usually represent the public interest before the federal power commission since that's the area that I am most familiar with who have never represented any utilities. And I can give him law firms and I can give him individuals who have functioned on that score.

Dr. Schwartz indicated that he was not here in Nevada, but can you not get outside legal counsel, can't you go to a Washington law firm? Go to Spiegel and McDermott, they have a dozen people you can rely on, all top flight who got the FPC reversed again and again before the Supreme Court.

Mr. Mello stated that he would like to direct some comments to Mr. Capone. Gentlemen, I said earlier that this was a poor presentation that you presented to this committee, that's the way I felt about it, and it's not a personal thing because I know you and I know your capabilities and I respect you, but I do know how many times you've come walking into a committee and things will be handed to you and you look at them out in the hall and you know a lot about what you are talking about and you really don't. And that's not your fault, but I do feel that the Governor's case is not being presented well. It's been presented on piecemeal. After you have listened to the Townsend group, then you have to run out and do more homework, and it appears that you come back with the answer to what they have said. Personally I feel that much of this should have been answered long before you appeared at this committee.

Mr. Capone stated that he would accept responsibility for that and said that he appreciated Mr. Mello's comments.

Mr. Dini stated that the public testimony for today was concluded. He asked that the public utilities people appear next Wednesday, February 11, 1981 for their presentation. I would like to schedule an additional public meeting again for the utilities. I will expect to receive a message from them.

Mr. Dini indicated that there were some bills that he would like the committee to work on.

BDR 22-243. This came from the Carson River Basin Council of Government study. It extends possible requirements for approval of certain parcel maps.
(AB 104)

Mr. Mello made the motion for committee introduction, which was seconded by Mr. Schofield. The motion carried.

The next BDR for committee introduction was BDR 32-508.

BDR 32-508. This bill came from the same organization.

(AB 103)

Mr. Schofield made the motion for committee introduction, which was seconded by Mr. Mello. The motion carried.

The next BDR for committee introduction was BDR 18-311.

BDR 18-311. Establishes single gift funds for Department of Human Resources.

(AB 102)

Mr. Mello made the motion for committee introduction, which was seconded by Mr. Nicholas. The motion carried.

Mr. Dini indicated that we would be scheduling additional hearings with the public utilities as soon as the committee finds out when they will be ready.

There being no further business to come before the meeting, the meeting adjourned at 11:50 A.M.

Respectfully submitted,



Barbara Gomez
Assembly Attache

INDEX OF EXHIBITS

Meeting of February 4, 1981

- Exhibit A - Testimony of Rosalie Beasley, representing Concerned Citizens.
- Exhibit B - Statement of Qualifications of David S. Schwartz and Statement of David S. Schwartz on behalf of the Coalition for Affordable Energy.
- Exhibit C - Remarks of Randolph Townsend, Chairman of the Coalition for Affordable Energy of Nevada
- Exhibit D - Memorandum from John W. Capone regarding a telephone survey regarding consumer advocate office and memorandum from John W. Capone regarding questions posed by committee on alternative proposals relating to the establishment of a consumer advocate for utility matters.
- Exhibit E - Data on track record for existing consumer complaint division of the PSC supplied by Heber Hardy.
- Exhibit F - Simplified index and analysis of AB 58 supplied by Heber Hardy.

Comments of Rosalie Beasley, representing Concerned Citizens, before the Assembly Government Affairs Committee, February 4, 1981

Mr Chairman and members of the committee, my name is Rosalie Beasley. I live at 25 E. Richards Way in Sparks, Nev., and I come here today to ask your support for the initiative petition.

As you know, the initiative petition was signed by more than 38,000 registered Nevada voters last fall. What you may not be aware of is that my own group, Concerned Citizens, obtained the signatures of more than 20,000 Nevadans last summer. We circulated our petitions as an expression of protest and frustration at the never-ending spiral of utility bills.

It was our intention to present our petition to all major elected officials. The entire Washoe County Commission signed the first page of our petition. It was cordially received by Senators Howard Cannon and Paul Laxalt and Congressman James Santini. It was presented to the ACR 22 Committee on the PSC on August 29, 1980, and is on file in this building.

The only one who threw cold water on us was our governor, Robert List. He stated publicly at an August 6, 1980, press conference that if we took our petition to him, we were "taking it to the wrong guy."

He also said that day that his Public Service Commission was doing a good job, and that consumer advocacy was not needed. He has obviously changed his mind.

I was finally able to get an appointment with the governor. I asked him that if we can't go to our governor for help, where can we go?

Governor List tried very hard to convince me to support his plan for restructuring the Public Service Commission as the best method of relief. That plan is before you today as AB 58.

It is 40 pages long, and would have you accept the idea that the people who are not doing the job now could do the job in the future with a new label on the door. Perhaps the simplest illustration of this fantasy is on the last page of AB 58. Gov. List has stated that we will have a separate office. His aides have stated that existing staffers would have a flying start because they would already know the job.

He has promised us fast and effective representation and relief.

Well, section 98 on page 40 of AB 58 seems to contradict that. It states, and I quote: "In order to effect an orderly and smooth separation of the functions of the department of representation from the public service commission, the public service commission and the utility customer's representative agency are authorized, for a period not to exceed 1 year, to enter into agreements with each other for the cooperative use of existing equipment, facilities, and personnel."

That is not separate representation. That is not fast relief from a Public Service Commission that likes to look for someone else to blame for its failings.

Sen. Howard Cannon wrote a letter to Mr. Heber Hardy, chairman of the PSC. Mr. Hardy's response laid the blame at the doorstep of OPEC. We are not willing to accept tired excuses like that which pass the buck everywhere but where it belongs. Hardy is opposed to advocacy.

I urge you to give us an office of consumer advocacy by voting for the initiative petition. We have been paying for it for years in the form of the mill assessment. We have had taxation without representation, and our utility bills really show it.

We don't need the same old faces who haven't been doing the job for years. We don't need political solutions that don't address the problem.

On behalf of 20,000 concerned citizens and the hundreds of thousands just like them in Nevada, I ask you to vote for the initiative petition, and vote for it today.

Thank you.

HOWARD W. CANNON
NEVADA

COMMITTEES:
COMMERCE, SCIENCE, AND TRANSPORTATION.
CHAIRMAN
ARMED SERVICES
RULES AND ADMINISTRATION

United States Senate

WASHINGTON, D.C. 20510

December 29, 1980

Mrs. Rosalie Beasley
25 E. Richards Way
Sparks, Nevada 89431

Dear Mrs. Beasley:

I have received the enclosed letter from Heber P. Hardy, Chairman of the Nevada Public Service Commission in response to my inquiry on behalf of yourself and thousands of other Nevadans concerned over utility rate increases. Chairman Hardy's comments will, no doubt, be of great interest to you.

For my own part, you have already received my firm commitment to continue doing all that I can to work for your interests on the federal level. My record as an inflation fighter is well established, in response to the suggestion made by Chairman Hardy that the Congress work to eliminate needless federal expenditures in the struggle against inflation.

With best wishes for the new year, I am

Sincerely,


HOWARD W. CANNON

HWC:be:ja
Enclosure



HEBER P. HARDY, Chairman
JANET S. MAC DONALD, Commissioner
ROGER C. BOS, Commissioner
PATRICK V. FAGAN, Deputy Commissioner
WM. W. PROKSCH, Jr., Secretary

PUBLIC SERVICE COMMISSION
STATE OF NEVADA

November 26, 1980

KINKEAD BUILDING
505 EAST KING STREET
CARSON CITY, NEVADA 89710

Address all communications to the Commission
Telephone (702) 885-4180

The Honorable Howard W. Cannon
United States Senator from Nevada
United States Senate
Washington, D. C. 20510

Howard
Dear Senator Cannon:

This is in response to your letter dated November 19, 1980 in which you share with me the concerns of Mrs. Rosalie Beasley regarding increasing utility rates in northern Nevada.

As you have recognized, the days of cheap energy are over and I assure you that double-digit inflation in general and dramatically increased costs of oil, natural gas, coal and money specifically are the economic reasons that utility rates have increased so much over the past seven or eight years.

The Public Service Commission of Nevada has a legal and moral duty to allow public utilities to recover their legitimate and prudently incurred operating costs and an opportunity to earn a fair and reasonable return on the investment of their stockholders. Contrary to the allegations of many people the return on common equity for Sierra Pacific Power Company's stockholders has not been excessive and is not the primary cause of high rates. Evidence presented in Sierra's most recent rate case shows that the return on common equity has been 12.68%, 11.81%, 12.9% and 11.79% for the years 1979, 1978, 1977 and 1976 respectively during a period of time which the Public Service Commission had authorized a return of 14%.

Growth in northern Nevada requires that public utilities plan many years in advance to build generating and transmission facilities which cost more than four times the cost of only ten years ago. In order to attract the large amount of capital necessary to build such facilities a utility must be financially healthy. Financial rating agencies have rated Sierra Pacific's bonds as A, which is two steps below the top rating and one step above the rating at which bonds can be sold at all in today's money markets. The lower the rating the higher the interest rates associated with any borrowing. Common stock of Sierra Pacific has sold below book value in every offering during the past five years. By all measures or standards it cannot be demonstrated that Sierra Pacific is earning excess profits or that its profits is the cause of higher than necessary rates.

I am also very concerned about high utility rates and as a Commission we are doing everything within our power to set rates as low as possible.

The Honorable Howard W. Cannon
November 26, 1980
Page 2

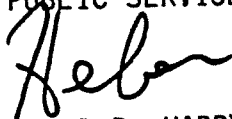
I urge you and your colleagues to do everything you can to help curb inflation by cutting out all unnecessary governmental expenditures and by reducing federally mandated requirements on public utilities and state regulatory agencies which create additional costs which ultimately must be paid by ratepayers.

There are no easy answers. The creation of a consumer advocate office cannot reduce utility operating costs and may only increase costs to rate-payers. The staff of the Public Service Commission has in the past and will continue in the future to thoroughly analyze rate filings and recommend adjustments on issues which they do not agree with the utility. The Commission will continue to balance the interests of all parties and hopefully set rates which are as low as possible keeping in mind the importance and necessity of treating investors fairly in order to attract capital to build needed facilities to meet the future requirements of the people of this state.

Best wishes for a happy holiday season and a rewarding new year.

Sincerely,

PUBLIC SERVICE COMMISSION OF NEVADA



HEBER P. HARDY
Chairman

HPH:NI

Statement of Qualifications

DAVID S. SCHWARTZ
7317 Broxburn Court
Bethesda, MD 20034
(301) 229-5539

EDUCATION:

B.S. University of Maryland, 1944
Ph.D. University of Wisconsin, 1950

PRINCIPAL POSITIONS:

Public Interest Consultant/Regulatory and
Energy Economics

9/80 to 11/80

Consultant to the Colorado Office of Consumer Services and the Denver Legal Aid Society in a case concerning the rate base treatment of the Fort St. Vrain nuclear plant of the Public Service Company of Colorado before the Colorado Commission.

11/80 to present

Consultant to the Division of Public Utilities of the State of Utah, Department of Business Regulation in case number 76-057-14 before the Utah Public Service Commission. This proceeding involves the so-called Wexpro case, and is on remand from the Utah Supreme Court. It concerns consumer contributions and property rights to oil and gas revenue.

1/80 to Present

Consultant to the District of Columbia Public Service Commission with respect to a Petition of Potomac Electric Power Company for a Rulemaking and/or Declaratory Order with respect to a modification of the PJM Interconnection Agreement (Pooling Agreement) in Formal Case No. 733.

1/80 to Present

Consultant to the Office of the Attorney General, State of New Mexico, to assist in a Rulemaking before the New Mexico Public Service Commission in the Matter of the Adoption of a Standard Purchased Gas Adjustment for Natural Gas Utilities under Commission Jurisdiction, Case No. 1543.

4/80 to Present

Consultant to the Argonne National Laboratory providing assistance in the formulation of a program in Community Energy Systems Planning.

5/80 to 7/80

Consultant to the National Consumer Law Center representing the Poverty Rights Action Center concerning the Application No. 59537 by Pacific Gas and Electric Company to implement a Conservation Financing Program.

1/80 to 3/80

Consultant to TURN - Toward Utility Rate Normalization with respect to Application Nos. 59249 and 59406 filed by the Pacific Gas and Electric Company for authority to revise its rates and change the rate design under the Gas Adjustment clause.

8/79 to 11/79

Consultant to the Office of Consumer Affairs, Department of Energy. Prepared a report entitled, "An Evaluation of the Adequacy and Reliability of

the Petroleum Information Collected and Disseminated by the Department of Energy".

5/79. to 10/79

Consultant to the National Consumer Law Center to assist in two proposed rulemakings at the Federal Energy Regulatory Commission relating to the incremental pricing provisions of the Natural Gas Policy Act of 1978 concerning a surcharge on industrial users to protect residential and other high priority users from increased gas acquisition costs under the Act.

1/79 to 9/79

Consultant to the Center for Rural Affairs (Walthill, Nebraska) to prepare a study funded by the Community Services Administration to examine the institutional factors influencing the cost of electric power in Federal Region VII (Iowa, Nebraska, Missouri and Kansas).

1/79 to 3/79

Witness for the staff of the Colorado Public Utilities Commission in the Application (No. 31011) by the Public Service Company of Colorado and other distribution companies for a surcharge on consumer bills to fund the Gas Research Institute.

'78 to 12/78

1. Prepared a report for the New England Regulatory Coordination Project entitled "An Examination of the Implications for Regulation of the New England Power Pool, Joint Venture and Interconnection and Coordination Arrangements".
2. Prepared two reports for the division of Regulatory Intervention, Economic Regulatory Administration, Department of Energy.
 - A. "An Analysis of the Major Proceedings, Rulemakings and Other Matters before the Federal Energy Regulatory Commission."
 - B. "Selected Major Proceedings, Rulemaking, and Other Matters before the Federal Energy Regulatory Commission that Merit Consideration for Intervention."
3. Prepared a report for the Bureau of Competition, Federal Trade Commission, entitled "Regulation and Competition in the Electric Utility Industry."
4. Prepared a report for the Chairman's Office, Federal Trade Commission, entitled "A Review of Economic Structure and Behavior in the Natural Gas Production Industry by Joseph P. Mulholland."

●/77 to 2/78 Adjunct Professor in Economics, Michigan State University Public Utilities Project, National Science Foundation RANN Program Grant No. 74-22664.*

10/76 to 2/77 Senior economist, Senate Antitrust and Monopoly Subcommittee, U.S. Senate.

6/76 to 9/76 Economic consultant to the UAW, AFL-CIO Industrial Union Department, Steelworkers Union, Energy Policy Task Force of the Consumers Federation of America, and American Public Gas Association.

5/75 to 5/76 Adjunct Professor in Economics, Michigan State University Public Utilities Project, National Science Foundation RANN Program Grant No. 74-22664.*

6/67 to 5/75 Assistant Chief, Office of Economics, Federal Power Commission

6/65 to 6/67 Chief, Division of Economic Studies, Office of Economics, Federal Power Commission

11/58 to 6/65 Senior Economist, Common Carrier Bureau, Federal Communications Commission

●/53 to 10/56 Research Associate, Finance and Business, University of Maryland

4/50 to 12/52 Assistant Professor, Overseas Program, University of Maryland

9/47 to 6/50 Instructor, University of Wisconsin

PUBLICATIONS:

1. "Public Policy Considerations in the Pricing of New Gas Supplies", Issues in Public Utility Regulation, Michigan State University, East Lansing, 1979.
2. "Comment: Lifeline Rates-the California Experience", Assessing New Pricing Concepts in Public Utilities, 1978 MSU Public Utilities Papers, East Lansing, Michigan.
3. "Market Structure and Regulatory Reform in the Electric Utility Industry", Proceedings of Workshop on the Evolving Structure of the Electric Utility Industry, Sponsored by the Division of Policy Analysis, National Science Foundation, 1977.

●TITLE: "Competition and Regulatory Reform in the Energy Utilities."

4. "Pricing and Competition in the Regulated Energy Industries", New Dimensions in Public Utility Pricing, Michigan State University, East Lansing, 1976.
5. "The Deregulation of Industry: How Far Should We Go? A Built-in Bias". Indiana Law Journal, Spring, 1976.
6. "Recent Developments in the Natural Gas Industry - A new Perspective". Public Utility Regulation - Chance and Scope. Edited by Werner Sichel and Thomas G. Gies, Lexington, Massachusetts, Lexington Books, 1975.
7. Comments on "Market Structure and Interfirm Integration". Journal of Economic Issues, Vol. IX No. 2, June 1975.
8. "The Impact of Technological Change on Pricing in the Energy Industries and the Regulatory Response", MSU Public Utility Studies, in Essays on Public Utility Pricing and Regulation, edited by Harry M. Trebing, Michigan State University, 1971.
9. "Comment: Selected Structure and Allocation Problems in the Regulated Industries", MSU Public Utilities Papers, 1969.
10. "A Reply by David S. Schwartz to Kafoglis and Keig's Article 'New Policies of the Federal Power Commission'", Land Economics, August, 1970 issue.

EXPERT TESTIMONY

Before Congressional Committees -

1. Senate Antitrust and Monopoly Subcommittee of the Senate Judiciary Committee, June 10, 1970, "The Impact of Technology on the Industrial Organization of the Electric Power Industry".
2. Senate Antitrust and Monopoly Subcommittee of the Senate Judiciary Committee, June 27, 1973, "The Nature and Extent of the Gas Producing Industry's Organization as it Relates to the Question of Market Structure and Workable Competition."
3. Senate Commerce Committee, October 11, 1973, "A Review of Various Legislative Proposals Before the Senate Concerning Deregulation of Wellhead Prices of Natural Gas and Alternatives with Respect to Improved Regulation.
4. Special Subcommittee on Integrated Oil Companies of the Senate Committee on Interior and Insular Affairs, December 13, 1973, "Competition in the Petroleum Industry and the Energy Crisis".
5. Subcommittee on Activities of Regulatory Agencies of the House Select Committee on Small Business, January 17, 1974, "Reserve Reporting, Supply Elicitation, and Offshore Leasing Policy".

6. Subcommittee on Activities of Regulatory Agencies of the House Select Committee on Small Business, March 26, 1974, "Market Structure in the Petroleum Industry, the Effects on Small Business, and the Need for Improvements in Leasing Policy for Supply Elicitation."
7. Subcommittee on Energy and Power of the House Interstate and Foreign Commerce Committee, March 21, 1975, testimony related to, "The Market Structure of the Gas Producing Industry and the Implications for Deregulation of Wellhead Prices".
8. Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce, June 26, 1975, testimony related to, "The Differences Between the Bureau of Economics and the Bureau of Competition of the Federal Trade Commission Concerning the Validity and Reliability of American Gas Association Proved Reserve Estimates".
9. Senate Committee on Government Operations, Hearings, Pursuant to S. Res. 71-To Authorize a Study of the Purpose and Current Effectiveness of Certain Federal Agencies, testimony related to, "A General Approach to Regulatory Reform and the Role of Competition in the Energy Utilities", December 19, 1975.
10. Subcommittee on Energy and Power of the House Interstate and Foreign Commerce Committee, January 30, 1976, testified on, "The Issue of Regulation or Deregulation of Natural Gas Prices as it Relates to H.R. 11265 (Congressman Kruger) and H.R. 9159 (Congressman Fraser).
11. Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce, U.S. House of Representatives, August 27, 1976, "Review of the New Federal Power Commission Nationwide Rate - Opinion No. 770."
12. Subcommittee on Energy and Power of the House Interstate and Foreign Commerce Committee, May 17, 1977, testimony related to, "Part D - Natural Gas, H. R. 6321 - National Energy Act."
13. House Committee on Ways and Means, June 1, 1977, testified on, "The National Energy Plan - H.R. 6831 and the Question of Horizontal Divestiture in the Energy Sector".

Before the Securities and Exchange Commission

Expert Economic Witness for the Securities and Exchange Commission in the Matter of American Electric Power Company, Inc., SEC Administrative Proceeding Filing No. 3-1476 (Proposed Acquisition by AEP of the Columbus & Southern Ohio Electric Company).

Before the New York Task Force on Natural Gas of the New York State Assembly

Testified before the special Task Force on "Natural Gas Supply, Curtailments, Pricing, and other Factors Impacting on New York State Gas Supply", April 18, 1977.

Professional Memberhsips:

American Economic Association
Association for Evolutionary Economics
Public Utilities and Transportation Group, American Economics
Association
Phi Kappa Phi Honorary Society

Other Activities:

Chairman, Nominating Committee, Association of Evolutionary
Economics, 1973 and 1974
Member, Editorial Board, Journal of Economic Issues, 1973-1975.

Participant in American Gas Association Annual Rate Fundamentals
Course, Madison, Wisconsin.

Participant in Annual Regulatory Studies Program, National
Association of Regulatory Utility Commissioners.

Participant in various Conferences of the Institute of Public
Utilities.

Conducted a Seminar on Electric and Gas Regulation for the Montana
Public Utilities Commission, July 1975.

Participant in a Conference on Energy and Regulatory Concerns before
the Minnesota Public Service Department, September 1975.

Appeared before the Rhode Island Public Utilities Commission,
October 1975, testified on Regulatory Policy Concerning Pricing
of Natural Gas and Supplemental Fuels.

Testified before the California State Assembly Subcommittee on
Energy, the testimony related to the "Alternative Gas Supplies
for California and the Role of LNG", July, 1976.

Member of the Investigating Team for the Secretary of the
Interior participating in the preparation of a Report on the
"Preliminary Investigation Production Capability and Production
Levels at Selected Natural Gas Producing Fields in the Gulf of
Mexico Outer Continental Shelf", February 1977.

Participated as a Speaker, Panelist, or Discussant in Various
Professional Conferences, on Radio and Television Concerning
Energy and Regulatory Economics.

Participated in 1978 Rate Symposium on Problems of Regulated
Industries, University of Missouri-Columbia, February 6, 1978,
Kansas City, Missouri.

Participant in Tech 3, The Third Technical Education Conference
for Public Utility Commissioners, The Great Lakes Conference of

Public Utility Commissioners, February 20, 1978, Washington, D.C.

Participated in a Conference on "The Future of the Consumer in the United States", sponsored by The Center for Consumer Affairs - University of Wisconsin - Milwaukee Extension and Consumer Research Foundation, Woodstock, Illinois, June 2-4, 1978.

Testified before the Nebraska Interim Legislative Committee on Utility Rate Reform on August 21, 1978, sponsored by the Center for Rural Affairs.

Participated in the Forty-Eighth Annual Conference of the Southern Economic Association, statement on "The Relevance of Competition and Market Structure for the Regulated Energy Utilities", November 10, 1978, Washington, D.C.

Presented a paper to the National Association of Regulatory Utility Commissioners at the Ninetieth Annual Convention, entitled "Competition Within a Regulatory Framework", November 16, 1978, Las Vegas, Nevada.

Presented a paper at the Tenth Annual Conference of the Institute of Public Utilities, entitled "Public Policy Considerations in Pricing New Gas Supplies", December 13, 1978, Williamsburg, Virginia.

Elected to the Board of Directors of the Association for Evolutionary Economics, December, 1979.

Presented a paper at the American Economic Association meetings entitled, "Implications of Deregulation - Natural Gas Production", December 29, 1979, Atlanta, Georgia.

Faculty Member, American Gas Association Executive Education Program for the Gas Industry, University of Colorado, Boulder, June, 1980.

VITA

NAME Rodney E. Stevenson

ADDRESS Graduate School of Business
University of Wisconsin-Madison
1155 Observatory Drive
Madison, Wisconsin 53706

TELEPHONE (608) 263-4992 (office)
(608) 233-6449 (home)

EDUCATION

B. A. Economics	1968	Monmouth College (Illinois)
Ph.D. Economics	1973	Michigan State University

MAJOR FIELDS Regulatory Economics and Industrial Organization
Economic Theory
Econometrics and Statistics

PROFESSIONAL
EMPLOYMENT

1976 to present Assistant Professor, Graduate School of Business
University of Wisconsin-Madison

1980 to present Assistant Professor, Institute for Environmental Studies
Assistant Professor, Institute for Research on Poverty
University of Wisconsin-Madison

1975 to 1976 Adjunct Assistant Professor, Department of Economics
Michigan State University

1972 to 1976 Instructor, University College
University of Maryland

1973 to 1975 Economist, Office of Economics
Federal Power Commission

1971 to 1973 Economist, Office of the Chief Economist
U. S. Postal Rate Commission

1968 to 1969 Teaching Assistant, Department of Economics
Michigan State University

RESEARCH AND PUBLICATIONS

DISCERTATION

Postal Pricing Problems and Production Functions,
Michigan State University, 1973.

BOOKS

Productivity Measurement in Regulated Industries, edited
with Thomas Cowing, Academic Press, (forthcoming 1980).

ARTICLES AND
PAPERS

"The Role of Quantitative Economics in the Regulatory
Process," Papers and Proceedings of the Regulatory
Information Systems Conference, 1972.

"The Historical Development of Industrial Organization"
(with Almarin Phillips), History of Political Economy,
Fall 1974.

"The Pricing of Postal Service," New Dimensions in Public
Pricing, H. M. Trebing, ed., MSU Press, 1976.

"Productivity in the Private Electric Utility Industry:
1951-1973," Public Utility Productivity: Management and
Measurement, W. L. Balk and J. M. Shrafritz, ed., 1976.

"Productivity Measurement in Regulated Industries,"
N. E. AIDS Proceedings, 1978.

"Social Responsibility and Public Utility Regulations,"
Proceedings of the Department of Energy/White House
Office of Consumer Affairs Conference, 1979.

"Energy Regulation and Federalist Solution,"
Issues in Public Utility Regulation, H. M. Trebing, ed.,
MSU Press, 1979.

"Measuring Technological Bias," American Economic
Review, March 1980.

"Likelihood Functions for Generalized Stochastic Frontier
Estimation." Journal of Econometrics, May, 1980.

"Productivity Measurement and Public Utility Regulation,"
Public Utilities Fortnightly, July, 1980 (with T. Cowing).

"Measuring the Potential Impacts from Lifeline Pricing
of Electricity and Natural Gas Services," (with D. Ray)
Current Issues and Problems in Public Utility Regulation,
M. Crew, ed., Lexington Books, (forthcoming 1980).

"Comparative Measure of Productivity in the Regulated Sector:
Examples from the Electric Utility Industry" (with T.
Cowing and J. Small), Productivity Measurement in
Regulated Industries, T. Cowing and R. Stevenson, ed.,
Academic Press, (forthcoming 1980).

"Establishing Objectives for Residential Load Research,"
Proceedings of the U.S. Department of Energy Electric
Rate Demonstration Conference, (forthcoming 1980).

- BOOK REVIEWS: "Public Utility Economics and The Control of Natural Monopolies," Land Economics, February 1981 (forthcoming).
- PUBLISHED COMMENTS: "Assessing New Price Structures and Policies: Comments," Assessing New Pricing Concepts in Public Utilities, H. M. Trebing, ed., MSU Press, 1978.
- "New Developments in Gas Pricing: Comments," Assessing New Price Concepts in Public Utilities, H. M. Trebing, ed., MSU Press, 1978.
- "Evaluating New Pricing Practices in Electricity: Comments," Issues in Public Regulation, H. M. Trebing MSU Press, 1979.
- TECHNICAL REPORTS: "Productivity and Public Utility Regulation," Economic Paper #5, National Association of Public Utility Commissioners, 1974.
- Survey of Selected Methods to Improve Gas Utility Transmission and Distribution Efficiency, (with R. Brandi, R. Hostetler, K. Fisher, and B. Smith), Report to the Department of Energy, 1
- Direct Load Management, Report to The Wisconsin Environmental Decade and The Wisconsin State Energy Office, 1979.
- Lifeline Rates: A Study of the Possibility of Lifeline Rates for Gas and Electric Utility Service in New Mexico, (with L. Adcock, D. Miller, J. Myers, D. Ray, and L. Williams) Report to the New Mexico Public Service Commission and the New Mexico State Legislature, 1980.
- Industrial Energy Use in Wisconsin: Consumption Patterns and Conservation Measures, (with W. Foell, A. Tenwald and M. Lindsay), Report to the Wisconsin State Energy Office, Institute of Environmental Studies Report, 1980.
- PAPERS UNDER REVIEW "X-Inefficiency and Interfirm Rivalry: Evidence from the Electric Utility Industry."
- "Allocative Efficiency and Automatic Adjustment Clauses" A Theoretical Analysis," (with T. Cowing).
- "Direct Load Management for Electric Utilities," (with R. Timm).
- "Modeling the Determinates of Inefficiency within a Frontier Estimation Framework," (with T. Cowing and D. Reifschneider).

PROFESSIONAL
PRESENTATIONS
(unpublished)

- "A Study of Nature of Scale Economies in the United States Postal Service," U. S. Postal Rate Commission Seminar on Economies of Scale, 1973.
- "Underpricing and Its Impact on the Demand for Electricity: Comments," Eastern Economic Association, 1974.
- "Productivity, Performance and Revenue Requirements," National Association of Regulatory Utility Commissions Annual Study Program, 1974 (revised presentations given yearly 1975 to present).
- "Research Relating to Small Energy Utilities," National Planning Association, 1975.
- "Choice of Techniques, Capital Specificity, and Argumented Technology: Comments," Atlantic Economic Association, 1975.
- "The Potential for Competition In the Electric Utility Industry," Eastern Economic Association, 1976.
- "Empirical Studies of Utility Regulation: Comments," Federal Communication Future Planning Conference, 1976.
- "Automatic Adjustment Clauses" "Rate Design Economics," Natural Gas Regulation," Public Service Commission of Wisconsin Training Program, 1977.
- "Future Regulatory Issues for Electric Utilities," Wisconsin Power and Light Executive Education Seminar, 1977.
- "Energy Pricing Policy," Graduate School of Business (University of Wisconsin-Madison) Update Program, 1977.
- "Curtailement Policies for Natural Gas," Energy Policy Symposium, University of Wisconsin-Extension, 1977.
- "Marginal Cost Pricing of Natural Gas: Comments," Rutgers University Symposium on Public Utility Pricing, 1978.
- "System Planning Policies," American Gas Association Edison Electric Institute Systems Planning Training Program, 1978.
- "Economics of Rate Design," American Gas Association Rate Fundamentals Training Program, 1978 (revised presentation given yearly 1979 to present)
- "Energy Policy and Economic Development in Mexico: Comments," Workshop on Planning and Management of Energy/ Environment Systems in Mexico, Instituto Estudios Technologico yde de Monterrey, 1979.

"Rate Impacts of Lifeline Pricing," Public Service Commission of Wisconsin, 1980.

"National Coal Policy Project: Comments," Wisconsin Coal Policy Program, Wisconsin Power and Light Company, and Public Service Commission of Wisconsin, 1980.

"Public Utility Responsibilities in the Eighties," Wisconsin Power and Light Executive Education Seminar, 1980.

"Risk and Responsibility in the Utilities: Comments," American Economic Association--Transportation and Public Utilities Group, 1980.

"Modeling the Determinates of Inefficiency in a Frontier Estimation Framework," Fourth World Congress of the Econometric Society, (juried contribution), 1980.

"Rate Making Standards Under the Public Utility Regulatory Reform Act," U.S. Department of Energy Training Program, 1980.

EXPERT TESTIMONY

United States Congress
 United States Federal Power Commission
 United States Postal Rate Commission
 Kansas Corporation Commission
 New Mexico Public Service Commission
 New York Public Service Commission
 Public Service Commission of Wisconsin
 Utah Public Service Commission

EXPERT CONSULTANT

United States Congress (Office of Technology Assessment)
 United States Department of Energy
 Illinois Commerce Commission
 Kansas Corporation Commission
 New Mexico Public Service Commission
 New York Consumer Protection Board
 Public Service Commission of Wisconsin
 Tecknekron, Inc.
 Wisconsin Office of State Planning and Energy
 Wisconsin Department of Justice
 Wisconsin Environmental Decade
 Wisconsin Public Service Company
 Utah Committee on Consumer Services

PROFESSIONAL SERVICES

(reviewer)

National Science Foundation
 American Economic Review
 Land Economics
 Journal of Economic Issues

RESEARCH GRANTS

National Science Foundation
 Michigan State University Institute of Public Utilities
 United States Department of Energy
 University of Wisconsin-Madison, Graduate
 School Research Committee
 Wisconsin Department of Administration

PROFESSIONAL
ASSOCIATIONS

American Economic Association
 Association of Evolutionary Economics
 The Econometric Society
 International Association of Energy Economists
 Transportation and Public Utilities Group (AEA)

HONORS AND
FELLOWSHIPS

Omicron Delta Epsilon	-Economic Honorary
Phi Gamma Mu	-Social Science Honorary
Phi Kappa Delta	-Forensic Honorary
Sigma Tau Delta	-English Honorary
Blue Key	-Academic Honorary
Federal Power Commission	-Outstanding Performance Award, 1975

NDEA Fellowship: 1969-1971

Michigan State University Institute for International
Business and Economic Development Fellowship, Summer 1969

Monmouth College Scholarship: 1964-1968

PERSONAL DATA

Date of Birth: July 31, 1946
Place of Birth: Monmouth, Illinois

RESUME

LEIGH ANN RIDDICK
3319 Harvey St. Apt. E
Madison, Wisconsin 53705
UW Office Phone: (608) 262-1980
Home Phone: (608) 231-1855

EDUCATION

College (Undergraduate): Bachelor of Arts in Business and Economics, Hendrix College, Conway, Arkansas, May 1975; Major: Economics.

College (Graduate): Master of Arts, University of Arkansas, Fayetteville, Arkansas, May 1977; Major: Economics.

College (Graduate): Currently enrolled in Ph.D. program in Economics, University of Wisconsin, Madison, Wisconsin.

CONSULTING EXPERIENCE

Office of the Attorney General, State of Arkansas, Division of Energy Conservation and Rate Advocacy--Rate design witness; time of use rates for major electric utility.

Office of the Attorney General, State of Utah, Committee of Consumer Services--Cost of service witness; marginal cost of service study for major gas utility.

City of Denton, Texas-- Subcontract with Management and Research Consultants, Inc. (MARC) to provide PURPA compliance manual, cost of service, and design rates for the municipal electric company.

Wisconsin Environmental Decade--Rate design witness; seasonal differential for large private electric utility case.

Wisconsin Environmental Decade--Rate design witness; load management tariffs and credits.

Office of the Attorney General, State of Arkansas, Division of Energy Conservation and Rate Advocacy--Electric rates; administrative review of three pending cases for major private electric utilities.

Office of the Attorney General, State of Arkansas, Division of Energy Conservation and Rate Advocacy--Technical review of marginal cost pricing literature and the application of the theories for staff use in various proceedings.

PRIOR MEMBERSHIPS AND HONORS

National Merit Scholar
Omicron Delta Epsilon (Honorary Economics Society)
NARUC Staff Subcommittee on Economics
NARUC Staff Subcommittee on Cost Allocation
NARUC Staff Subcommittee on Computers

PAPERS AND PUBLICATIONS

"Identification of the Seasonal Period of Energy Sales with Box-Jenkins Models", proceedings of NRRI/NARUC Biennial Regulatory Information Conference, October, 1978. Joint author, John C. Pickett.

"An Alternative Regression Technique for Analyzing Load Management: An Introduction to Switching Regressions", proceedings of NRRI/NARUC Biennial Regulatory Information Conference, September, 1980. Joint author, John C. Pickett.

PRIOR EMPLOYMENT

January 1979
to January 1980

Rate Analyst IV, Wisconsin Public Service Commission, Hill Farms State Office Building, 4802 Sheboygan Avenue, Madison, Wisconsin, 53702. Immediate supervisor: Terrance B. Niccolai.

Responsibilities: Full performance level professional public utility rate analysis work. Required the performance of highly complex and advanced cost of service studies and economic analysis in the design of rates for the largest formal public utility rate proceedings. Responded to complex rate design inquiries and complaints. Independently provided specialized cost studies, economic studies, engineering studies and cost related rate studies. Assisted in direction of work and training of less experienced staff members.

March 1978
to January 1979

Chief Rate Analyst, Arkansas Public Service Commission, Justice Building, State Capitol, Little Rock, Arkansas, 72201. Immediate supervisor: John S. Choate, Administrative Director.

Responsibilities: Initiated and supervised activities of Rates Section personnel in investigative, research, and rate case work. Coordinated Rates Section activity with other Commission sections and agencies. Administered federal and state programs. Interviewed job applicants and trained new employees. Provided technical assistance to the Commission and represented them at public meetings. Reviewed PURPA. Primary

responsibility within Commission for implementation of alternative methodologies in costing and pricing. Testified in major rate cases. Worked closely with Finance and Research Section of Commission Staff on independent research projects. Reviewed all tariffs. Major contact with Commission Staff for utility personnel.

July 1977
to March 1978

Rate Analyst III, Arkansas Public Service Commission, Justice Building, State Capitol, Little Rock, Arkansas, 72201. Immediate supervisor: Gary L. Goble, Chief Rate Analyst.

Responsibilities: Assisted Section Chief with administration of section and supervision of Rate Analysts Is and IIs. Special projects coordinator. Primary responsibility for electric utilities. Reviewed all submitted tariffs. Assessed and testified to the appropriateness of cost of service studies and rates submitted by utilities. Conducted alternative studies and designed rates when necessary. Drafted subsequent orders and briefs. Assisted Finance and Research Section of Commission staff with various projects.

September 1976
to July 1977

Rate Analyst II, Arkansas Public Service Commission, Justice Building, State Capitol, Little Rock, Arkansas, 72201. Immediate supervisor: Gary L. Goble, Chief Rate Analyst.

Assessed and testified to the appropriateness of cost of service studies and rates submitted by utilities. Conducted alternative studies and designed rates when necessary. Primary responsibility for computer operations.

May 1976
to July 1976

Research Analyst, Economic Analysis Associates, Fayetteville, Arkansas, 72701. Immediate supervisor: Donald Market, partner.

Responsibilities: Acquired and analyzed data on banking industry in northwestern Arkansas. Aided in preparation of testimony for presentation before State Banking Committee.

August 1975
to May 1976

Graduate Research Assistant, Department of Economics, University of Arkansas, Fayetteville, Arkansas. Immediate supervisors: Donald Market, Department Chairman; Charles R. Britton, Associate Professor.

Responsibilities: Analyzed U.S. Census data for migration study of labor market. Assisted in computer analysis of data acquired. Graded papers.

STATEMENT OF DAVID S. SCHWARTZ
ON BEHALF OF THE COALITION FOR AFFORDABLE ENERGY
BEFORE THE ASSEMBLY GOVERNMENT AFFAIRS COMMITTEE

Initially, I want to thank the Committee for the opportunity to address the important questions of the need and appropriate organizational structure for consumer representation before the Nevada Public Service Commission. My appearance on behalf of the Coalition is to present my views, as well as the results of the research and analysis conducted by myself, Dr. Rodney Stevenson, and Ms. Leigh Riddick. Dr. Stevenson is on the faculty of the University of Wisconsin with responsibility for the public utility program in the School of Business. Ms. Riddick is a consultant in public utility economics, and has had major responsibility for rate and cost of service work for the Arkansas and Wisconsin Public Service Commissions. The resume of their work experience and educational background, as well as my own, are appended to this statement. Additional research assistance was provided by Dr. William Gormley of the Political Science Department at the University of Wisconsin. Before turning to the issues pertaining to consumer advocacy, it may be of assistance to point out that I have served as a staff person at the Federal Power Commission, and as an expert witness for the District of Columbia Public Service Commission, the Colorado Public Utilities Commission, and Rhode Island Public Utilities Commission. In addition, I have served or am engaged as an expert witness for a number of consumer offices such as the Colorado Office of Consumer Affairs, and the New Mexico Office of the Attorney General. In other words, I have functioned as a utility staff person, as well as a consumer representative, and there is a marked difference in fulfilling each role.

Before examining this difference, it is important to stress that the need for distinct consumer representation is more important today than at any time in the past. This is illustrated by the Wall Street Journal article of August 28, 1980 (Attachment A) indicating that electric rate increases in the first half of 1980, as reported by the Edison Electric Institute (the electric utility trade association), totaled \$5.75 billion. In contrast, rate increases for all of 1979 were \$5.74 billion. For all of 1978, they were \$4.49 billion. In other words, electric rate increases in the first six months of 1980 were at twice the rate of 1979.

The electric rate increases in the second quarter (April-June) 1980 were triple the rate in the first quarter. Finally, at the end of June, 1980, there were \$7 billion in rate increases on file nationwide, a substantial increase over the \$4.87 billion outstanding at the end of 1979.

Nevada, of course, is no exception to ever-escalating utility rates. For example, electric and gas rates increased from \$29.6 million in 1978 to \$72.6 million in 1979, or more than 2-1/2 times the increases requested in 1978.

In addition, average rates for two of Nevada's major electric utilities increased significantly over the four-year period 1976-1979 (Attachment B). Average Kwh (kilowatt hour) charges for retail customers of Nevada Power Company have increased from 2.48¢/Kwh to 3.21¢/Kwh, or almost 30 percent from 1976 to 1979. Similarly, Sierra Pacific Power Company retail customers experienced a rise from 3.7¢/Kwh to 4.6¢/Kwh, and increase of almost 25 percent in the same period.

In the face of all these pressures for rate increases, (as Assemblyman Don Mello pointed out in Assembly Ways & Means hearings on AB 364 of the 60th session 5/14/79), there has been a loss of confidence in Public Service Commission regulation.

The rising energy costs and rapid general inflation of the seventies have affected the utilities in many ways. One of the results, which was discussed above, has been a rapid escalation in both the number of rate increase filings before state commissions and in the amount of dollar increases requested in those filings.

Both commissioners and their staffs have been inundated with complicated issues in cases dealing with complex and interlocking issues such as plant siting and specifications, fuel procurement procedures, dispatching operations, cost of service determinations and rate design.

An additional burden was placed on regulators with the passage of the Public Utility Regulatory Policies Act (PURPA) of 1978. PURPA required that in-depth analyses be made for all major electric and gas utilities to help provide answers to U.S. energy problems. Lengthy proceedings have been required in almost all states to investigate potential changes in utility operations to increase the efficiency with which we use our energy.

The result has been a dramatically increased workload for those involved in utility regulation with little or no accompanying increase in personnel and available technical expertise. Most commissioners and their staffs have been forced to make choices in allocating their scarce time so that one of two things have usually happened: (1) A few issues---usually those deemed most important in terms of dollars and society's welfare---receive

concentrated attention, or (2) cursory review is given to all issues with perhaps a few receiving more attention than others. Often, the leadership of both the commission and the supervisory staff will direct the review to certain areas. On occasion, local political situations of the past characteristics of local utility operations will cause a commission to focus on certain issues. Whichever scenario occurs, the result is often an unfortunate one of inadequate review.

Undoubtedly, the Public Service Commission of Nevada and its staff have been subject to these pressures for some time. There are several ways to judge the quality of regulation in an area. The most direct method is to compare the end result of the rate-making process in a given state---the tariffs, quality of service, and construction plans of the various utilities---with the standards implemented by other commissions. (Attachment C illustrates the particulars of this standard).

For example, note in Attachment C that the interruptible irrigation rate for water pumping customers of Nevada Power Company is not directly tied to the system peak. The rate design used fails to implement the cost principles implicit in good load management for interruptible rates. In essence, the irrigation customer pays for the demand level after interruption, but receives no credit since his demand charge is at the same level of other customers. In the case of Sierra Pacific Power Company, the irrigation customers have no control options.

The net result is inequitable rates for irrigation users.

The main thrust of this presentation, granting the criticism of Public Service Commission rate regulation, is to develop an institutional framework for independent consumer representation. It is essential that the legislature recognize the need for both organizational structures because each performs a distinct and unique role. The people need a strong and viable commission, as well as an office for consumer representation.

In this regard, the unique role of the commission staff is to perform a balancing function in assessing the position of the utility and the various intervenors. For example, in a rate case it is typical for the utility to present experts that will attempt to maximize the profits of the firm. The consumer groups will provide experts who will work toward keeping rates as low as possible within a just and reasonable context. This can be observed when the utility proposes a specific rate of return on investment, various operating expenses such as depreciation, and other aspects of revenue requirements. The staff recommendation or position is usually somewhere between the higher revenue requirement proposed by the utility and the lower one supported by the consumer group.

This reflects the balancing function of the staff. There is a legitimate function to the staff balancing role, as there is a legitimate function to consumer intervention. The result is that the commission receives the benefit of a more diverse and comprehensive record upon which it can rely to reach a decision.

In addition to this balancing role, the staff is responsible for record verification, information flow and enforcement of rules and regulations.

The distinction between the staff role and the consumer

advocate's function is clearly indicated in the following quote by Missouri Public Counsel William Barvick:

Utility customers view the world as polar. At one pole is the utility or private interest. At the other is the customer or public interest. To the customer, protection of the public interest is synonymous with protection of the customer interest.

The PSC's world, by law, must encompass a larger vision. In that world, the public interest must be determined by weighing and sifting a variety of competing interests. The two most important of these are customer interests and utility interests; however, there may be others. For example, the state itself may have some interest independent of both customers and utilities.

So to say that the PSC protects the public interest is neither accurate nor responsive to the question of why have a public counsel. The PSC does not protect the public interest in the sense of advocating the consumer's viewpoint. Rather, its job is to listen to all and reach a decision which is best for all.

(Barvick, William, "Report of the Office of the Public Counsel," State of Missouri, July 1, 1978 through June 30, 1978.)

The Management Study of the Public Service Commission

The recent "Report of a Comprehensive Management Study" by Cresap, McCormick and Paget (June 30, 1980; performed under the auspices of ACR 22 of the 60th session), made some cogent observations relative to opportunities for improvement in commission regulation. The two major points stressed are as follows:

- a) The uncertainties surrounding the mission and role of the commission has influenced the organization and composition of the staff, and
- b) the qualitative and quantitative shortcomings are inseparably tied to the personnel management system.

The net result, as indicated in the report, is that, "generally, the commission is perceived to have adopted a conservative interpretation of its regulatory duties and powers..."

With respect to the commission's staff, the report stated, "the single most-evident weakness in present PSCN staff arrangements is the absence of a clear focal point for leadership, direction and management of the staff."

The management report made the following basic recommendations:

- The need to clarify the commission's mission
- The need to place a greater emphasis on generic policy formulation
- The need to increase significantly the emphasis in the future on the development of clear regulatory policy and precedent.
- The need to establish firm executive leadership for the staff
- The need to overhaul weak personnel management systems

Structuring Consumer Advocacy

If consumer advocacy in Nevada is to be effective, it must find an adequate institutional voice. Consumers could represent themselves directly, be represented by local governmental offices, or be represented through state government offices of consumer advocacy. In a 1979 survey of all 50 states and the District of Columbia conducted by William Gormley, Nevada was found to be one of only 14 states where neither citizen groups nor state government consumer advocates were active intervenors in public utility commission proceedings. Since the Gormley survey, Nevada has become even more isolated as states such as Oklahoma, South Dakota, and Utah have increased their consumer advocacy activity.

Citizen or grassroots organizations which might intervene before public service commissions are often difficult to organize. Even when a consumer group does manage to organize, it usually lacks sufficient resources to be effective. Ernest Gellhorn, an administrative law expert, puts it this way:

Frequently the cost of participation in an administrative proceeding mounts into tens of thousands of dollars, and prolonged, multiple party proceedings cost even more. Public interest groups are often financially unable to participate.

(Gellhorn, Ernest. "Public Participation in Administrative Proceedings," Yale Law Journal (January 1972), pp. 359-388.)

Roger Cramton, another administrative law specialist, offers a similar analysis:

For public interest groups, cost is a considerable obstacle to effective participation in formal agency proceedings.

(Cramton, Roger. "The Why, Where and How of Broadened Public Participation in the Administrative Process," Georgetown Law Journal (February 1972), pp. 525-546.)

In Nevada, local governmental units have intervened in various PSC cases in the past. Testimony submitted by Assemblyman Tod Bedrosian on AB364 (Testimony before the Assembly Ways and Means Committee, May 14, 1979), demonstrates that the PSC tended to grant a significantly reduced revenue adjustment in those cases where local government units such as the cities of Reno and Sparks and the counties of Clark and Washoe actively intervened. PSC intervention by local government is, however, costly and time consuming. Most local governmental units doubt their ability to sustain active intervention. As Paul Freitag, city attorney for Sparks stated,

"...the rate hearings kept coming and sooner or later by sheer weight of ammunition, the power companies overcame the governmental entities. In the last year and one-half or so, I think there has been several applications, but I don't believe that either Reno or Sparks has done anything about them. It simply became a matter of not having enough time."

(Letter to Tod Bedrosian, April 16, 1979).

Robert Van Wagoner, city attorney for Reno, noted:

The primary problem of local governmental entities attempting defense in these cases is the inability to coordinate all of the interested local governmental entities and parties. Such coordination takes time and usually is too politically volatile to meet with much success. Some councilmen will only authorize \$1,000 and others are not interested unless open competitive bidding is allowed in the employment of expert consultants. Local district attorneys usually do not have the staff, time or budget to intervene in even half of the cases filed before the P.S.C.

(Letter to Tod Bedrosian, April 20, 1979.)

In a similar vein, Robert Miller, District Attorney of Clark County, stated:

As you know, District Attorney offices have not generally been active in this area of litigation for three (3) principle reasons: First, these cases are protracted and there is a problem with continuity of attorneys representing the consumer. Because one case can take several years before there is a final decision, the original attorney assigned the case in a District Attorney's office will frequently leave and the new deputy assigned the case will not be familiar with the voluminous files. The second reason for hesitance to intervene in these cases is the fact that it would take a full time attorney to handle those matters. Because of our other pressing matters it would be difficult to allocate this type of manpower. Finally, the costs of retaining experts such as CPA's and economists to represent consumers would be overly taxing, to say the least.

(Letter to Ted Bedrosian, April 19, 1979.)

An alternative approach that has attracted the attention of a substantial number of state legislatures is the establishment of a statewide, governmental office of consumer advocacy with authority to intervene on behalf of consumers in regulatory decision-making proceedings.

At the present time, approximately 80 percent of the states have some kind of governmental utility consumer advocacy office. Furthermore, most of these offices are very active participants in their state public utility commission proceedings. Indeed, utility consumer advocacy offices have become so active and important that they now have their own organization: The National Association of State Utility Consumer Advocates, founded in May 1979,

provides a forum for exchanging ideas and serves as an informational clearinghouse for member organizations. NASUCA now has member organizations in 27 states.

One particularly gratifying example of recognition of the contributions of consumer advocates can be found in New Hampshire. In that state, the consumer advocate is under the Legislative Utility Consumers' Council. In recognition of the work of consumer advocate J. Michael Love, he was appointed to his current job: chairman of the New Hampshire Public Utilities Commission.

The need for a consumer advocacy office is especially great in highly complex issue areas, such as public utility regulation. Issues under discussion in public utility commissions are highly technical and complex, for the most part. If consumers are to be adequately represented in such debates, they must be represented by highly skilled and competent attorneys and specialists. In short, representation is not enough; competent representation is a necessity.

Although the principal activities of utility consumer advocacy offices concern representation before state public utility commission proceedings, such offices are commonly authorized to appeal public utility commission decisions in court. The right to appeal is an extremely valuable tool, not so much because it leads to court challenges as because it encourages public utility commissions to render decisions sufficiently sound that they would withstand judicial review, if challenged. Utility consumer advocacy offices are also commonly authorized to intervene on behalf of state consumers in federal administrative agency proceedings, such as Federal Energy Regulatory Commission or Federal Communications Commission proceedings. This authority enabled utility consumer advocates to represent their state's consumers in

crucial decisions concerning wholesale natural gas prices, the allocation of long-distance telephone costs between interstate and intrastate consumers, and other matters. Utility consumer advocacy offices are almost always independent of the public utility commission. However, these offices are often attached to an existing governmental organization. The most common arrangement of this sort involves the establishment or alteration of a division within the Attorney General's office, for the purpose of representing consumers. In Michigan, for example, the Special Litigation Division of the Attorney General's Office represents consumers in utility cases before the Michigan Public Service Commission. In Kentucky, a Utility Section in the Attorney General's Division of Consumer Protection represents consumers in Kentucky Public Service Commission proceedings.

The principal alternative to this arrangement is the creation of a separate office of consumer counsel or public advocate outside the Attorney General's Office. In Illinois, the Office of Consumer Services is part of the governor's office. In New Jersey, the Division of Rate Counsel is part of a Cabinet-level Department of Public Advocate.

In a number of states, the head of the consumer advocacy unit is appointed by a committee of the state legislature. For example, the head of Florida's Office of Public Counsel is appointed by members of the Joint Legislative Auditing Committee. Most state legislatures, however, have found that this practice is unnecessary, since accountability to the legislative branch is already available through the appropriations process, legislative oversight, and, if necessary, sunset review.

The following table, (Table #1), provides information on the placement, staffing and budget of those states which pursue active

TABLE #1

LIST OF STATE OFFICES FOR CONSUMER REPRESENTATION FOR UTILITY INTERVENTION

State	<u>Organizational Structure</u>			<u>Personnel-Professional</u>		<u>Budget 1980-81</u>	
	Attorney General	Independent Public Counsel	Under Governor	Attorneys	Other	Contract Services-Experts	Total
Alabama	Yes	--	--	--	--	--	--
Alaska	Yes	--	--	--	--	--	--
Arizona	Yes	--	--	--	--	--	--
Arkansas	Yes	--	--	Consumer Council - 3	2	\$ 65,816	\$227,809
Colorado	--	Yes	--	--	--	--	--
Connecticut	--	Yes	--	Consumer Council - 3	1	\$ 75,000	\$196,500
Delaware	--	--	Yes	Public Advocate - 2	4		\$103,000 (state) \$208,000 (fed)
Florida	--	Yes	--	6	6	\$ 75,000	\$609,000
Georgia	--	Yes	--	4	4	\$ 22,574	\$120,021 (state) \$229,210 (DOE)
Hawaii	--	Yes	--	2 (AG's office)	29	\$160,000	\$800,000
Illinois	--	--	Yes	3	3	\$ 50,000	\$244,000
Indiana	--	Yes	--	4	4	\$625,000	\$900,693
Iowa	Yes	--	--	--	--	--	--
Kansas	Yes	--	--	--	--	--	--
Kentucky	Yes	--	--	--	--	--	--
Maine	Yes	--	--	--	--	--	--
Maryland	--	Yes	--	4	4	\$921,950	\$1,184,583
Massachusetts	Yes	--	--	7	2	\$ 10,000	\$250,000
Michigan	Yes	--	--	4	2	\$125,000	\$200,000 (state) \$300,000 (fed)

Table (contin...)

Organizational Structure Personnel-Professional

Budget 1981

State	Attorney General	Independent Public Counsel	Under Governor	Attorneys	Other	Contract Services-Expert	Total
Minnesota	--	Yes	Yes	Consumer Services - 2	3	\$111,500	\$279,900
Mississippi	Yes	--	--	--	--	--	--
Missouri	--	Yes	--	5	10	\$ 45,000	\$441,028
Montana	--	Yes	--	--	--	--	--
New Hampshire	--	Yes	--	2	2	\$ 50,000	\$ 65,000
New Jersey	--	Yes	--	24	13	\$800,000	\$2,000,000
New York	Yes	Yes	--	Consumer Protection Board - 6	8	\$ 94,000	\$489,200 (state) \$187,000 (fed)
New Mexico	Yes	--	--	--	--	--	--
North Carolina	Yes	--	Yes	Public Staff - 8	60	--	--
North Dakota	Yes	--	--	--	--	--	--
Ohio	--	Yes	--	17	30	\$1,000,000	\$3,154,721
Oklahoma	Yes	--	--	--	--	--	--
Pennsylvania	--	Yes	--	11	5	\$689,548	\$1,524,000
Rhode Island	Yes	Yes	--	--	--	--	--
South Carolina	--	Yes	--	5 (AG's office)	3	\$170,000	\$361,000
Texas	Yes	--	--	--	--	--	--
Utah	--	Yes	--	(AG's office)	Not Available	--	\$ 94,000 (state) \$169,000 (DOE)
Vermont	Yes	--	--	--	--	--	--
Virginia	Yes	--	--	--	--	--	--
West Virginia	Yes	--	--	--	--	--	--
Washington	Yes	--	--	--	--	--	--
Washington, D.C.	--	Yes	--	--	--	--	--
TOTAL	22	19	4				

SOURCE: National Association of State Utility Consumer Advocates, United States Office of Consumer Affairs, Department of Health Education & Welfare and U.S. Office of Consumer Education.

public utility commission interventions on behalf of consumers. As indicated in the table, more than half of the states have active consumer advocacy groups in the attorney general's office. It is quite rare for states to establish consumer advocate offices in the offices of the governor, or to have them structured in such a way that the governor exerts substantial control over the advocate. Those states where the governor has substantial authority over the consumer advocacy office are Delaware, Illinois, Minnesota and North Carolina. As will be described later in the testimony, those states with substantial gubernatorial control over the consumer advocacy offices have had significant problems.

For those states on which information is available, the number of state consumer advocate attorneys vary from two (Delaware, Illinois, Minnesota, New Hampshire) to a high of 24 (New Jersey). Three to five staff attorneys appear to be most common. Other professional staff vary from a low of one (Delaware) to a high of 60 (North Carolina). In certain cases such as North Carolina, consumer advocate offices with large staffs carry out some of the traditional functions of traditional public service commission staff. In general, most state consumer advocate offices have 3-5 professional non-legal staff members. Virtually all state consumer advocate offices have a substantial budget for contract services such as expert witnesses--many with contractual budgets in excess of \$100,000. Total budgets generally range from \$250,000 to \$3,000,000--with the budgets of \$300,000 to \$500,000 being common.

The key question, of course, is whether utility consumer advocacy offices are effective. Otherwise, the existence of such offices merely illustrates what Edelman refers to as "symbolic politics." (Edelman, Murray, The Symbolic Uses of Politics. Urbana: University of Illinois Press, 1964.)

There are a number of ways to measure effectiveness--through personal observation, an inspection of public documents, or interviews with knowledgeable participants in the policy-making process. Gormley took the latter approach in a detailed study of consumer advocacy offices in six states: Florida, Georgia, Massachusetts, Michigan, New Jersey, and New York. In each of these states, Gormley interviewed a wide variety of respondents, including public utility company executives, and consumer advocates. Among other questions, he asked respondents to assess the effectiveness of their state's utility consumer advocacy office, on a scale of 1 to 10. After pooling and averaging these responses, Gormley arrived at an overall effectiveness rating for each consumer advocacy office.

The following table* reproduces these findings from the Gormley study. In all six states, the utility consumer advocacy office was judged moderately effective or very effective. The Michigan Attorney General's Special Litigation Division and the New York Consumer Protection Board were judged moderately effective. The Georgia Consumers' Utility Counsel was judged moderately effective to very effective. The New Jersey Department of Public Advocate's Division of Rate Counsel, the Florida Office of Public Counsel, and the Massachusetts Attorney General's Utilities Division were all judged very effective.

It is important to note that several of these offices have only been active for several years. The New Jersey office, for example, originated in 1974. The Florida office originated the same year. The New York Consumer Protection Board originated earlier, but its Utilities Division was not created until 1974. The Georgia office, which originated with the appointment of a part-time director in 1975, did not hire a full-time director until 1977. In short, several of these offices have been moderately effective or very effective despite the fact that they are extremely young. This should offer encouragement to policy-makers who hope that such an office can achieve tangible results within a very short period of time.

*Table #2

TABLE #2

THE EFFECTIVENESS OF UTILITY CONSUMER ADVOCACY OFFICES

STATE	Florida	Georgia	Massachusetts	Michigan	New York	New Jersey
Office	Office of Public Counsel	Consumers' Utility Counsel	Attorney General, Utilities Division	Attorney General, Special Litigation Division	Consumer Protection Board, Utilities Division	Department of Public Advocate, Division of Rate Counsel
EFFECTIVE- NESS	High	Moderate to High	High	Moderate	Moderate	High

SOURCE: William Gormley, "Alternative Forms of Public Advocacy," Journal of Applied Behavioral Science (forthcoming).

It is also interesting to note that utility consumer advocacy offices have been effective in states whose public utility commissions vary sharply in their level of professionalism. New York and Michigan have very large, well-trained public utility commission staffs. The other four states have smaller staffs with less training and experience. This suggests that effective consumer advocacy does not depend on the presence of a highly professional public utility commission staff.

The effectiveness of utility consumer advocacy offices is indeed remarkable if one considers the opposition they confront. As Professor Samuels has put it:

Consumer Advocacy has had to overcome the very real and often very strong resistance of the entrenched and intransigent bureaucracy of regulation, including both (utility) companies and commissions which have seen regulation as its (sic) bailiwick and not that of state attorney general or citizen groups.

(Samuels, Warren. "Consumerism and the Public Utility Institution," paper presented at the 12th Annual Conference of the Institute of Public Utilities, Williamsburg, Virginia, December 2, 1980.)

Despite these obstacles, utility consumer advocacy offices have managed to become effective participants in the public utility regulatory process.

Performance of Consumer Advocate Offices---Savings to Ratepayers

There are two measures of savings resulting from the efforts of various consumer advocate offices. One measure is direct savings resulting from commission decisions to reduce rates or refund monies beyond the level recommended by utility commission staff. The other measure can be called shared or joint savings generally resulting from the common position taken by the consumer offices and the commission staff in which the commission reduces rates or

orders refunds below the level filed for by the utility.

For example, for the three year period from April, 1977, through March, 1980, the direct dollar savings resulting from the interventions of the Ohio Consumers' Counsel totaled \$61.3 million (according to the 1980 "Annual Report of the Consumers' Counsel Governing Board".) The shared savings over the same period amounted to over \$100 million.

The direct savings for the latest year for which data is available (March, 1979, through March, 1980), for the Ohio Consumers' Counsel are \$40.8 million (see Tables #3 and #4).

The emphasis in this analysis pertains to direct savings, in contrast to joint or shared savings.

In practical terms, effectiveness means that consumer advocacy offices have influenced specific public policy decisions made by state public utility commissions. The policy impacts of utility consumer advocacy offices have been primarily in the energy policy area. For example, the Massachusetts Attorney General played a major role in reducing the rate hike granted to Boston Edison in a 1979 rate case. Boston Edison originally requested a \$46 million rate increase in that case. The Attorney General subsequently offered a detailed critique of the company's revenue requirements calculations. After listening to the arguments of the Attorney General, the Massachusetts Department of Public Utilities awarded Boston Edison \$19 million in rate relief or \$27 million less than requested.

The Georgia Consumers' Utility Counsel was even more successful in a recent Georgia Power case. In that proceeding, Georgia Power and the Consumers' Utility Counsel submitted revenue requirements estimates which differed in several crucial respects. In virtually every instance, the Georgia Public Service Commission accepted the Consumers' Utility Counsel's

TABLE #3

OHIO CONSUMER COUNSEL
DIRECT SAVINGS IN COMPLETED RATE CASES
 (3/79 to 3/80)

<u>Company/Case</u>	<u>Amount Saved</u>	<u>Issues that Provided Savings</u>
Ohio Power 78-676-EL-AIR	\$14,510,000	Elimination of annualization for installation of precipitators - \$354,000 Elimination of annualization for non-union wages - \$224,000 Reduction in rate case expense - \$53,000 Elimination of normalized taxes - \$9,800,000 Refund of Ohio Coal Tax - \$2,905,000 Fuel annualization - \$318,000 Gross Receipts Tax - \$420,000 Allocation of FICA/Labor cost to Ormet - \$222,000 Customer deposits - \$214,000
Ohio Edison 78-1567-EL-AIR <u>et.al.</u>	\$10,625,000	Elimination of management group wage increase adjustment - \$821,000 Elimination of promotional advertising - \$284,000 Fuel stock allowance in working capital - \$1,497,000 Disallowance of Pennsylvania Gross Receipts Tax - \$6,518,000 Offset to working capital of Ohio Gross Receipts Tax - \$1,505,000

TABLE #3 (continued)

<u>Company/Case</u>	<u>Amount Saved</u>	<u>Issues that Provided Savings</u>
<i>Cleveland Electric Illuminating</i> 78-677-EL-AIR	\$ 4,243,000	Wage adjustment limited to union contract employees - \$1,962,000 Double-counting fuel cost adjustment annualizations - \$1,233,000 Offset to working capital for customer deposits - \$104,000 Refund of funds collected for Ohio Coal Consumption Tax - \$943,000
<i>Columbus & Southern Ohio Electric</i> 78-1438-EL-AIR	\$ 1,254,000	Writ of Prohibition delaying rate increase for City of Columbus
<i>Columbia Gas of Ohio/Columbus</i> 78-1008-GA-AIR	\$ 1,301,026	Working capital prepaid gas allocation - \$87,042 Elimination in working capital of material and supplies - \$44,832 Customer deposits - \$10,999 Elimination of other prepayments - \$15,536 Deferred tax rate base deduction - \$26,278 Cost of gas calculation - \$790,325 Sales expense - \$22,091 ADR flow through - \$75,360 Additional excess tax over book depreciation - \$228,888

TABLE #3 (contin

<u>Company/Case</u>	<u>Amount Saved</u>	<u>Issues that Provided Savings</u>
Toledo Edison 79-143-EL-AIR	\$ 1,000,000	Overestimation of the number of employees during test year
Toledo Edison 76-1174-EL-AIR <u>et. al.</u>	\$ 1,000,000	Supreme Court decision which eliminated Davis Besse from rate base as "used and useful"
Columbia Gas of Ohio/Toledo 78-1118-GA-AIR	\$ 651,617	Elimination of construction material and supplies - \$35,620 Customer deposits - \$17,935 ADR deferral - \$68,442 Deferred tax balance offset - \$22,673 Cost of gas load factor - \$327,673 Sales expense - \$4,527 Additional tax depreciation deduction - \$174,747
Columbia Gas of Ohio/Parma 78-1161-GA-AIR	\$ 232,325	Elimination of construction materials and supplies - \$8,226 Deferred tax offset - \$4,614 Customer deposits - \$2,912 Cost of gas load factor - \$100,927 Wage adjustment - \$75,901 Sales expense - \$2,186 ADR deferral - \$19,850 Additional depreciation tax deduction - \$33,461

TABLE #3 (continued)

Company/Case

Amount Saved

Issues that Provided Savings

Ohio Utilities
78-1421-WS-AIR

\$ 170,183

Capitalization of overhead and AFUDC - \$87,255

Gross Receipts Tax offset - \$2,560

Salaries and wages - \$10,933

Imputed interest - \$10,301

Depreciation expense - \$21,120

West Ohio Gas
78-1445-GA-AIR

\$ 148,813

Gross Receipts Tax offset - \$116,262

Labor expense adjustment - \$32,551

Ohio Water Service
78-712-WW-AIR

\$ 127,974

Reduction in charitable contribution - \$565

Exclusion of electrical energy surcharge - \$10,123

Exclusion of inflation adjustment - \$117,286

Oxford Natural Gas
78-1404-GA-AIR

\$ 36,386

Revenue annualization - \$14,608

Rate case expense - \$6,204

Labor expense - \$7,562

Error in authorized rate - \$7,702

Columbia Gas of Ohio/
Martins Ferry
77-1418-GA-AIR

\$ 388

Customer deposits

TOTAL \$35,300,712.00

Table #4

OHIO CONSUMER COUNSEL DIRECT SAVINGS IN COMPLETED FUEL CASES
(3/79 to 3/80)

<u>Company/Case</u>	<u>Amount Saved</u>	<u>Issues That Produced Savings</u>
Toledo Edison 79-233-EL-FAC	\$2,000,000 +	Unburned nuclear fuel. Shared with CEI due to co-ownership of Davis-Besse nuclear plant.
Dayton Power & Light 79-229-EL-FAC	\$1,222,271	Stuart Station coal inventory problems.
Cincinnati Gas & Electric 79-228-EL-FAC	\$1,217,519	Stuart Station coal inventory problems.
Columbus & Southern Ohio Electric 79-232-EL-FAC	\$ 737,125	Stuart Station coal inventory problems.
Cleveland Electric Illuminating 79-231-EL-FAC	\$ 279,742	Price of coal included penalties for failure to meet health and safety laws - \$235,232. Incorrect refund amount previously ordered for costs associated with repair of railroad tracks - \$35,189. Destruction of leased railroad cars - \$9,321.
Monongahela Power 79-230-EL-FAC	\$ 21,555	Harrison Station coal consumption figures.
TOTAL	\$5,478,212.00	

estimates. To cite another example, the Michigan Attorney General played a crucial role in reducing the level of an interim rate hike awarded to the Michigan Consolidated Gas Company in a 1979 case. In response to an interim rate hike request by Michigan Consolidated Gas, the Public Service Commission staff recommended an interim rate increase of \$42 million. The Attorney General countered that recommendation with testimony suggesting that such an increase was too high. Eventually, the Michigan Public Service Commission granted Michigan Consolidated Gas an interim rate increase of \$20 million, or \$22 million less than the figure recommended by the staff.

Although utility consumer advocacy offices have concentrated their efforts on electric and natural gas cases, many have influenced the outcomes of telephone cases as well. In one celebrated case, in 1976, the New Jersey Division of Rate Counsel opposed a New Jersey Bell telephone rate increase by objecting to the company's selection of a test period for computing revenue requirements. Impressed by the Rate Counsel's testimony, the New Jersey Board of Public Utilities awarded New Jersey Bell no rate hike whatsoever. Two years later, the New York Consumer Protection Board helped to trim a New York Telephone rate hike request by approximately \$30 million. The Consumer Protection Board also helped to prevent New York Telephone from raising pay telephone rates from 10¢ to 20¢. The Florida Office of Public Counsel has been especially active in telephone cases, with impressive results. In cases involving Southern Bell and United Telephone, the Office of Public

Counsel was instrumental in securing either rate reductions or actual refunds to consumers. Finally, Attachment D provides an article concerning the work of the Energy Unit of the New Mexico attorney general's office. It points out how increases in rates were slowed by intervention before the New Mexico Commission.

More specific savings are outlined in Table #5 and Table #6. Table #5 contains nine examples of intervention by two consumer advocate offices in rate cases in two states that resulted in a total savings of \$47.5 million to consumers over a two-year period. That represents an average savings of \$6.5 million per case. Perhaps even more important is the fact that the two offices involved--- Massachusetts and Florida---have 1980-81 annual budgets of \$250,000 and \$609,000, respectively. There is no question that these offices are cost-effective.

Table #6 shows direct savings to consumers from consumer advocate's activities in petitioning for refund and rate reduction hearings. Four states are covered for a three-year period and total savings were \$116.3-\$118.3 million. Of that amount, \$49 million was directly refunded to consumers. The 1980-81 budgets for these four offices range from \$227,809 to \$609,000. Again it is clear that consumer advocate activities are cost-effective.

To bring these numbers into perspective, consider the total savings of \$163.5 million outlined in Table #5 and Table #6. Only five state offices generated these savings, yet they would fund a consumer office in each of the 50 states with a budget of \$327,000 each for TEN YEARS.

TABLE #5

INTERVENTION IN RATE CASE PROCEEDINGS - DIRECT SAVINGS

State	Company/ Docket	Company Request	PSC Staff Request	Settlement Due to Advocate Position	Savings
MISSOURI	Joplin Water Co. WR-79-117	\$ 460,003	\$ 250,500	\$ 207,500	\$ 43,000
	Missouri Utilities Water Company WR-79-147	602,000	532,987	506,887	26,100
	Missouri Edison Company ER-79-120	3,300,000	1,978,611	1,673,000	305,611
	St. Joseph Water Company WR-79-219	694,000	670,579	592,000	78,579
	Doniphan Telephone Company TR-80-15	515,700	442,740	390,000	32,740
	Union Electric Company ER-80-17	81,600,000	26,198,000	20,473,500	5,724,500
	MASSACHUSETTS	Eastern Edison Company Docket No. 240	9,500,000	No Participation	5,300,000
Boston Edison Company Docket No. 160		69,000,000	No Participation	37,000,000	21,000,000
Massachusetts Electric Co. Docket No. 200		33,000,000	No Participation	16,900,000	16,100,000
				TOTAL SAVINGS	<u>47,510,530</u>

TABLE #6

PETITIONS FOR REFUNDS AND RATE DECREASES BY CONSUMER ADVOCACY OFFICES

State	Company Docket or Court	Issue	Savings or Reductions
FLORIDA	Florida Power and Light Company Docket No. 780732	PSC determined there was mismanagement of nuclear fuel that led to overcharging in automatic fuel adjustment charges. PSC staff recommended refund of \$4 million: Consumer Advocate recommended \$23-24 million. Final award was \$13-14 million.	REFUND \$9 million
	Florida Power and Light Company Docket No. 800119	Interim rate increase lowered at request of advocate by \$10-12 million annual basis. Interim rates in effect 3-4 months.	\$3-4 million
	United Telephone Company Docket No. 780777	Petition filed to reduce existing rates. Accepted by PSC.	\$3 million
	Southern Bell Telephone Company Docket No. 780354-TP (filed)	Refund in contention. Staff recommended \$12-15 million: Consumer advocate recommended \$50 million. Settlement reached by all parties to adjust revenues at end of year based on consumer advocates calculations. Final refund \$56 million.	REFUND \$44 million
	Tampa Electric Power Company Docket No. 800011	PSC determined that treatment of working capital should be changed on the basis of consumer advocate recommendation. Resulted in lowering current revenues \$2.3 million. Will result in future savings, as well.	\$2.3 million

TABLE #6 (continued)

State	Company Docket or Court	Issue	Savings or Reduction
FLORIDA (cont'd)	Florida Supreme Court Citizens vs. Hawkins 356 So. 2nd 254	Consumer advocate appealed a PSC decision in a General Telephone Company rate case on two issues: (1) Treatment of rate base and (2) Treatment of taxes. Court overturned PSC decision and ordered a refund and a change in procedures resulting in savings in rates.	REFUND \$14 million Savings \$10 million
ARKANSAS	Arkansas Power and Light Company (AP&L) Docket No. U-3123.	Based on consumer advocate's petition, PSC determined that AP&L had incorrectly applied its fuel adjustment charge. Refund made based on methodology presented by consumer advocate.	REFUND \$7.8 million
MISSOURI	State Supreme Court	Court agreed with consumer advocate's position that PSC did not have legal authority to allow automatic fuel adjustment costs recovery without full rate case investigation. Court ordered refund.	REFUND \$14 million
NEW MEXICO	Public Service Company of New Mexico Docket No. 1602	In reviewing an interim cost of service adjustment clause the PSC denied a portion of the increase based on consumer advocate's case.	\$4-5 million
	El Paso Electric Company Docket No. 1539	Company filed \$3.2 million rate case. Consumer advocate found severe computational error. Commission denied entire case.	\$3.2 million
	Gas Company of New Mexico	PSC agreed with consumer advocate's position on treatment of taxes, resulting in a lower revenue requirement.	\$2 million
TOTAL			<u>\$116.3-118.3 million</u>

For the most part, utility consumer advocacy offices have focused their attention on revenue requirements issues. Nevertheless, consumer advocates have also shown an interest in other issues with indirect benefits where consumer interests are at stake. For example, the Georgia Consumers' Utility Counsel worked in tandem with local citizens' groups in support of a "consumer bill of rights." In response to these efforts, the Georgia Public Service Commission adopted a rule banning disconnection of utility services in exceptionally harsh winter weather or in the event of a medical emergency. To cite another example, the New York Consumer Protection Board actively supported the speedy implementation of marginal cost pricing. As a result of the Consumer Protection Board's efforts, the New York Public Service Commission extended rate structures based on marginal cost pricing principles to additional customers.

To secure benefits for consumers, utility consumer advocacy offices have sometimes found it necessary to challenge public utility commission decisions in court. Although they have not always succeeded, their batting average has often been as good as that of utility companies. Ohio's experience during a recent four-year period helps to illustrate this point. In reviewing the Ohio Public Utilities Commission's decisions, the Ohio Supreme Court reversed the commission in 25 percent (2 of 8) of the appeals brought by the Ohio Consumers' Counsel, as opposed to 18 percent (9 of 49) of the appeals brought by utilities and other intervenors. These figures help to place court challenges by consumer advocates in perspective in still another respect. While public utility commission decisions are sometimes challenged in court by

consumer advocates they are more frequently challenged by utility companies. If judicial review has become all too frequent, that is hardly the fault of consumer advocates.

Indeed, utility consumer advocacy offices have demonstrated their willingness to cooperate with public utility commissions and utility companies to avoid unnecessary disputes and protracted litigation. After receiving a grant from the Department of Energy, the New York Consumer Protection Board approached the staff of the New York Public Service Commission and offered to collaborate in developing an econometric load forecasting model that could serve as an alternative to demand projections by utility companies. The Consumer Protection Board worked together with the Public Service Commission staff in producing such a model for the use of the Public Service Commission, the state Siting Board, and the state Energy Office. The model's projections, released in 1978, were subsequently cited by state decision-makers, who found the projections helpful in a variety of cases.

Utility consumer advocates have also been willing to cooperate with utility companies by "settling" or "stipulating" cases and thereby avoiding unnecessary delay. The New Jersey Division of Rate Counsel has settled in whole or in part, approximately half of the state's major rate cases in recent years. Even the Michigan Attorney General, widely regarded as one of the most vigorous and aggressive utility consumer advocates in the country, has settled cases with the Michigan Consolidated Gas Company. In short, utility consumer advocacy offices have achieved tangible benefits for consumers--through court challenges when necessary, through settlements where possible, but most often through careful, detailed, and persuasive testimony in public utility commission proceedings.

The Initiative (Townsend Plan) Proposal for Consumer Advocacy

The pivotal organizational feature of the Initiative Petition (Townsend) Plan is that the consumer advocacy function is placed in the Office of the Attorney General. This avoids the conflict of interest inherent in placing consumer representation under the governor, as the Public Service Commission is now under the governor, and the commissioners are appointed by the governor.

The Initiative Petition is simply another manifestation of the checks and balances essential to the democratic process.

There is no doubt that under the Initiative Plan the prospects for strong and effective consumer representation are maximized. It offers the opportunity to provide a singular consumer position before the Public Service Commission of Nevada for its deliberations.

Another advantage of placing consumer advocacy under the attorney general is to minimize the possibility of political influence. This occurred in the state of Idaho where political pressure ultimately resulted in an abandonment of consumer representation.

The Idaho Electrical Consumer Office was placed under the Lt. Governor and under the surveillance of a Consumer Advisory Board. The board included representatives of the business community, including a member from Idaho Power Company. The consumer office was ineffective, and after a short period of intervention, it went out of existence. (This coincided with the failure of the Lt. Governor to be re-elected.) In addition, in North Carolina, where the public staff is under an executive

director, it appears that politics has played an important role in the positions of the executive director before the commission.

To offset the possibility of this political problem, the office of the Attorney General of North Carolina still continues to intervene on behalf of consumers before the North Carolina commission.

Placing the consumer advocacy office under the attorney general provides the benefits of internal legal talent and the recruitment of a professional staff of modest size. With the ability to hire outside experts, not only is there no need for a large staff, but there is also immediate professional assistance available without the long lead time required to participate in proceedings before the commission. In addition, the modest budget ranging between \$297,000 and \$424,500 provides the most cost-effective alternative for consumer advocacy. (See Table #7).

Alternative Proposals: AB 58 (Governor's Proposal) and AB 85 (ACR 22 Legislative Commission Subcommittee)

Two major alternatives to the Coalition for Affordable Energy initiative petition have been proposed. The proposal by Gov. Robert List (AB 58) and the ACR 22 subcommittee (AB 85), are substantially similar, differing mainly in the manner in which the director of the new division would be determined. The main thrust of the two proposals is to shift a substantial portion of the current PSC staff into a new office charged with consumer representation. The control of the Public Service Commission over the new division's staff could continue as usual, because they would perform many of the commission's basic functions.

TABLE #7

THREE PROPOSED CONSUMER ADVOCACY BUDGETS UNDER THE OFFICE OF THE ATTORNEY GENERAL

Prepared by David S. Schwartz, PhD, Bethesda, MD
and Rodney E. Stevenson, PhD, U. of Wisconsin

OFFICE TITLE	BARE BONES BUDGET	AVERAGE SALARIES BUDGET	ABOVE AVERAGE BUDGET
Director	\$40,000.00	\$40,000.00	\$42,000.00
Legal Assistant #1	22,500.00	22,500.00	25,000.00
Legal Assistant #2	22,500.00	22,500.00	25,000.00
Public Utility Specialist *	38,000.00		
Chief Economist		\$32,000.00	37,500.00
Chief Engineer		35,000.00	40,000.00
Senior Auditor with financial background		35,000.00	40,000.00
Legal Secretary	<u>14,000.00</u>	<u>14,000.00</u>	<u>15,000.00</u>
TOTAL SALARIES	<u>\$137,000.00</u>	<u>\$201,000.00</u>	<u>\$224,500.00</u>
TOTAL ON STAFF	<u>five (5)</u>	<u>seven (7)</u>	<u>seven (7)</u>
Contract Services	\$125,000.00	\$100,000.00	\$150,000.00
Operation Expenses	<u>35,000.00</u>	<u>50,000.00</u>	<u>50,000.00</u>
TOTAL EXPENSES	<u>\$160,000.00</u>	<u>\$150,000.00</u>	<u>\$200,000.00</u>
TOTAL SALARIES PLUS EXPENSES, (annual)	<u>\$297,000.00</u>	<u>\$351,000.00</u>	<u>\$424,500.00</u>

*This is a position requiring a person with broad experience, having formal training in at least one, and having had practical experience in all of the following related disciplines: Economics, Law, Accounting, Engineering.

The governor's proposal orders the new division staff to perform enforcement and investigative functions, and further orders them to report to the commission.

As discussed above, much could be done to improve the current commission. However, it is important to maintain a clear distinction between proposals which might be desirable for improving the operations of the PSC in its current structural framework, and proposals which would radically and detrimentally alter the commission structure.

Both AB 58 and AB 85 would radically alter the PSC structure to the detriment of regulatory effectiveness in Nevada. Both proposals are ill-conceived and not advisable.

The major flaws of the two proposals are as follows:

- A. The proposals would severely hamper the ability of the PSC to make appropriate regulatory decisions.

As described above, the commission plays an important role in balancing the interests of the public utilities and the various consumer groups. In order to promulgate regulatory orders which are sanguine and balanced, sufficient staff expertise for advice is required. By stripping the bulk of the PSC staff from the commissioners, they will be denied timely and adequate access to expert advisers. The lack of commission expertise can be a legal justification for the judicial reversal of commission decisions.

In New Mexico, the Public Service Commission was reversed by the courts because of the lack of expertise of one of its staff witnesses (Alto Village Services Corporation vs. New Mexico Public Service Commission, 587 Pacific 2nd 1334).

Stripping the commission of its expert advisors will leave the Nevada PSC exposed to this danger. As structured, the two alternative proposals do not leave the commission with adequate in-house expertise.

Besides a need for adequate in-house advisors, the commission requires careful objective assessments of utility accounting practices and filings. As structured, these assessments would be made by the new office of consumer representation. However, since the office is also an adversary party before the commission, the conflict of roles will undermine the credibility of the consumer representative's commission staff functions and further hamper the ability of the PSC to make proper regulatory decisions.

A third problem is that the commission in reaching a decision is bound to the record. If outside parties stipulate to a settlement and refuse to develop a record, the commission may be hampered from making a decision which would be appropriate to the public interest. As currently structured, the two proposals could lead to the office of customer representation effectively pre-empting the power of the commission. Such occurrences have existed in Utah and are in part responsible for the current bills before that state's legislature to shift a major portion of the public utilities division staff back under the control of the commission. (See Attachment E, which is the pending Utah legislation).

B. The alternative proposals will not lead to an effective consumer advocate organization.

As structured, the staff of the proposed office of customer representation would have a dual role. First, it would have to be an adversarial consumer advocacy group. But second, it

would be required to play a continuing support role for the PSC--- both in terms of processing information and enforcing regulations. The two tasks are not congruent and do not call for the same skills or philosophic orientation. Consequently, the problem of serving "two masters" will arise, and ultimately undermine the effectiveness of the office.

Another problem with the effectiveness of the proposed office as specified in AB 58 and AB 85 is that most, if not all, of the staff in the new office of customer representation will be coming from the current PSC. As employees of the PSC, these staff members were charged with providing a balancing function, and most likely have developed a mindset which, though possibly appropriate for a regulatory agency, is inappropriate for a consumer advocate's office. An example of such a mindset can be found in Missouri. The Missouri utilities proposed that the PSC adopt a fuel adjustment clause.

The Missouri Office of Public Counsel, staffed by independent professionals, objected to the implementation of the clause. The proposed clause met with little opposition from the staff of the commission, and was ultimately adopted.

The Public Counsel appealed the PSC decision to the courts and was successful in having the clause declared illegal. Had the Office of Public Counsel been staffed by PSC staffers, or even former staffers, it is doubtful that such an aggressive appeal would have been mounted.

A third problem with the governor's proposal is that virtually all of the professional staff in the commission and in the Office of Utility/Transportation Customer Representation are being made unclassified employees. Such a reclassification

undermines the security of the staff and provides a potent inducement for objective professionals to become politically influenced. A high quality professional staff requires adequate protection from narrow political meddling and manipulation. Casting positions as unclassified will not provide the necessary level of assurity.

To be an effective consumer advocacy organization, the office must be independent of the PSC. Besides the dual roles and "mindset" problems arising from the renaming of the place where the PSC employees work, a potential conflict exists if both the commission and the Office of Utility/Transportation Customer Representation director and staff are appointed by the governor---especially if the office's director is to serve at the pleasure of the governor. Under such an arrangement, the independence of the two organizations---the PSC and the Office of Utility/Transportation Customer Representation---are undermined.

There is also the question of the transition period called for in AB 58. It provides for a one-year transitional period "for the cooperative use of existing equipment, facilities and personnel."

This will have the effect of prolonging an already-imbalanced situation and making sure that the "mindset" problems are further institutionalized.

Besides the structural infirmities of the governor's proposal, a few comments on his proposed budget should be made. There has been a significant increase in the budget from the 1980-81 work program of the Public Service Commission for salaries and operating expenses for the combined PSC and the proposed new Dept.

of Utility/Transportation Customer Representation. Salaries and operating expenses for 1980-81 totaled \$2,217,848. For 1981-82 the total of salaries and operating expenses is \$3,236,013. This represents an increase of over \$1 million, or 46%.* For salaries alone, the increase from \$1,783,017 ('80-'81) to \$2,408,354 in 1981-82, represents a 35% increase totaling \$625,337.

For operating expenses, the increase from \$434,831 in 1980-81 to \$827,659 represents an increase of 90% totaling \$392,828. In contrast, the proposed budget under the initiative ranges between \$297,000 to \$424,500 (Please see Table #7).

As indicated in Table #8 which follows, the governor proposes a 27.8% increase (37.7% of net reserve or budget surplus) overall.**The increases total approximately \$1 million. Table #8 serves to point out the dollar and percentage increases for various categories for expenditures. It presents comparisons for various types of expenditures, compared selectively, for the major sources of budget increases for a two-year period, 1981-82/1980-81. As indicated, some of the percentage and dollar increases are quite substantial, such as a 238.79% increase for apportioned rental expense.

Indeed, the consumer advocate office proposed by the Initiative Petition could be funded by the net of new and deleted positions plus the rent increase.

*Salaries and expenses alone

** Salaries and expenses combined with all other items in the budget.

TABLE # 8

NOTES ON GOVERNOR'S PROPOSED BUDGET

	<u>\$ Increase</u>	<u>% Increase</u>
Budget Increase 81-82/80-81	\$ 915,333	27.8
Budget Increase (Net of Reserve) 81-82/80-81	\$ 990,636	37.7
Major Cost <u>Increases</u> of 81-82 Budget over 80-81 Budget		
Salary Increase (existing positions)	\$ 223,922	16.4
Net of New Position Salaries and Deleted Position Salaries	195,622	--
Rent	156,172	238.79
Other Contract Services (copy machines)	65,739	554.25
Legal and Court Expense	45,122	51.30
Retirement	33,520	26.58
EDP	25,220	98.51
Consultant Services	21,722	12.18
Communication Expense	20,267	67.79
Insurance	15,635	64.42
Office Furniture	15,164	400.00

Conclusions

The research and analysis depicted in the above discussion results in the following conclusions:

- (1) Utility rate increases continue to escalate nationwide and in Nevada;
- (2) The workloads of regulatory commissions and their staffs continue to increase with little or no increase in personnel and technical staff;
- (3) There are serious questions about the deficiency of rate design approved by the Public Service Commission of Nevada, particularly with regard to irrigation rates;
- (4) There is a necessary and separate role for the full commission staff as distinct from an office of consumer advocacy;
- (5) The people of Nevada need a strong and viable commission staff, as well as a separate office for consumer representation. The staff performs a balancing role relative to the various interests who come before the commission, but the consumer advocate's office represents the ratepayers on an exclusive basis;
- (6) The Comprehensive Management Study of the PSC done for the ACR 22 subcommittee indicated areas where significant needed improvements can be made in commission regulation and the management of its staff;
- (7) Intervention by local units is usually poorly funded and intermittent before state commissions, including Nevada, which illustrates the need for a statewide government office for consumer advocacy;
- (8) More than half of the states having offices of consumer representation for intervention before regulatory commissions have established them under the office of the attorney general;
- (9) There are very few offices of consumer advocacy under the governor, as noted, above;
- (10) The budget for consumer advocate offices, in general, is in the \$300,000 to \$500,000 range;
- (11) Consumer advocate offices have achieved significant direct savings in a relatively short time;

(12) The direct savings from offices of consumer advocacy resulting from commission reductions or refunds greater than recommended by commission's own staff, for 7 state offices for a 2 to 3 year period, has saved ratepayers \$225.1 to \$225.7 million;

(13) A good example of the cost effectiveness of consumer advocacy is illustrated by comparing the total budgets for the four states of Missouri, Massachusetts, Arkansas and Florida, which total \$1,168,809 (information extracted from Table #5 and Table #6). The savings are approximately \$155 million, or about \$155 in ratepayer benefits for each dollar budgeted;

(14) Another example of the effectiveness of consumer advocate intervention is the fact that five state consumer advocacy offices generated \$163.5 million in direct (below commission's own staff recommendations) savings. This would fund a consumer office in each of the 50 states with a budget of \$327,000 each for ten years;

(15) The Initiative Petition proposal for consumer advocacy placing the office under the attorney general avoids the conflict of interest inherent in the governor's plan, and provides necessary checks and balances for a strong and effective consumer representation;

(16) The proposed consumer advocate budget provides for a modest budget ranging \$297,000 and \$425,500, thus allowing cost-effective consumer advocacy;

(17) Both AB 58 and AB 85 would radically alter the PSC structure to the detriment of regulatory effectiveness in Nevada. Both proposals are flawed because they would severely hamper the ability of the PSC to make sound regulatory decisions, would open up the PSC to new areas of legal exposure, and most importantly, will not lead to effective consumer advocacy.

ATTACHMENT B

REVENUES FROM RETAIL SALES

	Nevada Power Company		Sierra Pacific Power Company	
		Percentage Increase		Percentage Increase
1976	\$103,443,479		\$ 89,023,999	
		20.38		14.54
1977	\$124,527,865		\$101,965,155	
		13.92		16.30
1978	\$141,867,315		\$118,585,274	
		21.74		12.67
1979	\$172,702,139		\$133,613,188	

ANNUAL KWH SALES

	Nevada Power Company		Sierra Pacific Power Company	
		Percentage Increase		Percentage Increase
1976	4,178,209,167		2,403,263,000	
		3.85		5.94
1977	4,339,204,138		2,545,911,000	
		9.55		4.81
1978	4,753,669,780		2,668,354,000	
		13.35		8.67
1979	5,388,380,329		2,899,788,000	

AVERAGE PRICE PER KWH SOLD.
(all customers)

	Nevada Power Company		Sierra Pacific Power Company	
		Percentage Increase		Percentage Increase
1976	\$ 0.0248		\$ 0.0370	
		15.73		8.38
1977	\$ 0.0287		\$ 0.0401	
		3.83		10.72
1978	\$ 0.0298		\$ 0.0444	
		7.55		3.78
1979	\$ 0.0321		\$ 0.0461	

SOURCE: Statistic of Privately Owned Electric Utilities in the United States
 DOE/AIA - 0044 (76)
 DOE/AIA - 0044 (77)
 DOE/AIA - 0044 (78)
 DOE/AIA - 0044 (79)

RATE AND TARIFF ANALYSIS

by

Leigh A. Riddick

In an effort to judge the consequences of all the pressures on regulation in Nevada, a preliminary review was made of the tariffs on file in Nevada for two major electric utilities, Sierra Pacific Power Company and Nevada Power Company. The results clearly show that these pressures have resulted in deficient regulation in Nevada.

An example of effective regulation is designing rates based on concepts of cost of service. Such rates take various forms based on the characteristics of the company being examined, but certain general principles apply to almost all utilities. Some of these more basic results are absent from the tariffs examined. For example, the following are common characteristics of cost-based rates:

- seasonal differentials in which energy charges vary by season, as the utility's costs vary.
- fixed customer charges unrelated to consumption.
- time-of-use rates in which charges vary by period of the day as the utility's costs vary.
- load management rates which offer the customer a discount for allowing the utility to control the amount of power he consumes during high cost operation periods of the utility.
- cogeneration rates to encourage the use of alternate energy sources.
- class divisions based on cost characteristics of customer usage patterns.

All of these characteristics are incorporated into tariffs to encourage efficiency and conservation in energy use. The rates are intended to inform the consumer of the cost associated with his energy use. However, it should be noted that rates are not based entirely on cost, but tempered somewhat by other considerations such as customer impact. However, the characteristics listed above are basic to cost-based rates.

Seasonal differentials are absent in all of the rates examined, yet certain areas of Nevada have extreme seasonal differentials usually associated with extreme cost differences. Such differentials are one of the first basic cost characteristics usually recognized in rate design.

On the other hand, optional time-of-use electric rates are on file for large customers of both Sierra Pacific Power Company and

Nevada Power Company. Such rates are a much more sophisticated cousin of seasonal rate differentials. Seasonal rate differentials are used to show customers that many of the costs of the utility are geared to its need to expand plant to meet peak demands.

Much of the plant of a company with a sharp peak in demand will be idle in off-peak months, but still must be financed and maintained in good working order. In addition, peak plants usually require more expensive fuel. Peak users create the need for this plant: having higher rates in peak periods informs customers of their responsibility for these costs.

Similarly, many costs of the utility---mostly fuel and maintenance costs---vary during the hours of any given day as demand fluctuates and different running costs are incurred. However, the time-of-use rates on file at the Public Service Commission of Nevada are unusual in two respects which considerably lessen their effectiveness. First, the rate differentials are very, very narrow:

Sierra Pacific Power Company ¹		
Period	Rate	Differential
On-Peak	5.068¢	} 0.605¢
Mid-Peak	4.463¢	
Off-Peak	4.254¢	

¹Source: Sierra Pacific Electric Tariff No. 1, 8th Revised
P.S.C.N Sheet No. 68.

Nevada Power Company²

Period	Rate	Differential
On-Peak	3.920¢	} 0.653¢
Off-Peak	3.267¢	

It is generally accepted that the differential between such charges must be at least 2¢-3¢ to be meaningful in reflecting cost differences. Clearly, the 0.6¢ and 0.2¢ differentials in the existing rates suggest inadequacies. Additionally, the time periods to which the Nevada Power rates apply are too long (11:00 a.m. - 9:00 p.m.: 10 hours) to allow much flexibility in customer use. Also, the sharp edges of cost differences associated with time of electricity use are blurred as those differences are averaged over longer and longer time periods.

These rates are clearly inadequate, but an even greater problem exists in the dual facts that the time-of-use rate for Sierra Pacific customers is an optional rate and the alternative rate for the customers is a declining block rate.³ Declining block rates encourage use at all times because the average price per kilowatt hour declines as usage increases. No customer who desires to lower costs would be likely to choose the optional rate unless the kilowatt hour charges under the declining block rate greatly exceed the optional charges. However, this is not the case as the following comparison shows:

Sierra Pacific Power Company

Time-of-Use Charges		Declining Block Charges	
On-Peak	5.068¢	1st 150 Kwh	4.515¢
Mid-Peak	4.463¢	Next 150 Kwh	4.358¢
Off-Peak	4.254¢	Next 150 Kwh	4.212¢
		All Remaining Kwh	4.014¢

²Source: Nevada Power Tariff No. 1-B, Third Revised P.S.C.N. Sheet No. 15.

³Source: Sierra Pacific Electric Tariff No. 1, 8th Revised P.S.C.N. Sheet No. 67.

Clearly, the declining block charges will be less than any time-of-use scenario because the minimum cut off for entry into this class of service is 1000 Kwh. This means that any customer in this class will hit the 4.014¢/Kwh billing range under the declining block rate, which is less than the lowest time-of-use charge of 4.254¢. In addition, the average rate for a customer using only 1000 Kwh--a highly unlikely event--will only be 4.170¢/Kwh. Again, this average rate is less than the lowest time-of-use rate. To reiterate, there is no way a large user can save money on energy charges by being on the time-of-use rate. Demand charges on the tariffs are so similar that there is no need to discuss them. In summary, the time-of-use rates on file in Nevada are of form only and no meaningful substance.

The only load management rates are irrigation or water pumping rates. Load management rates are offered to allow customers an alternative way to receive their energy that will lower both their own costs and those of the utility. Usually, the customer allows the utility to directly control his load during peak hours or it is indirectly controlled by him. For this control he receives either a credit or a lower rate.

Nevada Power Company offers a water pumping customer a lower kilowatt charge for the privilege of being able to interrupt service to him when his demand exceeds 299 kilowatts in any one month.⁴ However, the timing of interruption is not directly tied to the timing of the utility's system peak. This is unusual since the utility's interest in curtailing demand is related to the potential for decreasing costs during its peak. The rate does tie demand charges to time of electricity use, but customers are only directly charged for demand levels during curtailment. This denies any cost principle associated with load management or interruptible rates. In essence, the

⁴ Source: Nevada Power Company, Tariff 1-B, Third Revised P.S.C.N. Sheet No. 18.

customer pays for the demand level after curtailment but receives no credit since his demand charges are at levels equivalent with other customers' demand charges. Additionally, these customers are not currently eligible for the time-of-use rates on file.

Sierra Pacific Power Company's irrigation customers have no control options, and again are not eligible for time-of-use rates. The implication of these facts is that these customers have no meaningful load control (and thus no cost control) option.

In summary, these Nevada utilities offer no load management incentives for their customers and they are thus promoting costly inefficiencies in energy use. Great potential exists for savings to both the utilities and their customers through controlling many loads, such as water heating, air conditioning, space heating and even some manufacturing loads. Such rates have been well-received and quite effective in other states.

No co-generation rates are offered by either utility, which again discourages wise energy use.

Due to time limitations and the complexity of analyzing usage patterns, this analysis does not include a discussion of the classification of customers into tariff groups based on cost characteristics.

Special Energy Unit Slows Those Soaring Utility Bills

By
**Howard
Houghton**

There is a bright side to that steady, frustrating rise in your utility bills over the past few years. Your bills probably would have climbed even faster if not for a special unit of the New Mexico attorney general's office.

This may seem like small consolation to New Mexicans who recently found themselves paying electric rates among the highest in the country. (A Department of Energy report ranked Public Service Company of New Mexico's residential rates seventh highest in the nation, although the company has said it doubts the ranking still holds). But, if you accept figures released by the attorney general's Energy Unit, things could have been a lot worse.

They claim to have "saved or assisted in saving" consumers more than \$36 million in rate requests that were denied to utility companies.

The claim is based on dozens of utility regulation cases in which they have intervened since 1975. That's the year they took up the role of representing average residential utility customers before the New Mexico Public Service Commission (PSC).

The PSC is the three-member body that

regulates electric and gas rates. According to law, the commission decides how much revenue the utility companies need to provide service, plus make a profit. The commission then fixes the rates accordingly, spreading the burden among the various types of consumers. The utility companies operate free of competition.

However, until the Energy Unit was formed as part of the attorney general's Consumer and Economic Crimes Division, the average ratepayer often was not specifically represented at rate hearings. And those who did intervene were ill-equipped to match the resources of the utility companies when it came to analyzing the complex data used to determine rates.

Using funds from the U.S. Department of Energy and other sources, lawyers in the Energy Unit began appearing at rate hearings and hiring consultants in economics, engineering and utility rate analysis to examine the evidence presented by the utility companies.

The result of the AG's intervention, and that of consumer advocacy groups funded through the AG's office, unquestionably has been denied



These lawyers (from left), Jeff Fornaciari, William Primm, [redacted] and Paul Bideman, carry the ball for the Attorney General's Energy Unit which represents the average ratepayer at utility hearings

al of some of the companies' revenue claims. They also have helped bring about rules and policies on energy conservation, customer rights and obligations and things like who pays for advertising and charitable donations by the companies.

The Energy Unit was started during former attorney general Toney Anaya's administration. You may remember television commercials touting the unit when Anaya campaigned for a U.S. Senate seat in 1978. The ads showed expert witnesses for the utilities marching lock step into rate hearings. Close behind came Anaya and his troops to represent us little guys.

It was a time of both rising "consumerism" and rising energy bills. Soaring fuel costs and expensive investments to keep up with New Mexico's growth and minimize the environmental impacts of power plants were — and are — relentlessly forcing utility rates higher.

"We're in one of the worst positions of any state," said David Cohen, lawyer for the PSC. "We've got the pressure of growth and some of the country's highest rates, yet our per capita income ranking is one of the lowest."

But, Cohen said, the AG's utility lawyers are adding sophistication to the regulatory process.

"Overall, they have been a pretty effective operation. In terms of skills of the attorneys and excellence of presentation, it has been very good."

The commission can only act on the record that is before it in a rate case. And what the attorney general does is bring forward things that otherwise probably would not get on the record. This provides options in the case.

"And they bring a sensitivity with regard to the residential customer."

The Energy Unit, regularly staffed by four attorneys and a secretary, blossomed in 1977 when it began receiving sizeable grants from the Department of Energy to take part in electric cases. The grants have ranged from \$200,000 to \$250,000. Part of the money has been parcelled out in subgrants to groups like Energy Consumers of New Mexico, Inc. and the Energy Project, both based in Albuquerque, and CAUSE (Citizens Association for Utility Study Efforts) in Las Cruces. State funds have been used by the Energy Unit to intervene in natural gas cases.

New Mexico is one of only a handful of states that has received such Energy Department funding of a yearly basis.

"They've done well in the yearly competition for grants," said Nancy Tate, chief of the Energy Department's State Relations Branch in Washington, D.C. "And from the reports we get, it appears that on the whole they are more effective than most other states."

Recently, to assist a request to Congress for continued funding of utility rate intervention projects, the White House Office of Consumer Affairs singled out the New Mexico operation for attention. Along with similar set-ups in New York and Michigan, the New Mexico unit was asked to report on its accomplishments to two congressional committees, to show the potential such programs have.



Attorney General Jeff Bingaman: "They are having the effect of making companies prove their rates before they get them."

"I've been very impressed with the work they're doing," said N.M. Attorney General Jeff Bingaman. "They are having the effect of making companies prove their rates before they get them."

"I don't want to kid anyone that rates aren't going up, but I think I'm satisfied that rate increases are necessary for the financial solvency of the companies."

Bingaman said the Energy Unit has had a "lower profile" under his administration than it had under Anaya. "We have not taken the tack of attacking the utility companies in the press every time we file a lawsuit," he said. "I think we have become more effective, perhaps because of the lower profile."

A source close to the PSC agreed that there has been less publicity surrounding the AG's utility efforts since Bingaman took office. "The success has been about the same under each administration," the source said. "But I would say the commissioners had more fear of Anaya because of his willingness to use the media."

Bingaman convinced the last session of the State Legislature that the state should start picking up the tab for operation of the Energy Unit, eliminating dependence on federal grants. "I think this is sort of recognition of the fact that the Energy Unit is performing a useful function," said Bingaman. "Also it makes it more permanent."

One side-effect of the switch to state funding, however, will be to force the consumer advocacy groups which have been receiving federal subgrants through the AG's office to find new ways to get funding.

Energy Consumers of New Mexico has received annual subgrants ranging from \$19,000 to \$35,000 to take part in electric rate cases. The Energy Project, a joint operation of the Southwest Research and Information Center and the New Mexico Legal Services Support Project, has received subgrants ranging from \$27,000 to \$48,000 for the same purpose.

"It's going to certainly hurt us and we're concerned about it," said a staff member of the Energy Project, who asked to be identified only as a "spokesperson."

"We're hoping the decision isn't irrevocable. To turn to state money that can't come to us (the state Constitution prohibits direct state funding of private groups) smacks of some disloyalty and no recognition of the benefits of having multiple fronts on the issues. And the subgrantees don't have the political restraints the attorney general has. We're in a position to make some hard and rather critical arguments."

The executive director of Energy Consumers, Pauline Eisenstadt, said, "I think we have been effective and one indication of that is that there has been movement, perhaps on the part of the utilities, to stop us from getting this funding."

Both groups, however, had praise for the work of the AG's Energy Unit. The speaker for the Energy Project said the attorney general's office "has been the single most important participant bringing some kind of balance to the regulatory process."

Bud Mulcock, vice president for public affairs at Public Service Company of New Mexico, the state's largest utility company, indicated he's not likely to shed any tears if the private consumer groups lose funding.

"There is a need in our industry for some counterbalance," he said. "Because there is a lack of competition, there is need for a force to assure that the commission is doing a fair and reasonable job. It's an accepted fact of life and it's not for us to say that nobody should be represented but us."

"... I think I'm satisfied that rate increases are necessary for financial solvency of the companies."

The issue concerns how much new construction is necessary.

"But whether five different people have to be involved, all marching to the same drum, that's what I question. Because of the multiplicity, the tendency to get into inconsequential issues is exaggerated. There is an overkill of information requested during the hearings."

He also said, "The attorney general's office

doesn't try to monkey with management of the company as much as some of the other intervenors."

Another company spokesman, Communications and Public Affairs Manager Mike Slota, had qualified praise for the AG's Energy Unit. "To the extent that the attorney general's office has caused modifications in total reve-

nue increases, it has been effective," he said. "They do have a very strong residential consumer interest and they seem to forget commercial and industrial and other interests."

Added Mulcock, "I can't give you a number on how much money they saved in knocking off rate requests. And I can't say how much it cost because of sometimes questionable expansion of the regulatory process."

"One case cost us about \$750,000 (in regulatory expenses). An industry publication estimated recently that regulation has a 30 percent impact on the cost of providing service. If that's true for us, then regulation has cost us about \$73 million. Although we have to live with some regulation, not all of it is necessary."

A coming showdown of sorts between the companies and the intervenors is indicative of the battles waged before the Public Service Commission. The issue concerns how much new construction is necessary. It is an issue that touches directly on how much regulation is necessary and what decisions have to be left to company management. And it is an issue that could have a substantial effect on utility bills.

"We need to know what capacity is really needed before (new electrical generating plants) are built," said Jeff Fornaciari, director of the Energy Unit. "It's one thing that we want to get into."

Paul Biderman, who founded the Energy Unit as its first full-time attorney, explained, "There is a reserve margin, beyond the capacity needed to meet the peak demand period. A few utilities have built substantial reserve margins. The issue is one of excessive reserve margin, trying to keep the consumer from paying for ambitious building programs."

New generating plants cost around \$375 million on the average and consumers pay for the cost of construction even before it begins. The fear is that if a company is allowed to overbuild, the utility will end up exporting the extra power to other utilities and channeling the money to the company's stockholders while consumers help foot the bill for the plant.

Biderman said a utility company may have a tendency to "try to increase its rate base — to make a bigger company" through new construction.

Warned Public Service Company's Mulcock, "If they're getting into construction planning, they're getting into management. It is legitimate for them to be able to question our data, but it is not their decision as to what we do."

Mulcock said it is "an absolute economic untruth" that utilities have a natural urge to expand. He added, "If all the attorney general staff's suggestions had been adhered to, Albuquerque would be dark. They would have us at rates we had in 1969 and, if that were so, there would be no electricity in New Mexico."

Responded Biderman, "We feel if everything we asked for had been granted, Public Service Company wouldn't have the seventh highest rates in the country. We obviously feel there is some fat in the company." □

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ATTACHMENT E---page 1

(PUBLIC UTILITY REGULATORY ACT)

1981

GENERAL SESSION

B. No. _____

By _____

AN ACT RELATING TO THE PUBLIC SERVICE COMMISSION; PROVIDING DEFINITIONS; ESTABLISHING THE PUBLIC SERVICE COMMISSION AS THE ENTITY TO REGULATE PUBLIC UTILITIES; PROVIDING THE DUTIES OF THE PUBLIC SERVICE COMMISSION; PROVIDING FOR AN EXECUTIVE STAFF DIRECTOR AND TECHNICAL SUPPORT STAFF; PROVIDING QUALIFICATIONS FOR COMMISSIONERS AND PERSONNEL OF THE COMMISSION; ESTABLISHING THE PUBLIC ADVOCACY DIVISION; PROVIDING FOR THE DUTIES OF THE PUBLIC ADVOCACY DIVISION; PROVIDING FOR A DIRECTOR OF THE PUBLIC ADVOCACY DIVISION; ESTABLISHING A CITIZEN'S ADVISORY COUNCIL; AND PROVIDING QUALIFICATIONS FOR THE PUBLIC ADVOCACY DIVISION AND THE CITIZEN'S ADVISORY COUNCIL.

THIS ACT AMENDS SECTION 13-1-2, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 34, LAWS OF UTAH 1969 AND SECTION 13-1-12, UTAH CODE ANNOTATED 1953, AS LAST AMENDED BY CHAPTER 23, LAWS OF UTAH 1959; ENACTS SECTIONS 54-1a-1 THROUGH 54-1a-14, UTAH CODE ANNOTATED 1953 AND SECTIONS 54-2-2 THROUGH 54-2-11, UTAH CODE ANNOTATED 1953; REPEALS AND REENACTS SECTION 54-1-1, UTAH CODE ANNOTATED 1953, SECTION 54-1-2, UTAH CODE ANNOTATED 1953, AS LAST AMENDED BY CHAPTER 9, LAWS OF UTAH 1975 (1st S.S.), SECTION 54-1-3, UTAH CODE ANNOTATED 1953, AS LAST AMENDED BY CHAPTER 153, LAWS OF UTAH 1969; AND SECTION 54-2-1, UTAH CODE ANNOTATED 1953, AND REPEALS SECTIONS 13-1-1.1, 13-1-1.3 and 54-1-1.5, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 34, LAWS OF UTAH 1969, SECTIONS 54-1-4, 54-1-5, 54-1-6, 54-1-7, 54-1-8, 54-1-10, 54-1-11, and 54-1-12, UTAH CODE ANNOTATED 1953, SECTION 54-1-9, UTAH CODE ANNOTATED 1953, AS LAST AMENDED BY CHAPTER 129, LAWS OF UTAH 1967, AND SECTIONS 54-10-1 THROUGH 54-10-7, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 54, LAWS OF UTAH 1977.

1 B. No.

2 Be it enacted by the Legislature of the State of Utah:

3 Section 1. Chapter 1 of Title 54, Utah Code Annotated 1953, is repealed and
4 reenacted to read:

5 54-1-1. Title 54 shall be known and may be cited as the "Public Utilities
6 Regulatory Act."

7 54-1-2. It is the purpose of this act to provide for the effective regulation of
8 public utilities to insure reliable, efficient, economic, and safe public utility service.

9 54-1-3. When used in this act:

10 (1) "Commission" means the public service commission of the state of Utah.

11 (2) "Commissioner" means a member of the commission.

12 (3) "Division" means the Public Advocacy Division.

13 (4) "Corporation" includes a corporation, an association and a joint stock
14 company having any powers or privileges not possessed by individuals or
15 partnerships, but shall not include towns, cities, counties, conservancy districts,
16 improvement districts or other governmental units created or organized under any
17 general or special law of this state.

18 (5) "Person" includes an individual, a firm, a corporation and a copartnership.

19 (6) "Transportation of persons" includes every service in connection with or
20 incidental to the safety, comfort or convenience of the person transported, the
21 receipt, carriage and delivery of such person and his baggage.

22 (7) "Transportation of property" includes every service in connection with or
23 incidental to the transportation of property, including in particular its receipt,
24 delivery, elevation, transfer, switching, carriage, ventilation, re Fridgeration, icing,
25 dunnage, storage and hauling; and the transmission of credit by express companies.

26 (8) "Street railroad" includes every railway, and each and every branch or
27 extension thereof, by whatsoever power operated, being mainly upon, along, above,
28 or below any street, avenue, road, highway, bridge, or public place within any city or
29 town, together with all real estate, fixtures and personal property of every kind used
30 in connection therewith, owned, controlled, operated or managed for public services
31 in the transportation of persons or property; but the term "street railroad" shall not
32 include a railway constituting or used as part of a commercial or interurban railway.

33 (9) "Street railroad corporation" includes every corporation and person, their
34 lessees, trustees, receivers or trustees appointed by any court whatsoever, owning,
35 controlling, operating or managing any street railroad for public service within this

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2 state.

3 (10) "Railroad" includes every commercial, interurban and other railway, other
4 than a street railway, and each and every branch or extension thereof, by
5 whatsoever power operated, together with all tracks, bridges, trestles, rights of
6 way, subways, tunnels, stations, depots, union depots, yards, grounds, terminal
7 facilities, structures and equipment, and all other real estate, fixtures and personal
8 property of every kind used in connection therewith, owned, controlled, operated or
9 managed for public service in the transportation of persons or property.

10 (11) "Railroad corporation" includes every corporation and person, their
11 lessees, trustees and receivers or trustees appointed by any court whatsoever,
12 owning, controlling, operating or managing any railroad for public service within this
13 state.

14 (12) "Express corporation" includes every corporation and person, their lessees,
15 trustees and receivers or trustees appointed by any court whatsoever, engaged in or
16 transacting the business of transporting any freight, merchandise or other property
17 for public service on the line of any common carrier or stage or auto line within this
18 state.

19 (13) "Automobile corporation" includes every corporation and person, their
20 lessees, trustees and receivers or trustees appointed by any court whatsoever,
21 engaged in or transacting the business of transporting passengers or freight,
22 merchandise or other property for public service by means of automobiles or motor
23 stages on public streets, roads or highways along established routes within this state.

24 (14) "Aerial bucket tramway corporation" includes every corporation and
25 person, their lessees, trustees and receivers or trustees appointed by any court
26 whatsoever, owning, controlling, operating or managing any aerial bucket tramway
27 for public service in this state, except where the aerial tramway is used only for the
28 purpose of delivering raw material to an industrial or manufacturing plant from its
29 customers.

30 (15) "Common carriers" includes every railroad corporation; street railroad
31 corporation; automobile corporation; scheduled aircraft carrier (corporation); aerial
32 bucket tramway corporation; express corporation; dispatch; sleeping, dining,
33 drawing-room, freight, refrigerator, oil, stock and fruit car corporation; freight
34 line, car loaning, car-renting, car-loading, and every other car corporation, and
35 person; their lessees, trustees and receivers or trustees appointed by a court

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2 whatsoever, operating for public service within this state; and every corporation and
3 person, their lessees, trustees and receivers or trustees appointed by any court
4 whatsoever, engaged in the transportation of persons or property for public service
5 over regular routes between points within this state.

6 (16) "Heating plant" includes all real estate, fixtures, machinery, appliances
7 and personal property controlled, operated or managed in connection with or to
8 facilitate the production, generation, transmission, delivery or furnishing of
9 artificial heat.

10 (17) "Heat corporation" includes every corporation and person, their lessees,
11 trustees and receivers or trustees appointed by any court whatsoever, owning,
12 controlling, operating, or managing any heating plant for public service within this
13 state.

14 (18) "Gas plant" includes all real estate and fixtures and personal property
15 owned, controlled, operated or managed in connection with or to facilitate the
16 production, generation, transmission, delivery or furnishing of gas (natural or
17 manufactured) for light, heat or power.

18 (19) "Gas corporation" includes every corporation and person, their lessees,
19 trustees and receivers or trustees appointed by any court whatsoever, owning,
20 controlling, operating or managing any gas plant for public service within this state
21 or for the selling or furnishing of natural gas to any consumer or consumers within
22 the state of Utah for domestic, commercial or industrial use, except where gas is
23 made or produced on, and distributed by the maker or producer through, private
24 property alone, solely for his own use or the use of his tenants and not for sale to
25 others.

26 (20) "Electric plant" includes all real estate and fixtures and personal property
27 owned, controlled, operated or managed in connection with or to facilitate the
28 production, generation, transmission, delivery or furnishing of electricity for light,
29 heat or power, and all conduits, ducts or other devices, materials, apparatus or
30 property for containing, holding or carrying conductors used or to be used for the
31 transmission of electricity for light, heat or power.

32 (21) "Electrical corporation" includes every corporation, cooperative
33 association and person, their lessees, trustees and receivers or trustees appointed by
34 any court whatsoever, owning, controlling, operating or managing any electric plant,
35 or in anywise furnishing electric power, for public service or to its consumers or

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2 members for domestic, commercial or industrial use, within this state except where
3 electricity is generated on or distributed by the producer through private property
4 alone; i.e., property not dedicated to public use, solely for his own use, or the use of
5 his tenants, or by an association of unit owners formed under the "condominium
6 ownership act," Chapter 111, Laws of Utah, 1963 [~~57-8-1 to 57-8-35~~], and not for
7 sale to others.

8 (22) "Telephone line" includes all conduits, ducts, poles, wires, cables,
9 instruments and appliances, and all other real estate and fixtures and personal
10 property owned, controlled, operated or managed in connection with or to facilitate
11 communication by telephone whether such communication is had with or without the
12 use of transmission wires.

13 (23) "Telephone corporation" includes every corporation and person, their
14 lessees, trustees and receivers or trustees appointed by any court whatsoever,
15 owning, controlling, operating or managing any telephone line for public service
16 within this state.

17 (24) "Telegraph line" includes all conduits, ducts, poles, wires, cables,
18 instruments and appliances, and all other real estate and fixtures and personal
19 property owned, controlled, operated or managed in connection with or to facilitate
20 communication by telegraph, whether such communication be had with or without
21 the use of transmission wires.

22 (25) "Telegraph corporation" includes every corporation and person, their
23 lessees, trustees and receivers or trustees appointed by any court whatsoever,
24 owning, controlling, operating or managing any telegraph line for public service
25 within this state.

26 (26) "Water system" includes all reservoirs, tunnels, shafts, dams, dykes,
27 headgates, pipes, flumes, canals, structures and appliances, and all other real estate
28 and fixtures and personal property owned, controlled, operated or managed in
29 connection with or to facilitate the diversion, development, storage, supply,
30 distribution, sale, furnishing, carriage, appointment, apportionment or measurement
31 of water for power, fire protection, irrigation, reclamation or manufacturing, or for
32 municipal, domestic or other beneficial use; provided, this shall not apply to private
33 irrigation companies engaged in distributing water only to their stockholders.

34 (27) "Water corporation" includes every corporation and person, their lessees,
35 trustees and receivers or trustees appointed by any court whatsoever, owning,

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2 controlling, operating or managing any water system for public service within this
3 state; provided, this shall not apply to private irrigation companies engaged in
4 distributing water only to their stockholders; nor shall the term include towns,
5 cities, counties, water conservancy districts, improvement districts or other
6 governmental units created or organized under any general or special law of this
7 state.

8 (28) "Sewerage corporation" includes every corporation and person, their
9 lessees, trustees and receivers or trustees appointed by any court whatsoever,
10 owning, controlling, operating or managing any sewerage system for public service
11 within this state; provided, this shall not apply to private sewerage companies
12 engaged in disposing of sewage only for their stockholders; nor shall the term include
13 towns, cities, counties, conservancy districts, improvement districts or other
14 governmental units created or organized under any general or special law of this
15 state.

16 (29) "Warehouseman" includes every corporation and person, their lessees,
17 trustees and receivers or trustees appointed by any court whatsoever, owning,
18 controlling, operating or managing any grain elevator or any building or structure in
19 which property is regularly stored for public use within this state, in connection with
20 or to facilitate the transportation of property by a common carrier or the loading or
21 unloading of the same.

22 (30) "Aircraft carrier" includes every corporation and person, and lessee,
23 trustee and receivers or trustees appointed by any court whatsoever, operating for
24 public service for hire engaged in intrastate transportation of persons or property;
25 except those air carriers operating with a certificate of convenience and necessity
26 issued by the federal government.

27 (31) "Fixed Utility" includes every gas corporation, electrical corporation,
28 telephone corporation, telegraph corporation, water corporation, sewage corporation
29 and heat corporation.

30 (32) "Public utility" includes every every common carrier, gas corporation,
31 electrical corporation, telephone corporation, telegraph corporation, water
32 corporation, and sewerage corporation, heat corporation and warehouseman where
33 the service is performed for, or the commodity delivered to, the public generally, or
34 in the case of a gas corporation or electrical corporation where the gas or
35 electricity is sold or furnished to any member or consumers within the state of Utah

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2 for domestic, commercial or industrial use. And whenever any common carrier, gas
3 corporation, electrical corporation, telephone corporation, telegraph corporation,
4 water corporation, sewerage corporation, heat corporation, or warehouseman
5 performs a service for or delivers a commodity to the public; or in the case of a gas
6 corporation or electrical corporation selling or furnishing gas or electricity to any
7 member or consumers within the state of Utah, for domestic, commercial or
8 industrial use, for which any compensation or payment whatsoever is received, such
9 common carrier, gas corporation, electrical corporation, telephone corporation,
10 telegraph corporation, water corporation, sewerage corporation, heat corporation,
11 and warehouseman is hereby declared to be a public utility, subject to the
12 jurisdiction and regulation of the commission and to the provisions of this title.
13 Except, as hereinafter provided, when any person or corporation performs any such
14 service for or delivers any such commodity to any public utility herein defined, such
15 person or corporation, and each thereof, is hereby declared to be a public utility and
16 to be subject to the jurisdiction and regulation of the commission and to the
17 provisions of this title. Any corporation or person not engaged in business
18 exclusively as a public utility as hereinbefore defined shall be governed by the
19 provisions of this title in respect only to the public utility or public utilities owned,
20 controlled, operated or managed by it or by him, and not in respect to any other
21 business or pursuit.

22 Provided, that whenever any person, association, company or corporation, not
23 engaged in business as a public utility as defined by this act shall be able to produce
24 a surplus of electric energy or power, gas or water, beyond the needs of its own
25 business and shall desire to sell, exchange, deliver or otherwise dispose of such
26 surplus to or with any public utility as in this act defined, such public utility desiring
27 to effect a purchase or exchange of such surplus shall submit to the commission, for
28 authorization by said commission, a proposed contract covering such purchase or
29 exchange. The commission shall thereupon determine, after a public hearing,
30 whether, in the public interest it shall be advisable that such contract be executed
31 and, if not adverse to the public interest, said commission shall authorize the
32 execution of said contract, and thereupon such public utility shall have the right to
33 purchase and receive or exchange such surplus product in accordance with the terms
34 of such contract. Such person, company, corporation or association selling or
35 exchanging such surplus product under such authorized contract shall not thereby

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2 become a public utility within the meaning of this act, nor shall it be subject to the
3 jurisdiction of the commission; provided that any person or corporation defined to be
4 an electrical corporation or public utility hereunder may continue to serve its
5 existing customers subject, however, to any order or future determination of the
6 commission in reference to the right to serve such customers.

7 Section 2. Chapter 1a of Title 54, Utah Code Annotated 1953, is enacted to
8 read:

9 54-1a-1. The Public Service Commission is hereby established as the agency to
10 administer the Public Utility Regulatory Act, and to carry out fully and effectively
11 the functions committed to it by law. It shall be the duty of the commission to
12 regulate any public utility engaged or proposing to engage in business inside the
13 state and to supervise all of the business of such public utilities so as to:

14 (1) Insure that the costs of public utility services are just and reasonable and in
15 the interest of the using and consuming public;

16 (2) Provide for the efficient management and operation of public utilities;

17 (3) Protect the financial integrity of public utilities;

18 (4) Encourage the well planned development of utility resources in a manner
19 consistent with state policy including the productive use of state energy resources,
20 conservation, and appropriate rates of growth; and

21 (5) Insure the safe operation of all public utility facilities; provided that the
22 Department of Transportation shall have jurisdiction over those safety functions
23 specified by the Department of Transportation Act.

24 54-1a-2. In discharging its duties, the commission may:

25 (1) Investigate, upon complaint or upon its own motion, the rates,
26 classifications, rules, regulations, practices, operations, services and facilities of a
27 public utility and hold hearings on them;

28 (2) Administer oaths, issue subpoenas and other process to compel the
29 attendance of witnesses and the production of testimony, records, papers, accounts
30 in any inquiry, investigation, hearing or proceeding before the commission. The
31 commission may petition a court of this state to enforce its subpoena or other
32 process;

33 (3) Make or require just, fair and reasonable rates, classifications, regulations,
34 practices, services and facilities for a public utility;

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2 (4) Prescribe the system of accounts and regulate the service and safety of
3 operations of a public utility;

4 (5) Require a public utility to file reports and other information and data;

5 (6) Appear personally or by counsel and represent the interests and welfare of
6 the state in all matters and proceedings involving a public utility pending before any
7 other officer, department, board, commission or court of the state or of another
8 state or the United States and to intervene in, protest, resist, or advocate the
9 granting, denial or modification of any petition, application, complaint or other
10 proceeding;

11 (7) Examine witnesses and offer evidence in any proceeding affecting the state
12 and initiate or participate in judicial proceedings to the extent necessary to protect
13 and promote the interests of the state; and

14 (8) Adopt regulations, consistent with due process of law, which govern the
15 practice and procedure and the conduct of all investigations, hearings and
16 proceedings before the commission.

17 54-1a-3. The jurisdiction and powers of the commission shall extend to all
18 public utilities as defined by this act. The powers of the commission shall be
19 liberally construed; and the commission shall have the powers specifically conferred
20 by this act and by any other law, and also all implied and incidental powers
21 necessary and proper to carry out effectually the provisions of this act.

22 54-1a-4. The commission shall be composed of three members appointed by the
23 governor by and with the consent of the senate. The terms of the members shall be
24 staggered so that one commissioner is appointed for a term of six years on March 1,
25 of each odd-numbered year. Not more than two members of the commission shall
26 belong to the same political party. Each commissioner at the time of appointment
27 and qualification shall be a resident citizen of the United States and of the state of
28 Utah and shall be not less than thirty years of age. Each member of the Public
29 Service Commission shall qualify by taking the constitutional oath of office and in
30 addition thereto shall swear or affirm that he is not pecuniarily interested directly
31 or indirectly in any public utility.

32 54-1a-5. A majority of the commissioners shall constitute a quorum for the
33 transaction of any business, for the performance of any duty or for the exercise of
34 any power of the commission; and may hold hearings at any time or place within or
35 without the state, and any action taken by a majority of the commission shall be

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2 deemed the action of the commission. Any investigation, inquiry or hearing which
3 the commission has power to undertake or to hold may be undertaken or held by or
4 before any commissioner or administrative law judge appointed by the commission.
5 All investigations, inquiries and hearings by a commissioner or administrative law
6 judge appointed by the commission shall be deemed the investigations, inquiries and
7 hearings of the commission; and all findings, orders or decisions made by a
8 commissioner or administrative law judge appointed by the commission, when
9 approved and confirmed by the commission and filed in its office, shall be deemed
10 the findings, orders or decisions of the commission and shall have the same effect as
11 if originally made by the commission.

12 54-1a-6. Any member of the commission may be removed for cause by the
13 governor. Vacancies shall be filled for unexpired terms by the governor. In the
14 event a commissioner is temporarily disabled or disqualified from sitting on any
15 manner before the commission, the governor may appoint a commissioner pro
16 tempore to sit on the matter before the commission. Compensation for
17 commissioners pro tempore shall be established by the governor. Any vacancy in the
18 commission shall not impair the right of the remaining commissioners to exercise all
19 the powers of the commission so long as a majority of such commission remains.

20 54-1a-7. The governor shall designate one commission member as chairman of
21 the commission. The chairman shall be the chief administrative officer of the
22 commission. The chairman and commissioners shall receive a rate of compensation
23 as established by law and all actual and necessary expenses incurred in attending to
24 official business.

25 54-1a-8. The Public Service Commission shall be located for purposes of
26 administration within the Department of Business Regulation. The executive
27 director of the Department of Business Regulation shall have no policy or
28 administrative control over the commission, its staff, the budget and selection of
29 personnel.

30 54-1a-9. The commission shall appoint an executive staff director, who shall:

31 (1) Provide administrative assistance to chairman of the commission for
32 personnel, budget and administrative details related to the work of the commission
33 or as required by state law;

34 (2) Carry out the commission's orders and policies;

35 (3) Keep full and correct records of all actions, transactions and proceedings of

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2 the commission; and

3 (4) Perform other duties as the commission directs.

4 54-1a-10. (a) The commission shall hire, develop, and organize a technical
5 staff to perform its functions under this chapter, including but not limited to the
6 analysis of all data submitted to the commission, the generation of its own data and
7 the preparation of a staff position in matters pending before the commission. The
8 technical staff of the commission shall be divided into a division of fixed utilities
9 and a division of common carriers. The commission shall hire economists; cost of
10 capital experts; rate design experts; accountants; engineers; inspectors; and any other
11 experts deemed necessary to meet the needs of the commission. The commission
12 may retain additional experts as required for a particular matter.

13 (b) The commission shall hire administrative law judges to the extent required.
14 Administrative law judges shall constitute a separate organizational unit reporting
15 directly to the commission.

16 (c) The commission shall hire administrative and personal staff to the extent
17 required to advise the commissioners, draft proposed orders and rulings, and perform
18 other administrative and personal staff functions.

19 (d) The commission shall hire accountants and such other technical and support
20 staff as may be necessary to insure compliance with orders issued by the commission.

21 54-1a-11. (1) The attorney general shall appoint sufficient full-time legal
22 counsel to assist and advise the commission and its staff in all matters affecting its
23 powers and duties and perform such duties and services in connection with this act
24 and the enforcement thereof as the commission may require.

25 (2) Notwithstanding the provisions of Chapter 5 of Title 67, the salary of the
26 commission's legal counsel shall be paid from the budget of the commission.

27 (3) The commission's legal counsel shall upon request of the commission
28 represent and appear for the commission in all actions and proceedings involving any
29 question under this act, and shall aid in any investigation or hearing conducted under
30 the provisions of this act.

31 54-1a-12. The commission shall make and submit to the governor and the
32 legislature an annual report containing a full and complete account of the
33 transactions of its office, together with such facts, suggestions and
34 recommendations as it may deem necessary. It shall be made and submitted as soon
35 after October 1, of each year as may be feasible in order to bring the report down to
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2 regulatory actions on residential consumers and those engaged in small commercial
3 enterprises in the state of Utah.

4 (2) The division shall assist residential consumers and those engaged in small
5 commercial enterprises in appearing before the public service commission of the
6 state of Utah.

7 (3) The division shall be an advocate on its own behalf and in its own name, of
8 positions most advantageous to a majority of residential consumers as determined by
9 the division and those engaged in small commercial enterprises, and may bring
10 original actions in its own name before the public service commission.

11 (4) The division may also represent the interests and welfare of residential and
12 small commercial consumers in all matters and proceedings involving a public utility
13 pending before any officer, department, board, commission or court of the state or
14 of another state or the United States and to intervene in, protest, resist, or
15 advocate the granting, denial or modification of any petition, application, complaint
16 or other proceedings.

17 54-2-3. The Public Advocacy Division shall have full access to public service
18 commission records and shall be entitled to call upon the assistance of the
19 commission staff unless the commission determines that such assistance is
20 inconsistent with the commission staff's responsibilities.

21 54-2-4. The Public Advocacy Division shall hire clerical, technical, and
22 administrative personnel as are needed to discharge the division's responsibilities.
23 The division may also hire or retain experts in utility regulation as may be required
24 for a particular matter.

25 54-2-5. The Public Advocacy Division, as it deems desirable, may request the
26 public service commission to review accounting procedures and expenditures of
27 natural gas, electric or telephone utilities.

28 54-2-6. There is hereby established in the Public Advocacy Division a Citizen's
29 Advisory Council. The advisory council shall study and recommend solutions and
30 policy alternatives relating to public utilities rates and their effect on residential
31 and small commercial consumers and assist the Public Advocacy Division in the
32 discharge of the division's responsibility.

33 54-2-7. The Citizen's Advisory Council shall consist of five members who shall
34 serve for a period of five years provided, that the first members shall serve: one for
35 a term of one year, one for a term of two years, one for a term of three years, one

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2 for a term of four years, and one for a term of five years. Upon the expiration of
3 such respective periods, the successor shall be appointed for a full term of five
4 years. The first member shall determine the original term of their appointment by
5 lot at the first meeting held by them after their appointment. All members shall
6 maintain their principal places of abode within the state of Utah. The five members
7 shall be appointed by the governor: one from Salt Lake City, Provo, or Ogden; one
8 from a county other than Salt Lake, Utah, Davis, or Weber; one who shall represent
9 the interests of low-income residents; one who shall represent the interests of senior
10 citizens; and one of whom must be a small commercial or agricultural consumer; and
11 one whom must be a resident consumer; however, no more than three shall be from
12 the same political party. The governor shall designate one member as chairperson
13 of the committee.

14 54-2-8. Members of the Citizen's Advisory Council shall be paid, as
15 compensation for their services, a per diem, and expenses as provided by law. The
16 committee may hold monthly meetings, and may hold such other meetings, at such
17 times and places as the chairperson and a majority of the committee may determine.

18 54-2-9. The governor, upon recommendation of the Citizen's Advisory Council,
19 shall appoint a director of the Public Advocacy Division who shall serve at the
20 pleasure of the governor.

21 The duties of the director shall include but shall not be limited to the following:

- 22 (1) Supervising the clerical, technical, and administrative support staff of the
23 Public Advocacy Division;
- 24 (2) When appropriate, coordinating activities between the Public Advocacy
25 Division and the staff of the Public Service Commission; and
- 26 (3) Carrying out such other responsibilities necessary to implement the policies
27 of the Public Advocacy Division.

28 54-2-10. (1) The attorney general shall appoint sufficient full-time legal
29 counsel to assist and advise the Public Advocacy Division in all matters affecting its
30 powers and duties and perform such duties and services in connection with this act.

31 (2) The legal counsel assigned to the Public Advocacy Division shall, upon
32 request of the Public Advocacy Division, represent and appear before the Public
33 Service Commission in all actions and proceedings involving fixed utilities, and shall
34 aid in any investigations or hearings related to fixed utilities.

35 (3) Notwithstanding the provisions of Chapter 5 of Title 67, the salary of the

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2 division's legal counsel shall be paid from the budget of the division.

3 54-2-11. (1) No personnel of the Public Advocacy Division or member of the
4 Citizen's Advisory Council shall, during their service:

5 (a) Hold any official relation or connection with any public utility, or have any
6 pecuniary interest therein, whether as the holder of stock or other securities or
7 otherwise;

8 (b) Hold any office of position, or be engaged in any business or avocation,
9 which is incompatible with the duties of their office or employment with the
10 commission;

11 (c) Solicit, suggest, request or recommend directly or indirectly to any public
12 utility the appointment of any persons to any office or place of employment.

13 (2) Chapter 16 of Title 67, "Utah Public Officers' and Employees' Ethics Act"
14 shall govern the activities of commissioners and personnel of the commission.

15 Section 4. Section 13-1-2, Utah Code Annotated 1953, as enacted by Chapter
16 34, Laws of Utah 1969, is amended to read:

17 13-1-2. The administration of the department shall be under the supervision,
18 direction and control of the executive director of business regulation. The
19 executive director of business regulation shall be appointed by the governor with the
20 advice and consent of the senate. He shall be a person experienced in
21 administration and knowledgeable in the field of business regulation. The executive
22 director of the department of business regulation shall be removable at the will of
23 the governor and shall receive a salary as established by law. [~~The governor may, if~~
24 ~~he so elects, appoint a member of the public service commission of Utah, other than~~
25 ~~the chairman of such commission, to fill the position of director of business~~
26 ~~regulation in addition to his duties as a member of the public service commission of~~
27 ~~Utah. The director of business regulation shall be removable at the will of the~~
28 ~~governor, provided, if the director of business regulation is a member of the public~~
29 ~~service commission, removal by the governor of such person from the position of~~
30 ~~director of business regulation will not affect the term of such individual as a~~
31 ~~member of the public service commission of Utah. The director of business~~
32 ~~regulation shall receive a salary in an amount established by the board of examiners.]~~

33 Section 5. Section 13-1-12, Utah Code Annotated 1953, as last amended by
34 Chapter 23, Laws of Utah 1959, is amended to read:

35 13-1-12. The members of the commission of business regulation shall be the

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2 members of ~~[the public service commission, of]~~ the state securities commission and
3 of the trade commission of Utah. The banking department shall be within the
4 department of business regulation. The department of registration shall be under
5 the supervision and control of the commission of business regulation and it shall
6 appoint the director of registration and such other administrative officers as may be
7 necessary efficiently and economically to perform the functions of the department
8 of business regulation.

9 Section 6. Sections 13-1-1.1, 13-1-1.3 and 54-1-1.5, Utah Code Annotated 1953,
10 as enacted by Chapter 34, Laws of Utah 1969; Sections 54-1-4 through 54-1-8, and
11 54-1-10 through 54-1-12, Utah Code Annotated 1953, Section 54-1-9, Utah Code
12 Annotated 1953 as last amended by Chapter 129, Laws of Utah 1967 and Sections
13 54-10-1 through 54-10-7, Utah Code Annotated 1953, as enacted by Chapter 54,
14 Laws of Utah 1977 are repealed.

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END ATTACHMENT E

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Coalition for Affordable Energy

P.O. Box 10034 • Reno, NV 89510 • (702) 786-1455, 826-7333

PRESENTATION BEFORE THE
COMMITTEE ON GOVERNMENT AFFAIRS OF THE 61st SESSION
NEVADA STATE ASSEMBLY, 2/4/81
Hon. Joseph E. Dini, Jr., Chairman

remarks by Randolph Townsend
Chairman of the
Coalition for Affordable Energy of Nev.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, AND HONORED GUESTS. FOR THE RECORD, I AM RANDOLPH TOWNSEND, CHAIRMAN OF THE COALITION FOR AFFORDABLE ENERGY, AND I THANK YOU FOR THE OPPORTUNITY TO COME BEFORE YOU TODAY.

I WILL BE BRIEF, AND KEEP MY REMARKS CONFINED TO THE FACTUAL DIFFERENCES BETWEEN THE TWO CONCEPTS BEFORE YOU THIS MORNING. FIRST, LET ME ASK YOU TO CLEAR YOUR MINDS OF THE BASIC MISCONCEPTION WHICH WE TRIED TO BEGIN CORRECTING ONE WEEK AGO TODAY. THAT MISCONCEPTION IS THAT WE HAVE AN ABSOLUTELY ADVERSARY SITUATION BETWEEN THE INITIATIVE PETITION AND AB 58 AND AB 85.

THIS IS SIMPLY NOT THE CASE. IN MOST RESPECTS, TO COMPARE THE TWO ASSEMBLY BILLS AND THE INITIATIVE IS TO COMPARE APPLES AND ORANGES.

AS I STATED BEFORE THIS COMMITTEE LAST WEEK, THE INITIATIVE PETITION DOES NOT ADDRESS THE STRUCTURE OF THE PUBLIC SERVICE COMMISSION OF NEVADA IN ANY WAY. ANY ASSUMPTION TO THE CONTRARY IS ERRONEOUS.

THE COALITION AGREES THAT THE PUBLIC SERVICE COMMISSION OF NEVADA IS IN SORE NEED OF ATTENTION. THE VERY EXPENSIVE MANAGEMENT STUDY DONE BY CRESAP, McCORMICK AND PAGET CERTAINLY SHOWS THAT THE COMMISSION'S MANAGEMENT AND ADMINISTRATION NEED LOTS OF LEGISLATIVE REVIEW. WE DO NOT FEEL THAT THE ASSEMBLY BILLS ADDRESS THE SUBJECT OF PUBLIC SERVICE COMMISSION ADMINISTRATION VERY WELL, BUT THAT IS A MATTER FOR THIS LEGISLATURE AND ITS COMMITTEES TO DECIDE.

SOMEHOW, THE COALITION AND THE SUPPORTERS OF AB 58 AND 85 HAVE BEEN CAST IN AN ADVERSARY RELATIONSHIP. THIS IS INDEED UNFORTUNATE, AS THE REAL ISSUE SEEMS TO HAVE BEEN OBSCURED.

THE HEART OF THIS MATTER IS VERY EASY TO DEFINE, AND IT IS TWOFOLD IN NATURE:

FIRST, THE PUBLIC SERVICE COMMISSION OF NEVADA DOES NOT DO ITS JOB VERY EFFICIENTLY. IT IS BESET WITH A WORLD OF PROBLEMS, SOME OF ITS OWN MAKING, AND SOME NOT OF ITS OWN MAKING. THE CRESAP REPORT DEFINES THEM.

SECOND, CONSUMERS IN THIS STATE NEED REPRESENTATION IN EXCHANGE FOR THEIR ONGOING TAXATION.

THERE YOU HAVE YOUR APPLES AND ORANGES. THE PROBLEMS CANNOT BOTH BE ADDRESSED IN THE SAME MANNER. YOU CANNOT SOLVE TWO PROBLEMS FOR THE PRICE OF ONE. YOU SIMPLY CANNOT GET SOMETHING FOR NOTHING.

THE PUBLIC SERVICE COMMISSION HAS THREE JOBS: REGULATION, INVESTIGATION, AND ENFORCEMENT. HENCE, WE CALL IT A QUASI-JUDICIAL BODY. YOU CANNOT ADD NEW RESPONSIBILITY TO THIS AGENCY---RESPONSIBILITY WHICH IS TO A LARGE DEGREE FOREIGN TO IT---AND EXPECT IT TO WORK.

IT CERTAINLY CANNOT WORK FOR THE SAME PRICE. THE OPERATING BUDGET FOR THE NEW VERSION OF THE PUBLIC SERVICE COMMISSION AND ITS NEW SATELLITE AGENCY IS \$1 MILLION DOLLARS MORE THAN THE LAST FISCAL YEAR. THAT BUDGET ALSO CALLS FOR A NEW GENERAL TAX INCREASE. LAST YEAR, THE REGULATORY BODY TOOK 2½ MILLS PER DOLLAR OF INTRASTATE UTILITY REVENUE. THIS YEAR'S BUDGET INCREASES THE MILL TAX LEVY BY ONE FULL MILL. THAT IS A GENERAL INCREASE IN COST TO THE RATE PAYERS OF NEVADA OF BETWEEN \$600,000 AND \$700,000 PER YEAR. THIS IS A WHOLESALE INCREASE IN THE COST OF GOVERNMENT.

THERE IS ALSO A QUESTION TO BE RAISED AS TO WHAT IS GOING TO BE DONE WITH THE CURRENT MILL TAX SURPLUS OF MORE THAN

\$1,000,000. THE BUDGET NOW BEFORE THIS LEGISLATURE SIMPLY DOES NOT PROVIDE ENOUGH INFORMATION TO ANSWER THAT VERY BASIC QUESTION.

THIS ONE MILL INCREASE WILL BE FOISTED UPON THE RATEPAYERS OF THIS STATE AS A NEW HIDDEN TAX UNLESS THE LEGISLATURE ACTS AGAINST IT, OR SEES TO IT THAT THE PEOPLE GET MORE FOR THEIR MONEY.

AS I STATED LAST WEEK, THE INITIATIVE PETITION WILL COST NOWHERE NEAR WHAT THE BUDGETARY PROJECTIONS OF THE OTHER PROPOSALS ARE. THERE WILL BE NOWHERE NEAR THE NUMBER OF STAFF PEOPLE INVOLVED. THE REASON IS THAT WE ARE COMPARING APPLES AND ORANGES.

A PUBLIC SERVICE COMMISSION CANNOT BE A CONSUMER ADVOCATE. THEY ARE MUTUALLY EXCLUSIVE FUNCTIONS, WHICH MUST BE APPROACHED FROM DIFFERENT POINTS OF VIEW.

WE SAY AGAIN THAT WE AGREE THAT THE PSC NEEDS REVAMPING. BUT THE INITIATIVE DOES NOT ADDRESS THAT. THE PETITION SAYS GIVE US REPRESENTATION BEFORE THAT QUASI-JUDICIAL BODY SO THAT OUR VOICES WILL BE HEARD IN MATTERS WHICH AFFECT UTILITY RATES.

IF ONE NEEDS PROOF POSITIVE THAT AB 58 AND 85 ARE NOT CONSUMER ADVOCACY MEASURE, ONE NEED ONLY LOOK ONCE MORE AT THE BUDGET. AT THE HEART OF CONSUMER ADVOCACY IS THE AUTHORITY AND THE MONEY TO BRING IN OUTSIDE EXPERTS WHOSE AREAS OF SPECIALITY FIT THE MERITS OF THE CASE AT HAND. NO PUBLIC SERVICE COMMISSION OR CONSUMER ADVOCATES OFFICE HAS ALL THE EXPERTISE IT NEEDS TO HANDLE EVERY CASE ON AN IN-HOUSE BASIS.

THE TOTAL OUTSIDE EXPERT BUDGET LAST YEAR WAS \$178,278. THIS YEAR'S BUDGET ALLOWS \$25,000 FOR THE NEW PSC, AND \$175,000 FOR ITS NEW SATELLITE. THAT IS AN INCREASE IN BUDGET OF ONLY \$21,722 FOR BRINGING IN OUTSIDE EXPERTS TO ANALYZE UTILITY/TRANSPORTATION/TAXICAB/CABLE TV AND OTHER MATTERS WHICH WILL COME BEFORE THE PSC AND ITS SATELLITE.

THAT FIGURE OF \$21,722 REPRESENTS LESS THAN 1% OF THE TOTAL BUDGET FOR THE NEW YEAR. IT WOULD SEEM TO FOLLOW, THEN, THAT THIS AMOUNT OF MONEY WILL BE HARD PRESSED TO PROVIDE RESPONSIBLE ADVOCACY FOR UTILITY CONSUMERS. BUT IT IS IN THE INTERVENTION AREA THAT THE LIFEBLOOD OF EFFECTIVE ADVOCACY EXISTS.

THE TOTAL BUDGET FOR THE NEW STRUCTURE, BY CONTRAST, HAS INCREASED DRAMATICALLY OVER THE PREVIOUS YEAR: 46% FOR STAFF AND OPERATING EXPENSES COMBINED. OPERATING EXPENSES ALONE ARE UP 90%. SALARIES ARE UP 35%. BUT INTERVENTION DOLLARS ARE UP LESS THAN 1%. THE FACTS SPEAK FOR THEMSELVES.

THIS IS NOT A SEPARATE AND EFFECTIVE OFFICE OF ADVOCACY. IT IS MERELY THE PUBLIC SERVICE COMMISSION REPACKAGED AS OLD WINE IN AN EXPENSIVE NEW BOTTLE.

THERE WILL BE NO SEPARATION UNDER THE NEW STRUCTURE PROPOSED BY THE TWO BILLS. THE SATELLITE AGENCY'S STAFF IS STILL ORDERED TO PERFORM STAFF WORK AND REPORT TO THE COMMISSION ON PAGE AFTER PAGE OF AB 58. THE SATELLITE STAFF WILL STILL PERFORM ALL OF THE INVESTIGATIVE AND ENFORCEMENT FUNCTIONS OF THE CURRENT PSC. AND NO SEPARATION WILL TAKE PLACE AT ALL IMMEDIATELY. AB 58 ALLOWS FOR A LENGTHY TRANSITION PERIOD BEFORE THE TWO GROUPS ARE SEPARATED.

AB 58 AND 85 WOULD NOT GO INTO IMMEDIATE EFFECT UPON SIGNATURE BY THE GOVERNOR. THE INITIATIVE WOULD.

THE PUBLIC SERVICE COMMISSION WOULD NO LONGER BE A PARTY TO BE SUED IF A UTILITY DECIDED TO APPEAL A RATE CASE. IT SEEMS THERE IS A SERIOUS LEGAL QUESTION ABOUT SUCH A PROVISION THAT PREVENTS PROPER PARTIES TO A LEGAL ACTION FROM BEING SUED. THE NEW STRUCTURE WOULD ALLOW UTILITIES TO SUE ONLY THE SATELLITE AGENCY. REMEMBER, THE COMMISSION IS NOT AND NEVER WILL BE STRICTLY A JUDGE.

THE COMMISSION WOULD HAVE NO STAFF TO MAKE INDEPENDENT, OBJECTIVE JUDGEMENTS. THERE EVEN SEEMS TO BE LACK OF CLARITY ON WHETHER OR NOT THE COMMISSION MAY LOOK AT THE BOOKS OF REGULATED INDUSTRIES ANYMORE (THIS IS POINTED OUT IN THE REVISIONS TO NRS 703.195).

AGAIN, PLEASE DO NOT BE CONFUSED. YOU NEED A STRONG COMMISSION. YOU NEED A STRONG INDEPENDENT CONSUMER ADVOCATE. THEY CANNOT BE ONE AND THE SAME. ONE CANNOT WORK FOR THE OTHER.

TURNING TO THE INITIATIVE, LET ME REMIND YOU THAT THE PETITION WAS NOT DRAFTED QUICKLY OR SPURIOUSLY. IT HAS IT ROOTS IN LEGISLATION FIRST PROPOSED IN THE ELECTION CAMPAIGNS OF 1974. WHAT IS TODAY THE INITIATIVE WAS FIRST INTRODUCED IN THIS LEGISLATURE IN 1975.

WE HAD THE BENEFIT OF ALL THE YEARS OF RESEARCH AND TESTIMONY PUT INTO THE IDEA, AS WELL AS THE ABILITY TO OBSERVE THE TRACK RECORDS OF SIMILAR STRUCTURES. A FIRST CLASS TEAM OF EXPERTS PUT THE INITIATIVE TOGETHER BEFORE THE FIRST SIGNATURE WAS EVER PUT ON PAPER. WE WENT TO ALL BRANCHES OF STATE GOVERNMENT, OR AT LEAST IT FELT THAT WAY, IN ASKING FOR INPUT AND ADVICE.

THE INITIATIVE IS A GOOD PIECE OF LEGISLATION. IT CAN STAND ON ITS OWN MERITS.

THERE IS NO GENERAL TAX INCREASE INVOLVED. THERE IS NO LARGE NEW STAFF TO PAY HIGH RENT. ONLY FOUR TO SEVEN PEOPLE OF THE HIGHEST CALIBER WE CAN FIND.

THE PRESENCE OF THE OFFICE UNDER THE ATTORNEY GENERAL ALLOWS FOR A GOOD LEGAL ENVIRONMENT, AND PROPER CHECK AND BALANCE. ANOTHER CHECK AND BALANCE IS THE LEGISLATURE ITSELF, WHICH WOULD CONFIRM THE ATTORNEY GENERAL'S NOMINATION OF THE HEAD OF THE OFFICE, AND WHICH

REVIEW THE BUDGET OF THE OFFICE. REMEMBER, THE FUNDING FOR THIS OFFICE HAS A CEILING...ONE MILL. ONLY A FRACTION OF THAT IS NEEDED UNDER THE BUDGET ALTERNATIVES WHICH WE HAVE PRESENTED TO YOU.

AS I STATED LAST WEEK, THE KEY ISSUE HERE IS NOT NEW BUREAUCRACY VS. EXPANDED BUREAUCRACY. THE ISSUE IS HOW TO MAKE BUREAUCRACY RESPONSIVE TO THE NEEDS OF THOSE WHO PAY FOR IT.

SOME 38,000 REGISTERED VOTERS HAVE EXPRESSED THEIR PREFERENCE. OVER 20,000 ADDITIONAL INDIVIDUALS HAVE DONE THE SAME.

REMEMBER, IF THE INITIATIVE IS NOT ENACTED IN THIS SESSION, IT WILL NOT GO AWAY. IT WILL BE ON THE GENERAL ELECTION BALLOT IN NOVEMBER OF NEXT YEAR. AT THAT TIME, THE VOTERS CAN BE THE FINAL JUDGE ON WHAT DEFINITION OF CONSUMER REPRESENTATION THEY WILL ACCEPT. ANY OTHER VERSION PASSED BY THE LEGISLATURE WILL ALSO GO ON THE BALLOT, AND LIKE WITH ANY OTHER ELECTION, THE ONE WITH THE MOST VOTES WINS. BUT THAT IS OVER A YEAR AWAY.

I ASK YOU NOT TO LET THE PEOPLE LOSE. GO AHEAD AND REVAMP THE STRUCTURE OF THE PSC. IT NEEDS IT. BUT GIVE THE PEOPLE CONSUMER ADVOCACY. THEY CANNOT WAIT ANOTHER YEAR OR TWO UNDER THE SAME SET OF STRICTURES. THEY NEED REPRESENTATION AT RATE INCREASE HEARINGS.

DO NOT LET THE PEOPLE LOSE.

TAKE THE INITIATIVE.

THANK YOU VERY MUCH.



The State of Nevada
Executive Chamber
February 9, 1981

Robert List
Governor

Capitol Complex
Carson City, Nevada 89710

M E M O R A N D U M

TO: The Honorable Joseph Dini
Chairman, Assembly Government Affairs Committee

FROM: John W. Capone
Administrative Aide to Governor List

TELEPHONE SURVEY REGARDING CONSUMER ADVOCATE OFFICE

The following questions were directed to state agencies involved in utility regulation throughout the country.

1. Is there a state agency in your jurisdiction which regularly appears on behalf of the public in utility general rate cases?

2. If the answer to the above question is yes, then is there also a commission staff that regularly participates in general rate case proceedings?

The following 30 states indicated that there was either no consumer advocate, or a consumer advocate that took the place of the commission staff during general rate cases:

Arizona, California, Connecticut, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin, Wyoming.

The following 19 states indicated that there was a consumer advocate, in addition to a participating commission staff:

Alabama, Arkansas, Colorado, Delaware, District of Columbia, Georgia, Illinois, Maryland, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, New York, Ohio, Pennsylvania, South Carolina, Utah, Virginia.

Alaska and Hawaii could not be reached for comment.



The State of Nevada
Executive Chamber

February 10, 1981

Capitol Complex
Carson City, Nevada 89710

Robert List
Governor

M E M O R A N D U M

TO: The Honorable Joseph Dini
Chairman, Assembly Government Affairs Committee

FROM: John W. Capone
Administrative Aide to Governor List

I am submitting this additional information in response to questions posed by your committee at the February 4th hearing on alternative proposals relating to the establishment of a consumer advocate for utility matters.

1. The committee asked me to look into the possibility of federal funding to establish a utility consumer advocate office in Nevada.

I first contacted 3 states which have received funding in previous years for such a concept. Arkansas, Delaware and Illinois have all received federal funds to help establish an office of public representation in utility matters. All three states indicated that they have been advised to look elsewhere for continued funding as it is expected that this particular grant program will not be continued.

The original grant program was only good through fiscal year 1980. Also, the use of funds was restricted to representation in electric utility rate cases only.

I also contacted the regional office of the Department of Energy in San Francisco. Although no formal statement on this subject has been issued by the Reagan Administration, the indications are that no funds will be earmarked for this specific type of program in the future.

2. The other question raised by the committee was somewhat more difficult to address. Specifically, Mr. Mello asked if there was any particular reason why certain states elected to set up the consumer advocate in the Attorney General's Office rather than as an independent entity or within the Executive Branch of government.

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I contacted 15 states with different structures and asked for some history on their creation. I would summarize the range of responses to my inquiry by saying that there appears to be no single overriding reason why a particular state chose a specific structure for its consumer advocate office.

In some instances the function of this office was viewed as within the area of responsibility of their Division of Consumer Affairs and thus was placed within that function.

In other states the deciding factor boiled down to a fiscal consideration, i.e., which existing agency or office would have adequate funding to assume this additional responsibility.

In a few cases the final resting place of the consumer advocate was decided on the basis of who championed the legislation which created the office in the first place, i.e., Governor, Attorney General or Legislature.

In the final analysis it appears that unique variables within any given state lent themselves to the structuring of an advocate's office/agency within that state without consideration, per se, for what other jurisdictions were currently doing in that area.

3. The following is a synopsis of various responses that I received from the states that I contacted on this subject.

Alabama - Their Legislature is currently in session and is considering substantial changes in their consumer protection laws particularly as they relate to utility customers.

Prior to last October the Office of Consumer Protection, which addressed the public concerns regarding utility rates, was housed in the Governor's office as a cabinet level position. However, the Attorney General's Office was also involved in litigation of utility rate cases so there was some duplication of effort in this regard.

To alleviate this duplication of function the Governor and Attorney General agreed that the consumer advocate would reside in the Attorney General's Office structure. Thus the director of this office now serves at the pleasure of the Attorney General.

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Arkansas - This was one of the offices that was created through the use of federal grant funds. Therefore, the future of this entity is questionable.

Currently the function is housed within the Attorney General's Office as a separate consumer protection section. The head of that section is appointed by the Attorney General and serves at his pleasure.

The placement of the office appears to have been based on the fact that the Governor appoints the Commissioners of their regulatory body, subject to Legislative confirmation. In order to achieve some degree of separation it was felt that the consumer representative should be appointed by the Attorney General.

It is pointed out, however, that it is almost impossible to totally depoliticize this area. Also, due to the restrictions of the federal grant the customer representative can only intervene in utility rate cases involving consumers of electrical power.

Delaware - Currently this state operates an Office of Public Advocacy within its Department of Community Affairs and Economic Development.

The Director of this office is appointed by the Governor subject to Legislative confirmation and serves at the Governor's pleasure.

This office has cabinet level status and statutory independence to intervene in or appeal any matter within the jurisdiction of the Commission. The intent of the creators of this office was not to replace Commission staff but rather to supplement its activities on behalf of the consumer.

This office was another of the recipients of federal grant money over the past four years. They are currently awaiting a decision on who would pick up the cost for continuing their function.

It was once again mentioned that the key element to the effective operation of a consumer advocate operation was the degree of independence given to this office. It should clearly be separate from the Commission function. However, placement in the Attorney General's Office would not necessarily solve the credibility question since an

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elected Attorney General might well succumb to political pressures and try to direct the operations of the consumer representative to his own ends.

In the final analysis it was pointed out that whoever appoints or directs the consumer advocate will have a difficult time "controlling" his operation because of the high visibility of the position.

Georgia - The Consumer's Utility Counsel is appointed by and serves at the pleasure of the Governor. There apparently has been no unusual problems, political or otherwise with this arrangement. The chief reason for the structure as it currently exists is that the Attorney General already provides legal support to the state's regulatory commission and therefore, a fully independent public representative was created outside the Attorney General's Office.

Illinois - This was a third state that benefited from federal grant money at its inception. Currently the Consumer Advocate Office functions are performed by a special assistant to the Governor. There is a separate consumer protection office in the Attorney General's staff that has, under a newly-elected Attorney General, begun to formulate a new role as a utility advocate. At the same time the Attorney General serves as legal advisor to the Commission.

Once again, due to grant restrictions the consumer advocate in the Governor's Office is restricted to representation in electric power rate cases.

In addition, I was advised that Illinois is currently considering going to a process whereby Commissioners would be elected officials not appointed. However, two states that tried this approach, Florida and Minnesota, found it to be unworkable and switched back to the generally-accepted practice.

Maryland - The People's Counsel of Maryland has been in existence in one form or another since 1922. The current Counsel is an appointee of the Governor who must receive Legislative confirmation. He serves at the pleasure of the Governor and has thus far survived three different administrations.

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Again, there was no specific rationale given as to why the office is set up the way it is. Since there is no Attorney General involvement in utility regulatory matters the Counsel's staff has had to assume ever-increasing responsibilities. For the last six to eight years it has grown from a part-time to a full-time operation and currently represents the public in opposition to utilities in all major cases.

This particular state also has a Commission with its own staff as do most other jurisdictions I contacted.

Minnesota - The utility customer representative in this situation is the Residential Consumer Utility Unit of the Office of Consumer Services. There is no Attorney General involvement on behalf of the public in utility rate cases.

The staff of the Residential Consumer Utility Unit is answerable to the Director of the Office of Consumer Services who is appointed by the Governor, subject to Legislative confirmation.

An interesting wrinkle has been added in Minnesota with the establishment of a citizens advisory board selected by the Governor. This Board provides recommendations to the customer representative and acts as a sounding board for public sentiment on regulatory matters.

Once again, the consumer advocate office was arranged to accomodate an existing function of state government within the Executive Branch.

Missouri - The Public Counsel of Missouri was established to respond to the public's concern that the state's Public Service Commission was not able on its own to represent the public interest.

Originally the General Counsel to the Commission was to advise the Commission on legal matters while at the same time representing public concerns.

Although there are still vestiges of the early ties to the Commission, the Public Counsel is beginning to take on an independent identity.

The Commission still has support staff under its

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direction and is answerable to the state's Department of Consumer Affairs, an Executive Branch Department. The biggest complaint expressed over the current structure was that it does not provide sufficiently broad powers to investigate and compel disclosure of records etc., in utility regulatory matters.

New Hampshire - This state was the only one that created a consumer representative directly responsible to the Legislative Branch. The Legislative Utility Consumer Council was formed in 1976. It currently is being reviewed under the sunset provisions of New Hampshire law to determine whether or not its existence is still necessary.

Apparently the current feeling of the Legislature is that the state's Public Utility Commission is now capable of properly balancing the interests of the public and the utilities.

There is still support for retaining some independent public representation, probably within an Executive Branch agency, and definitely not connected to the Commission. There is also some sentiment being expressed for the transformation of their Commission into a "quasi-judicial" body.

The New Hampshire state Attorney General's office currently has a section dealing with consumer affairs and serves in an advisory capacity to the Commission. However, it appears that the Council is the primary representative of public interest in utility regulatory matters.

New Jersey - The Rate Counsel of New Jersey is a part of the Department of Public Advocacy, a department that is headed by the state's Public Defender. The scope of authority of the Department is much broader than in most other states. Not only does it deal in utility rate cases, but it also is involved in insurance and hospital rate matters.

Prior to 1974 the state Attorney General was responsible for hiring outside counsel to represent the public in rate cases. However, a number of problems arose through this practice and ultimately it was decided that full-time attorneys should be hired by the state. Thus, deputy public advocates are separate from the Attorney General's Office and are hired by the head of the Department who is appointed by the Governor, and is confirmed by the state Legislature. The role of the Attorney General's Office

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is now solely legal advisor to the Commission.

Ohio - In 1976, in response to growing public concern over skyrocketing utility rates the Ohio Legislature established the Office of Consumers Counsel. Although the Public Utility Commission has a retained staff that is supposed to represent the public interest, it was felt that residential utility customers needed a more independent voice. Thus, the specialized office focuses on the needs of residential users and receives public input through a 9-member governing board selected by the state's Attorney General. The Consumer Counsel is appointed by the Board while the Commissioners of the Public Utility Commission are appointed by the Governor.

There appears to have been no special significance to the structuring of the Ohio concept. Obviously, the intent was to focus on a special problem area, residential user representation, and to provide a mechanism for public input into the operations for the Consumer Counsel.

Pennsylvania - The Consumer Advocate in Pennsylvania is appointed by the Attorney General and confirmed by the State Senate. His Department is located in the Attorney General's Office. Pennsylvania just recently changed to an elected Office of Attorney General and the incumbent appears to be seeking a more active role in the area of utility regulation.

Currently the Consumer Advocate has 9 staff attorneys but no auditing or other technical experts assigned to it. Therefore, such expertise is generally hired through consulting firms.

There appears to be a growing sentiment towards reducing the size of the state's Public Utility Commission, which apparently has grown rather unwieldy. There are some 20 administrative law judges who conduct hearings on various regulatory matters while the Commission made up of five individuals sit as a final arbiter in selected cases.

Virginia - Within the Division of Consumer Counsel for the state Attorney General's Office there are two deputy attorney generals assigned to utility regulatory matters. Once again, it was felt that a consumer representative separated from the regulatory commission would provide a more effective voice for the public interest. Since the Division of Consumer Affairs was set up in the Attorney General's Office this was felt to be an appropriate location for the utility consumer advocate.

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In reflecting on other state structures that were considered in Virginia, the consensus was that this concept would work best. Once again, it appears that the selection of a proper vehicle for consumer representation was based on factors unique to that state.

New York - The crisis that gave birth to the Utility Intervention Office in New York was the oil embargo of 1974. Set up as a Division of the State Consumer Protection Board, the Utility Intervention Office was given a broad mandate to represent consumers of all types involved in utility regulatory matters.

Although the state Attorney General has no specific statutory role in consumer representation it appears that the current Attorney General is beginning to independently intervene on selected cases. As an aside it was noted that the current Attorney General is quite ambitious and is using the resources of his office to expand into new areas of representation.

The Consumer Protection Board, the parent division of the Utility Intervention Office, is headed by a gubernatorial appointee who by law is confirmed by the State Senate. This head of the Consumer Protection Board hires the staff of the Utility Intervention Office and directs their operations.

The New York Commission is made up of nine gubernatorial appointees and has a rather large staff. Although purporting to also represent the public interest, it appears that Commission staff takes on a more restrained role in the process than does the Utility Intervention Office. It seems that the New York model has much the same look as that of many other states with perhaps a greater emphasis placed on the quasi-judicial role of the Commission.

New Mexico - Prior to 1975 the only consumer representation in utility matters was the Mexico Public Service Commission or private intervenors.

The New Mexico Attorney General's Office had a Division of Consumer Protection in operation at that time and pretty much on their own initiative began to intervene in rate cases as a representative of the consumer.

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This rather informal approach has apparently grown into a much more active role. The office was able to qualify for the same Department of Energy funding that some of the other states received, and began to expand its representation solely in the electric utility rate cases.

The Commission staff still technically represents the public at hearings but they apparently are required to weigh public interest, as well as, utility concerns when making their recommendations. The future expansion of the Attorney General function in this area will depend on the availability of alternative funding to replace the Department of Energy grant money which appears to be drying up.

South Carolina - The utility consumer advocate in this state is part of the Department of Consumer Affairs. In deciding on placement of the advocacy function the state apparently decided that the existing consumer affairs function could absorb the new advocacy role with a minimum of administrative problems. Also, they were concerned about a possible conflict of interest if the office were made part of the Attorney General's responsibilities since by statute the Attorney General was mandated to represent all state agencies.

Attorneys hired by the advocacy section are subject to review by the Attorney General by law, but once hired they are under the direction of the director of the Department of Consumer Affairs. The director is selected by a separate Commission on Consumer Affairs, an eleven-person commission of ex-officio and selected members. (Secretary of State, one representative of the State Senate, one representative of the House of Representatives, four selected by the general assembly, and four selected by the Governor).

The consumer advocate was given sole discretion to intervene in the public interest in utility rate cases. There is apparently no pressure brought to bear on the advocate due to this legislated autonomy.

Conclusion - Hopefully this overview of several different state concepts will be of assistance to the committee in its deliberations. It would appear that many factors come into play when arriving at a proper model for each state surveyed. Budgetary concerns, public sentiment, desire to work within an existing governmental structure all played varying roles in each example.

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Perhaps the only sure thing that can be said on this subject is that the area of independent consumer representation in many states is still a new and ever-changing concept. No one can really say that what works well in one jurisdiction will necessarily be right for Nevada.

I remain at the committee's disposal if there is any further information that you wish me to provide.

CONSUMER DIVISION

Reviews and processes all walk-in, telephonic and written complaints filed against all jurisdictional utilities, common carriers and brokers by the using public.

The Division, which has offices in Carson City and Las Vegas, answers telephone complaints regarding utility rates and services, conducts investigations of verbal and written consumer complaints, including a determination as to applicable rules, regulations, tariffs or statutes, determining the factual circumstances surrounding the complaint and making a written recommendation regarding the resolution of complaints that cannot be resolved informally; reviews new tariff filings to determine impact on utility consumers; performs field investigations and surveys regarding utility service practices and procedures; prepares background material for use at formal hearings; performs special studies of consumer interest.

The Division staff of seven (Director; four Consumer Services Representatives; two secretaries) must have a good knowledge of utility tariffs, Public Service Commission rules and regulations; knowledge of Federal and State laws pertaining to utility regulation; skill in securing facts, checking records, conducting investigations, preparing and presenting reports and ability to deal with the public with tact and courtesy.

Of the 4187 complaints investigated by the Consumer Division during 1980, only 18 or .004% had to be placed before the Commission for disposition.

OVERALL COMPLAINT ACTIVITY

<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>
1815	2889*	3992**	4187***
	* Up 59% over 1977		
	** " 38% " 1978		
	*** " 4.9% " 1979		

COMPLAINT ACTIVITY - CARSON CITY OFFICE

<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>
958	1584*	1891**	2069***
	* Up 65% over 1977		
	** " 19% " 1978		
	*** " 9.4% " 1979		

COMPLAINT ACTIVITY - LAS VEGAS OFFICE

<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>
857	1305*	2101**	2118***
	* Up 52% over 1977		
	** " 61% " 1978		
	*** " .8% " 1979		

WRITTEN COMPLAINTS

	<u>CCU*</u>	<u>CCT**</u>	<u>TOTALS</u>
1977	128	45	173
1978	151	50	201
1979	201	34	235
1980	190	37	227

*Utility Complaints

**Transportation Complaints

1980 CCU's by Utility

Cable Television	20
CP National	6
Centel	38
Continental	6
Mobile Telephones	2
Nevada Bell	23
Nevada Power	45
Sierra Pacific Power	22
Southwest Gas Corporation	19
Water Companies	9

1980 CCT's by Category

Moving & Storage	5
Passenger	7
Tow Cars	25

TELEPHONE COMPLAINTS

	<u>1977</u>		<u>1978</u>		<u>1979</u>		<u>1980</u>	
	<u>Las Vegas</u>	<u>Carson</u>	<u>Las Vegas</u>	<u>Carson</u>	<u>Las Vegas</u>	<u>Carson</u>	<u>Las Vegas</u>	<u>Carson</u>
January	165	92	89	78	212	185	259	174
February	88	62	93	109	205	134	179	193
March	60	86	84	85	190	112	152	125
April	36	50	84	65	156	130	157	100
May	48	63	99	108	143	133	172	153
June	54	67	108	180	157	132	139	100
July	38	76	130	168	198	114	202	208
August	114	69	141	103	182	174	236	219
September	53	49	120	138	140	148	169	138
October	53	47	119	121	154	163	188	151
November	64	64	115	127	165	106	129	138
December	<u>84</u>	<u>60</u>	<u>123</u>	<u>101</u>	<u>199</u>	<u>125</u>	<u>136</u>	<u>143</u>
	857	785	1305	1383	2101	1656	2118	1842

1980 CCW BREAKDOWN

<u>UTILITY:</u>	<u>Carson City</u>	<u>Las Vegas</u>
Cable Television	329	7
Electric	498	732
Gas	195	205
Telephone	415	934
Water	272	33
Misc.	50	75

TRANSPORTATION:

Freight	12	1
Mobile Home Carriers	1	0
Passenger	23	33
Tow Cars	23	63
Moving & Storage	9	34

AMENDMENTS TO CHAPTER 703

Section (New)

- 2 "Commission Staff" defined
- 3 UCRA referred to as "agency"
- 4 Creation of UCRA; declaration of purpose
- 5 UCRA director: appointment; term of office
- 6 Qualifications of UCRA director
- 7 Oath of UCRA director
- 8 Salary of UCRA director
- 9 UCRA employees: employment; compensation
- 10 UCRA fund: creation; deposits; uses
- 11 General duties of UCRA
- 12 Intervention by UCRA without leave to intervene; appeals by UCRA; UCRA recommendations regarding regulations; UCRA to maintain tariff files; UCRA to enforce regulations and observe compliance with commission orders.
- 13 UCRA inspectors: peace officers
- 14 Commission to furnish UCRA with copy of all filings within one day
- 15 Attorney General: duty to represent UCRA in courts of law
- 16 UCRA cooperation with federal government and state agencies
- 17 Notice: to be given to UCRA

Section (Amended)

- 19 Travel expenses: commission, commission staff, UCRA (703.140)
- 20 Travel expenses - out of state audits, investigations: UCRA (703.145)
- 21 Public service regulatory fund: Creation; deposits; uses (includes hiring consultants) (703.147)
- 23 Commission and UCRA records open to public inspection: 90 day exception (703.190)
- 24 Duty of public utilities, motor carriers, brokers to furnish information, annual report to commission and UCRA (703.191)
- 25 Examination of books, records by UCRA: UCRA may petition for commission order (703.195)

- 26 Filing fees: commission may not charge UCRA (703.197)
- 27 Printing of commission, UCRA to be done by state printing office (703.200)
- 28 Attorney General: duty to represent commission in courts of law; render advice to commission (703.210)
- 29 Division of consumer relations; establishment as a division of UCRA; duties(703.290)
- 30 Complaints against utilities, brokers: investigation by division of consumer relations; probable cause hearing (703.210)
- 31 Record of hearings; transcripts to be furnished to parties; no charge to UCRA (703.330)

AMENDMENTS TO CHAPTER 704

Section (New)

- 35 Declaration of purpose of commission
- 36 Annual UCRA assessment on utilities: limited to 2-3/4 mills
- 37 Revenue reports; computation and payment of UCRA assessments; actions by UCRA for collection
- 38 Tariff filings: UCRA to review and report; initial determination by commission
- 39 Application for certificate of public convenience and necessity; UCRA to investigate and report
- 40 Appeal: commission not a party

Section (Amended)

- 41 Annual commission assessment on utilities: limited to 1 1/4 mills (704.033)
- 42 Notice to commission and UCRA prerequisite to change in rates; UCRA to petition for dismissal of application in certain cases (404.100)
- 43 Hearing on propriety of new rate, fare, charge, and suspension of operation of new schedule at request of UCRA or upon commission's own motion; recommendations by UCRA (704.110)
- 44 Management audit of utilities; UCRA to participate in selection of auditor (704.183)
- 45 Accidents: reports to commission, UCRA; UCRA may investigate (704.190)
- 46 Utility service standards: commission to set; UCRA to represent customer whose facilities are defective (704.220)

- 47 Tests of utility facilities by UCRA (704.240)
- 48 Violations of wiretap law: UCRA to enforce (704.285)
- 49 Railroad crossings: investigation by UCRA; commission approval requires for modifications (704.300)
- 50 Certificates of public convenience and necessity: UCRA to petition for cease and desist order against non-certificated operator (704.330)
- 51 Value of utility's property: UCRA may investigate and ascertain (704.440)
- 52 Appeal from commission order: procedure; notice (704.540)
- 53 Pendente lite injunctive relief; procedure; notice; refund procedure (704.550)
- 54 Civil penalties for failure to obey order, furnish information to commission or UCRA; UCRA may maintain action (704.590)
- 55 Failure, refusal to make reports, allow examinations by UCRA: penalty (704.600)
- 56 Suspension, revocation of certificate of public convenience and necessity: petition by UCRA (704.643)
- 57 Suppliers of water, sewer services to subdivision, land development projects: investigation by UCRA; fee paid to UCRA (704.679)
- 58 Parties to UEPA permit application: UCRA included (704.885)
- 59 Judicial review of UEPA order: procedure, commission not a party (704.895)

CHAPTER 705

Section (New)

- 61 Railroad Safety Inspections: UCRA to conduct; authority to obtain federal funds

CHAPTER 706

Section (New)

- 63 Examination of books, records, etc. by UCRA; UCRA may apply for subpoena

- 64 Tariff filings: UCRA to review and report; initial determination by commission
- 65 Application for certificate of public convenience and necessity: UCRA to investigate and report
- 66 Appeal: commission not a party

Section (Amended)

- * 67 Legislative declaration of intent; UCRA and DMV have duty to enforce Chapter 706 of NRS and commission regulations (706.151)
- 69 Peace officers to assist UCRA in enforcement upon request (706.231)
- * 70 Unsafe vehicles: UCRA or DMV may declare out of service (706.246)
- * 71 Accidents: report to DMV; DMV may investigate; DMV to preserve accident reports in files (706.251)
- * 72 Interstate, foreign carriers to submit information to DMV; issuance identifying devices (706.266)
- * 73 Fees for registration of documents issued by ICC to be collected by DMV (706.267)
- 74 Liability insurance to be provided by certain carriers: proof to be filed with UCRA; UCRA to request conditional suspension of certificate upon receipt of notice of insurance cancellation (706.291)
- 75 Notice to commission and UCRA prerequisite to change in rates; UCRA may investigate rates, fares, charges, rules, etc. at any time and petition for changes (706.321)
- 76 Hearing on propriety of new rate, fare, charge, and suspension of operation of new schedule at request of UCRA or upon commission's own motion; recommendations by UCRA (706.326)
- 77 Tow car fees: payment to UCRA (706.451)
- 78 Failure to obtain certificate: UCRA may subpoena records of alleged offender (706.457)
- 79 Taxicab motor carrier fees: payment to UCRA (706.471)
- 80 Suspension, revocation of certificate, permit: UCRA may petition for revocation, suspension; procedure; appeal (706.701)
- 81 Appeal from commission order: procedure; notice; (706.706)
- 82 Pendente lite injunctive relief; procedure; notice; refund procedure (706.711)

* Includes provisions carrying out transfer of enforcement duties to DMV.

- 83 Failure, refusal to make reports, allow examinations by UCRA: penalty (706.761)
- 84 Hours of employment for motor carriers: UCRA and DMV to enforce commission limits (706.776)

CHAPTER 708

Section (New)

- 86 UCRA to enforce pipeline safety standards; UCRA may apply for federal funds to aid enforcement

Section (Amended)

- 87 Application by oil pipeline carrier for certificate of public convenience and necessity: UCRA to investigate application and report to commission (708.035)
- 88 UCRA has authority to inspect books of oil pipeline carriers; has duty to enforce provisions of chapter (708.080)

CHAPTER 711

Section (Amended)

- 89 Examination of records of CATV company by UCRA; UCRA may petition commission for relief if CATV company violates regulation (711.120)

CHAPTER 712

Section (New)

- 90 Application by warehouse for permit: UCRA to investigate, report to commission

Section (Amended)

- 91 Inspection by UCRA; examination of books (712.060)

CHAPTER 481

Section (Amended)

* 93 DMV to enforce, inter alia, Chapter 706 of NRS (481.023)

CHAPTER 482

Section (New)

94 DMV to transfer \$3 motor carrier fee to UCRA and commission

97 Sections Repealed:

NRS 703.155, 703.180, 703.300, 704.010, 706.031, 706.176, 706.181,
706.201, 708.010, 711.050

98 Enabling Legislation

* Includes provisions to carry out transfer of enforcement duties to DMV