

VERBATIM
MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON COMMERCE AND LABOR

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
FEBRUARY 11, 1981

The Senate Committee on Commerce and Labor was called to order by Chairman Thomas R. C. Wilson, at 1:40 p.m. on Monday, February 11, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Thomas R. C. Wilson, Chairman
Senator Richard Blakemore, Vice Chairman
Senator Don Ashworth
Senator Melvin Close
Senator William Hernstadt
Senator Clifford McCorkle

COMMITTEE MEMBER ABSENT:

Senator William Raggio (Excused)

STAFF MEMBERS PRESENT:

Betty Steele, Committee Secretary
Fran Kindred, Committee Secretary

Chairman Wilson opened the session, stating that this was the time and place for hearing of the three items, as noted in the agenda, for matters pending in the Assembly. Although they are pending in the Assembly, the committee is assuming the Assembly is going to pass one or the other or some form of all three proposals. Some of the basic testimony will be heard to try and get it out of the way. The matters will be taken in the

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order they appear on the agenda. The ground rules in the last initial hearing were simply to have an outline in respect to structure and jurisdiction of each of the proposals, without comment on any other proposals pending. The committee can hear each of these and the proponents of one major proposal can talk about the major proposal, advocating and commenting on the others. Senator Wilson stated that the three proposals are not totally alternatives; but they are related, can overlap, and interrelate. One does affect the other and, if they do, witnesses may feel free to comment on these matters.

Mr. David Schwartz presented testimony on behalf of the Coalition for Affordable Energy. He presented a lengthy statement to the committee members (Exhibit C). This represented the results of the research and analysis done by him; by Dr. Rodney Stevenson, who is on the faculty of the University of Wisconsin, and is responsible for public utility course work in the School of Business; and Ms. Leigh Riddick, who is a public utility economist. Ms. Riddick was formerly with the Arkansas commission; served three years of their rate session; worked with the Wisconsin commission, and is a consultant in public utility economics. In addition, they had the assistance of Dr. William Gormley, of the Political Science Department faculty, University of Wisconsin, specifically on the issue of consumer advocacy.

The thrust of Mr. Schwartz's statement refers to the general question of the need for and the appropriate organizational structure for consumer representation. He gave a brief outline of his past, to put it in focus in terms of his own advocate position. (See Exhibit C for Resumes.) For approximately 25 years, he has functioned in the public utility field in one capacity or another; for the Federal Communications and the Federal Power commissions, Colorado commission, Rhode Island commission, as well as the District of Columbia commission. He has also appeared as a consumer advocate for the Office of Consumer Affairs in Colorado; and is currently working with the Attorney General's Office in New Mexico in their energy unit, which does intervene before the New Mexico commission. He has also worked on a National Science Foundation Grant with a number of academics on a study of the issue of regulatory reform of public utility commissions.

Mr. Schwartz has actually worked on both sides; as a staff witness and also as a consumer advocate representing the consumer's position in various regulatory commissions. He wanted to make it clear that there is a distinct, unique function associated

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with a staff role as well as a consumer advocate role. Mr. Schwartz said they are not close, nor do they have the same symbolic relationship. He wanted to emphasize that point as he went through his testimony.

The areas he planned to cover in his statement, were as follows:

1. The need for a consumer advocate's office in light of the inflationary impact, the magnitude and the number of rate increases that are taking place before public utility commissions;
2. The impact on the public service commission, because of these very large numbers of rate increases, and the size of these rate increases;
3. To distinguish the need for a consumer advocacy office as distinct from the staff function;
4. The difference between the staff role and the consumer advocacy role;
5. To discuss the need for improvement of the public service commission here in Nevada;
6. To discuss the appropriate organization structure for a consumer advocacy office and the performance of various consumer advocate offices, the benefits and the related savings of the consumer advocate offices in a number of states (details in Exhibit D);
7. Review the Initiative Proposal, per se, and then move on to review of Assembly Bill No. 85 and Assembly Bill No. 58.
8. Finally, to try and reach a conclusion on all issues above.

Mr. Schwartz stated the need for consumer advocacy today is fairly well-established in the Wall Street Journal article (See Exhibit C) which points out that in the first six months of 1980 the electricity increase alone totalled 5.75 billion dollars. This was about twice the rate of 1979, and these figures come from the utilities' own trade association, the Edison Electric Institute. He said that the second quarter of 1980, the rate increases were actually triple the rate of the first quarter of 1980, and Nevada is no exception. Figures received from the National Association of Public Utility Commission, relative to

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the rate increases of Nevada, indicate that for electric and gas, the 1979 increases, which are the latest figures they had, were going up at about 2½ times the rate of the rate increases of 1979 over 1978.

Mr. Schwartz stated there is no question but that we are confronted with a very serious inflationary impact, which has its reflection in the very sizeable rate increase filings before the public service commission which are certainly more frequent than they have ever been in the past. He continued that he did not see any abatement of this particular trend in view of the fact that energy costs will continue to escalate; and with the deregulation of all prices, there is going to be an immediate impact. As he saw it, the problem would intensify rather than be mitigated and this intensification provides very strong support for establishment of an independent office for consumer advocacy and consumer protection, for the citizens of Nevada.

Mr. Schwartz commented that these pressures have undoubtedly impacted the commission staff. In addition to the repetitive increases and the magnitude of these increases, the commission is confronted with the Public Utilities Regulatory Policies Act, and the PURPA responsibilities require the commission to review specific rate standards. In addition to their normal work load, they have the additional responsibility to look at such things as interruptible rates, seasonal rates, the cost of service standards, the issues that go to lifeline rates, the whole question of load management and the whole question of master metering. These additional responsibilities are in addition to the normal workload of the commission of having to review rate increases and certificate applications. Mr. Schwartz did not think there has been any increase of staff or improvement of the expertise, either in general or in Nevada.

Mr. Schwartz stated an analysis, by Ms. Riddick, of the rates and tariffs relative to various utilities here in Nevada, which is attached to the summary (see Exhibit C). In that analysis, she indicates some very serious deficiencies with the regulations here in Nevada with regard to the fact there are no seasonal rates, the time-of-day rates have such small differentials they do not encourage time-of-day use and off-peak use. These rates are greater than the declining block rates. Also there are some deficiencies in relation to the irrigation rates.

Mr. Schwartz remarked there is a need to recognize the necessity of improving regulation in the state; but this does not necessarily mean to collapse the commission, decimate its staff, leave a shell at the commission and shift the primary bulk of the staff, 46 members, over to the office of consumer representation as

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proposed by Assembly Bill No. 85 and Assembly Bill No. 58. Mr. Schwartz emphasized that what is needed is a strong effective commission and a strong effective consumer advocate's office. The diversity and the input of the two independent offices, will improve representation here for the citizens of Nevada. He suggested there are unique roles to be performed by the staff of the commission as well as the consumer advocate's office. The staff of the commission usually has to perform a balancing role when the utilities and interveners come in to file their cases. He gave an illustration and said what you have is the staff trying to balance off the presentations of both entities, and that is the normal function of the staff. It is a very important role but should not be confused with the need for a consumer advocate's office whose unique and exclusive responsibility is to present the rate payers' position; to show the commission these are the appropriate costs to include the maximum protection for the consumer, the rate payer and user of the service. This is not the role and function performed by the staff of the commission nor is it the function performed by the utility. Mr. Schwartz stated with these diverse interests, the committee is benefited, the public is benefited, by strong and effective representatives of all of these interests but the consumer advocacy interests should not be weakened at that point. He said he could go into other examples but unless the committee has questions he would leave it at that.

Senator Wilson asked if it was Mr. Schwartz's judgment that the staff remain in a mediating role, notwithstanding where it is located structurally - whether in the commission's office or is made an autonomous separate agency as proposed in the alternate bill.

Mr. Schwartz replied that he would like to take that comment in context as his statement addresses it further on. He went on to present his views on the question of the Cresap, McCormick, and Paget report on the commission; the management study that came out in June, 1980. The report, in essence, pointed out the commission does not have a sharply-defined role or mission. Perhaps some of the issues should be looked at in the generic sense rather than piecemeal. They also indicated there were some shortcomings in the personnel management in the commission. This led Mr. Schwartz to the conclusion the commission should be strengthened; and a strengthened commission would benefit consumer advocacy. Senator Wilson commented the recommendations of the study appear in IV, pages 1 through 21 and questioned whether there were particular ones

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the committee ought to look at with respect to clarifying the mission of the commission

Mr. Schwartz stated the study on rates and tariffs attached (see Exhibit C) indicated some very serious areas that have not been adequately addressed in Nevada. There is not the type of inducement to time-of-day use which would induce better load management and leveling of the peak. He said it is only through an appropriate time-of-day use rate structure that time-of-load level can be determined. Mr. Schwartz was quite surprised, given the seasonal diversity of northern and southern Nevada, there has not been an introduction of seasonal rates.

Senator Ashworth asked for an example of how seasonal rates would be applied.

Mr. Schwartz explained that northern Nevada generally has a colder climate than southern Nevada and consequently the peaks would differ. There would be a tendency to a winter peak here and to a summer peak in southern Nevada (an air-conditioning peak). He stated with appropriate interconnection of utilities, building a plant by each individual utility could be avoided by having an exchange of power between the two to meet the seasonal needs, the peak needs, of the south by drawing on the capacity of the north in the summer months; conversely meeting the peak needs of the north in the winter months by drawing on the available capacity of the south at that time. He said transmission costs are very low in comparison to generating facilities.

Senator Ashworth commented that it was his understanding the two systems are different, southern Nevada coming from the Los Angeles area and Utah, and northern Nevada linked to Idaho and Utah.

Mr. Schwartz stated these options are there and although, as Senator Ashworth indicated the utilities made other choices, those choices were not preordained, they were made by the individual utilities. However, if the commission is actively involved in this type of problem, and other commissions are, they would try to promote the seasonal diversity relative to the utilities under their jurisdiction.

Mr. Schwartz addressed the question Senator Ashworth raised in regard to how interconnection can be accomplished. He said it would take an engineering study to see what transmission exists,

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whether it is compatible or could be made compatible and what the costs would be; and which system would be more feasible for the relative economies of exchanging power to meet diversity of peak. Mr. Schwartz stated this would take a specific engineering study, which obviously has not been made.

In response to Senator Ashworth's question as to what are some of the issues seen, in terms of commission improvement, Mr. Schwartz indicated their study of rates and tariffs only indicated some of these areas. He said they have not had the time to go into the cost of service presentations made before the commission to determine whether there would be potentially significant savings affected by looking at the types of decisions which have been made.

Senator Hernstadt asked Mr. Schwartz if he had studied the Nevada public service commission. Mr. Schwartz explained he had not looked into the commission until about a month ago; but he was aware of what has taken place here in a more general sense. When Senator Hernstadt asked if Mr. Schwartz's comments were made on general knowledge or national trends, Mr. Schwartz said his comments were based on his awareness of what has happened as well as some specifics of what has happened, based on what has been filed with the Government Affairs Committee of the Assembly; indicating the staff had recommended 27 percent of requested increases be passed through and the commission had recommended 58 percent. Senator Hernstadt asked specifically whether Mr. Schwartz, as an expert, had studied the Nevada power scene in terms of the interrelationship of the companies, the kinds of areas they serve, the seasonal nature of power use, or were his comments based on general knowledge. Mr. Schwarz replied he had not and his comments on seasonal rates were based on review of all the tariffs on file, and there are no seasonal rates in Nevada.

Mr. Schwartz then addressed the issue of the appropriate construction of organization for a consumer advocate's office. He referred to statements made during hearings on Assembly Bill No. 364 where the city attorney of Sparks and the district attorney of Washoe County pointed out they had neither the funds nor the manpower to continuously intervene before the public service commission; they had done so sporadically and when they did, there were significant reductions in the rates requested. There was also a reference to Professor Gormley's study that, in general, the grass roots efforts of consumer groups or local government units were not as effective as state organizations in their intervention before public service commissions and in their cumulative savings to the consumer (see Exhibit C), as well as the

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ability to protect consumers and bring about significant savings. These grass roots organizations really do not have the resources to continually intervene. Mr. Schwartz indicated Table I of the study which showed that of the 40 states and the District of Columbia studied, 22 had the consumer advocate's office under the attorney general, 19 had independent consumer counsels, and 4 had them under the governor's office as proposed in Assembly Bill No. 58 and Assembly Bill No. 85. He said consumer advocacy throughout the country has been so successful there is now a national association of state utility advocates which numbers 27 states.

Senator Wilson asked how the chiefs or directors are selected for the 19 states having independent consumer counsels. Mr. Schwartz explained some are appointed by the governor but most are appointed by the assembly, and he referred to the example of Ohio where the consumer counsel is selected by the assembly committee with oversight of the consumer counsel. Senator Wilson commented he assumed of the 22 in the attorney general's office, the attorney makes the appointments; the 4 under the governors' were appointed by the governor; and the 19 independents were mixed. Mr. Schwartz replied this was correct.

Mr. Schwartz continued, saying the hallmark of success is indicated by the fact one state, New Hampshire, recently appointed the head of the consumer advocate's office as chairman of the public utilities commission. He said, in general, in looking at all 40 of these consumer advocate's offices, the budget range is between \$300,000 and \$500,000 for the consumer advocate's office. He stated their statement details the actual savings as a result of the efforts of a consumer advocate director as against the joint efforts of consumer advocate and commission staff. Mr. Schwartz cited as an example; Ohio, 1977-1980, there were savings of 61.3 million dollars directly attributable to the consumer advocate's office as against \$100 million in joint savings.

Senator McCorkle asked what was the decision of the public service commission if there was a substantial difference in recommendations. Mr. Schwartz replied the decision of the public service commission was to reduce the requested rates by the utility, 61 million dollars below what their own staff recommended. He cited the savings of four states, Florida, Arkansas, Missouri and New Mexico, for the same 3 year period of between 116 and 118 million dollars; which were savings above and beyond the staff's own recommendations.

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Senator McCorkle said these were very impressive numbers. He asked if these were done by staff or a separate entity under the governors. Mr. Schwartz answered that all of these consumer offices were independent or under the attorney general. The tables in the summary (see Exhibit C) depict savings made strictly as the work of the New Mexico attorney general's office, the Michigan attorney general's office and the Ohio consumer counsel. Senator McCorkle asked if these same savings could be realized under the governor's proposal where the staff is removed from the commission and Mr. Schwartz replied he did not think so.

Senator Ashworth commented everyone would agree the more advocates there are on various positions, the more information becomes available and the more meaningful will be the decision made by the commission. He said his question was whether there were any states having only 1 staff, removed from the commission and functioning independently of the commission. Mr. Schwartz asked if he was talking about the model to be used under Assembly Bill No. 85 and Assembly Bill No. 58, where the commission's staff is split off, and Senator Ashworth agreed it was. Mr. Schwartz stated they were talking about North Carolina, Minnesota, Delaware, and Illinois which are under the governor. He said their record is not good.

Mr. Schwartz explained the primary consideration under the Initiative plan was to place the office under the attorney general and he contended this would avoid the conflicts inherent in Assembly Bill No. 85 and Assembly Bill No. 58. Under those plans the director (of consumer advocate's office) is appointed by the governor as are the members of the public service commission. He feels this destroys the checks and balances there should be in the democratic process, to give maximum protection. Also, the Initiative plan minimizes the potential for political influence. At this point he mentioned the situation in Idaho where a member of the Consumer Advisory Board was also of the Idaho Power Company, as well as other business interests. This Board was so ineffective in their intervention that the office was eliminated after a year and half. He stated the North Carolina situation was the key model for the governor's plan where the bulk of the commission staff was split off to become public staff. He said the attorney general's office still intervenes before the North Carolina commission. Mr. Schwartz said their public staff found it very difficult, some of them impossible, to make the transition from balancing staff to exclusively consumer advocate. In reply to Senator Wilson's comment, Mr. Schwartz stated that his recommendation is for a strong consumer advocate's office, and a strong

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effective commission staff, both trying to enlighten the commission.

Senator Wilson asked if the point of these proposals is to somehow make the rate process more truly adversary; in the past there has been a balancing of staff versus the utility advocate minus the consumer advocate. What is really wrong with taking basic staff, telling them not to balance anymore but to advocate since the utility presumably has hired all the experts they can and do advocate. Why cannot the commission do the balancing and make the transition, asked Senator Wilson. Mr. Schwartz indicated there were three considerations. First is whether the commission staff could really become a consumer advocate, and drop their psychological orientation as balancing staff. Second, is whether the commission loses its capability when its staff is stripped away. An example is Utah, where the staff was stripped away and did not have the expertise to render technically sound decisions; there is now a bill before their legislature to reincorporate the staff in the Utah commission. The third point is whether the process works better relative to all three inputs - staff in its balancing role, the consumer advocate focused on maximum consumer protection, and the utility focusing on profit maximizing.

Senator McCorkle commented that Mr. Schwartz was downgrading the Chairman's suggestion due to numbers rather than quality of staff. He stated it is correct they would be left with a minimal staff but if they are good people, they would be even better. Mr. Schwartz responded that the two objectives and responsibilities are completely unique and different. The commission has the tremendous job of going through a comprehensive record presented by the various parties with input from engineering, accounting, economics, and a whole range of other specialities; whereas the advocate's office of just five people hopefully would be able to hire outside professional experts. Their job would be to work in concert with outside experts in accounting, engineering, or the economy to provide a singular focus relative to consumer representation. The commission's job is far broader than just looking at the issues in a rate case primarily to find the best position to provide maximum protection to the rate payer. Mr. Schwartz does not see these two functions as equivalent.

Senator Hernstadt remarked the public service commission, because of its adjudicatory role needs very complex staff support. Consumer advocacy does not need the staff structure the commission does; although they do need professional expertise.

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Mr. Schwartz continued theirs is a relatively narrow consideration compared to the responsibility of the commission to reach a decision which will stand up to a court challenge. He cited a case in his statement (see Exhibit C) where the Mew Mexico commission was reversed because their accountant was not considered adequate to address the engineering issues. He stated this is the type of problem to arise if the commission is collapsed. Senator Hernstadt commented at least he understood this position now.

Mr. Schwartz then stated some of the key points relative to the Initiative, in this proposal. It would provide a better sense of checks and balances if the governor appointed the public service commission; but not the executive director of the consumer advocate's office. He thought the committee could insulate it more effectively from political influence than if the governor makes the appointment and controls the office of consumer advocacy. Mr. Schwartz pointed out another problem is the recommendation that professionals in the office of consumer advocate as well on the commission staff will no longer be provided civil service protection. He said this would result in a very docile staff, afraid of losing their jobs. He cited an example from North Carolina where one member of the public staff was told to leave out certain testimony because it would embarrass the governor. The testimony was left out because the executive director told him to. Such a situation could definitely compromise consumer advocacy and representation.

Mr. Schwartz indicated one of the advantages of the Initiative Proposal is that it has a very modest budget, with a relatively small staff nucleus, relying on outside experts with the background and experience. Senator Wilson asked if the measure adopting these in the past made specific provisions for civil service. Mr. Schwartz said he would recommend it as the protection is necessary and the Initiative Proposal does not address that issue. The governor's bill, the Assembly bill and the budget specifically provide all these positions be unclassified. Mr. Schwartz indicated, in response to Senator Wilson's comment, his recommendation, if the committee did not pass the other measure, was the current status quo would be retained, which in fact provides civil service protection. He questioned whether it had to be provided for, but deferred to the committee expertise in such matters as he did not feel he could address that point.

Mr. Schwartz continued with a very small staff, less bureaucracy, more effective representation would be obtained rather than what

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is contained in Assembly Bill No. 58 and Assembly Bill No. 85 which have all the former responsibilities of the commission for enforcement, complaint, modes of carrier problems, cable TV, and permits for warehouses, which are really commission functions; not functions the consumer advocate's office should address. Their singular focus is to represent consumers in rate cases, to protect them against potentially higher rates.

Mr. Schwartz continued that his concern was in the shifting of a substantial number of staff into this new office of representation under the governor, there will be a serious conflict of interest and it will hamper sound regulations which need a strong commission with an adequate technical staff. Otherwise they will be subject to potential reversal as happened in the New Mexico situation. Mr. Schwartz emphasized that what is wanted is an independent and effective consumer advocate's office and a strong and effective commission as well. One is not a substitute for the other, both are needed.

Senator Wilson commented the commissioners of the public service commission are appointed for specific terms of office and he indicated Assembly Bill No. 58 retains that, would have the director of the staff agency appointed by the governor, to serve at the pleasure of the governor. He stated he had some trouble with this provision. The Initiative Petition would have the director of the consumer advocacy office serve at the pleasure of the attorney general. Senator Wilson's question was if the consumer advocate director should have a specific term of office for the same reason public service commissioners have a specific term of office.

Mr. Schwartz replied there is some benefit in continuity. If the person is performing effectively, he does not feel there is a need to reappoint him. The attorney general should be able to assess the competence, relative expertise, and adequacy of the executive director at that point. If he falls short of the mark, then he should be removed. Mr. Schwartz continued that the commission functions on a separate set of preconceptions. They are appointed by the governor. When there are changes in administration, the new governor may prefer a different direction for the commission, and he has that prerogative. This is appropriate to the commission's organization, but not to the consumer advocate's office. There is a need there for the assurance that if someone takes the job, does it well, there should be no uncertainty about his position. If the job is not done well, then the person should be "canned" and that would be the attorney general's responsibility.

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Senator Wilson agreed that if the person did not do the job, he should be "canned". However, he wondered about an earlier illustration cited by Mr. Schwartz when the director of an advocate's staff was told not to embarrass the governor by introducing certain testimony in rate cases. He asked if the same kind of problem might arise wherever the consumer advocate office is sited, either with the governor or the attorney general. Both offices are constitutionally elected, political institutions. However, should the advocate or director of staff have the same autonomy from politics to do his job without worrying about embarrassing his constitutionally elected boss, who has to survive in a political environment. He went on to ask if the committee might do better to appoint a person for a specific term, but not saying not to have him appointed by the attorney general for that term. Should he serve for a term so he can take his mandate to be an advocate without worrying about the political consequences.

Mr. Schwartz replied if that assumption was made, there might be some benefit in doing so. He did not assume that the consumer advocate who functioned quite effectively would be removed by the attorney general. He felt at that point it would enhance the attorney general's political aspirations, if the committee is concerned on that score.

Senator Wilson commented the same argument could be made in respect to the governor who was elected by the same people who elected an attorney general. A strong consumer advocate would ignore the political advantages of who ever appoints him. He continued the committee wanted to produce the best bill they could, and his question was what was the better way, and why.

Senator McCorkle stated there was a third alternative which went along with these questions, and he did not understand why this could not be a very political question. Every appointive position in government he could recall needs to be a balancing position of some nature, protecting two opposing interests. He stated the consumer advocate does not have that responsibility, it is a one-way advocate; but what would be wrong with having him elected. The better job he does, the more support he would gain.

Mr. Schwartz answered it probably is political and feasible, but only theoretically. His concern is for one thing only - for the citizens of Nevada to have consumer representation as quickly and effectively as possible. He said that talking about theoretical possibilities and the niceties that go with such

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conceptualizations, gets one away from the heart of the matter. Mr. Schwartz continued the heart of the matter relative to the three bills under discussion is: will the consumer be better represented under the Initiative than under Assembly Bill No. 85 or Assembly Bill No. 58? His position is it will be better represented under the Initiative; given the fact there is a set of alternatives, this is the best alternative to get adequate consumer protection.

Senator Wilson remarked they were not trying to choose between the three alternatives. They may very well take the best part of each of them and go with that. He said he was just trying to get an expert's judgment; but not asking that he advocate one of the three alternatives. The questions, as he sees them, are to make the decision on a term or serving at the pleasure of the appointing authority; whether to seek the advice and consent of the legislators, or the legislative commission; whether to house the office in the attorney general's office or elsewhere. These are practical decisions which have to be made. He asked if the term of office analogy made sense or not. If the committee tries to insulate the control of regulation from the current of politics and states implicitly, if not explicitly, to ignore politics, does the same mandate apply or not?

Mr. Schwartz commented he appreciated the motivation to simply get his view of whether or not it is advisable to set a term so the consumer advocate has protection and will not be summarily removed. Senator Wilson interjected it was not a question of choosing everything in one alternative over the other. With any consumer advocate, including this proposal, some of the powers needed to be added. Mr. Schwartz explained he was giving the committee his best judgment. Essentially he felt there were advantages and disadvantages to both choices. A consumer advocate serving at the pleasure of the attorney general knows he has to perform well. If he performs poorly and has term protection, a period of time must elapse before he could be removed, so there is that disadvantage. Mr. Schwartz indicated the pivotal point in any response is the intangible element of the human being involved. Assuming an effective, strongly-motivated consumer advocate, he would not want a term situation. In fact, let him do his job, he cannot be removed for doing his job. But, if in fact, given the vagaries of human nature and the political motivation of an attorney general, this person may not get the protection he needs, then there should be a term as a protective device. Mr. Schwartz said it becomes an almost imponderable question and he felt he really could not answer it.

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Senator Ashworth asked Mr. Schwartz, of all the offices of consumer advocacy he had studied in all the states, which did he feel was the most effective. Mr. Schwartz replied he felt the consumer counsel of Ohio, under the legislature; and the Michigan attorney general's office under the attorney general. In reply to Senator Ashworth's question, Mr. Schwartz answered because these offices had effected the greatest amount of savings; they have the reputation of really providing very strong consumer protection; and they are very well respected by their state commissions for the work they do. They have good staffs who really put on very professional cases. In response to Senator Wilson's question, as to what constituted a good staff, Mr. Schwartz answered that they also had a good budget. He explained in the Ohio budget, they have over 3 million dollars and also spend a million dollars for outside expertise, as shown on page 11b, Table 1 (see Exhibit C) of the study. The Michigan commission's budget is not that monumental but it has done a very effective job. Their total budget is \$500,000, which includes \$125,000 for outside professional help.

Senator Wilson asked if these were consumer advocate offices rather than the traditional staff. Mr. Schwartz explained these were strictly consumer advocate's offices - not referring to commission staffs at all in the material on Table 1 - these are lists of offices of consumer representation throughout the forty states.

Senator Hernstadt questioned whether, in Ohio and Michigan as a result of the advocacy of the consumer representatives, any of the utilities had their bonds down-graded. Mr. Schwartz replied he had not really looked into that aspect. His study concentrated on consumer advocacy offices, their performance, and the nature of the work they did, their structure. He had not looked at that issue and had no way of addressing it without the information.

Senator Hernstadt asked if that might be significant. As a politician and a consumer he wanted to have as low a rate as possible. However, there are long term and short term effects with such rates. Each shot-down rate increase could keep a rate of return at a lower level. If the utility's bonds are downgraded, and the next bond issue is to pay for a generator, they will be paying a couple points more of interest, and it will come in a lot higher later on. What has been done is just to defer the increase. The public service commission not only has the rate to look at, it has the future to consider, as to

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whether they want to take the stand of rotating, rather than building new expensive facilities at 20 percent prime rate. Senator Hernstadt asked how would a consumer advocate be able to weigh those factors; whether to take a short term cut and in effect mortgage the future of the system so it may not be sufficient for peak periods; or would they adopt a no-growth policy so there would not be any more people to be hooked onto the system.

Senator Wilson commented he thought the answer was that the commission would determine the issue. Mr. Schwartz explained the answer could be on two levels. One level would be the commission's responsibility to weigh the short run gain versus the long run impact. It is their primary responsibility to keep the utility viable so they can provide service; to make sure they are covering legitimate costs; and the utility is earning a fair rate of return. When the commission weighs the consumer advocate's presentation, they can see whether or not the case has been pressed to the extreme; whether or not the consumer advocate has recommended a rate of return so low it will exacerbate the cost of money for the utility. In such case, they obviously would not follow the recommendations. Mr. Schwartz continued there are a number of considerations that are quite sophisticated and not susceptible to answers on a general level. It takes specifics such as looking at a specific cost of service, the current cost of debt, the imbedded cost of debt, what new issues the utility will offer, whether they are going to new equity rather than debt, the time value of money, whether there is a benefit of short-term gains because of time value and money relative to long-term costs. Mr. Schwartz stated, in view of these factors, there was no simplistic response he could make.

Senator Hernstadt remarked this was what he was trying to get at. Was all this only a public relations "razzamatazz". In the clipping submitted from the Wall Street Journal (see Exhibit C) part of the article refers to Commonwealth Edison Company of Chicago, going from a triple A rating to a single A rating over a period of 18 months. He stated that investors have turned their backs on utilities and therefore they cannot raise the funds for new equipment. Mr. Schwartz stated that investors had not really turned their backs on the utilities. He admitted there has been a downgrading of some utilities from triple A to double A, or double A to A, or A to triple B; and therefore made it more difficult for them raise funds. He agreed that the point raised by Senator Hernstadt was a relevant one.

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Mr. Schwartz continued his response to Senator Hernstadt's statement by categorically asking if it is costing everyone concerned more because of the down-grading; and are the long-run costs greater than the short-run gain. He added that Commonwealth Edison in the state of Illinois, which has the consumer representation office under the governor.

Senator Hernstadt questioned whether the consumer representative point out areas of inefficiency and incompetency in the utilities. He commented that most of the costs of utilities are due to the raw materials; the fuel oil, coal, atomic materials or natural gas. Mr. Schwartz refuted that statement. Senator Hernstadt then asked in what way can the consumer advocate help the utility get their raw materials cheaper. Mr. Schwartz first explained that fuel for generation is not the major cost of a utility, it is only about 30 percent of the total cost. He stated the basic costs are really capital costs; they are major. He continued there are many considerations in the costs of service which a consumer advocate should address if he is to do his job well. He must be aware of not only the rate of return but its regulatory expense, its advertising expense, its general administrative expense as well as whole range of specific operating costs. Depreciation is another very important area with a lot of dollars and cash flow involved in terms of appropriate depreciation rates on different classes of plant. However, he indicated there is a way a consumer advocate can address fuel costs, and this concerns whether the utility has a competitive bidding system as against private placement. Mr. Schwartz stated further, in a number of cases he had been involved in, where there were interlocking directives, it was found the utilities were not obtaining the lowest cost fuel because they did not have an automatic fuel adjustment clause and did not particularly care whether or not they were obtaining the lowest cost fuel. He told Senator Hernstadt therefore, the answer to his question was affirmative, there is latitude available for a consumer advocate's office to suggest minimizing fuel costs.

Senator Hernstadt asked whether a consumer advocate could save the public money without impairing the financial strength of the utility company and Mr. Hernstadt affirmed it was possible.

Senator Close inquired whether, if this was put under the attorney general's office and the commission has the attorney general as its representative, there might arise the position

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of the attorney general of one office opposing, possibly in court, the attorney general of another office. Mr. Schwartz explained, in the New Mexico situation, the energy section of the attorney general's office intervenes before the public service commission there. It is a separate and distinct entity from the rest of the attorney general's office. He stated this question was asked specifically, and the New Mexico information was that another section of the attorney general's office represents the commission before the court and there is no conflict because of the complete separation of functions. There is the energy unit staff who intervenes as a consumer advocate representative and the rest of the attorney general's staff who function as the commission's staff before the court.

Senator Close asked if the attorney advocate and the attorney representing the commission both report to the attorney general. When Mr. Schwartz affirmed this, Senator Close stated that was the most blatant conflict he could imagine where both attorneys report to the same person and owe their job to that same person. Mr. Schwartz replied on the surface it could be; however, his information from New Mexico indicated there has been no conflict. Senator Close indicated that might apply in New Mexico, but what alternative is there for Nevada. He voiced several other objections to this arrangement and Mr. Schwartz suggested if he felt this really was a major problem the alternative was that the commission could hire its own outside legal staff but Mr. Schwartz did not think it was a major problem.

Mr. Schwartz began his concluding remarks by reiterating some points of his concern regarding Assembly Bill No. 58 and Assembly Bill No. 85. He touched on the serious conflicts of interest, potential political conflicts; his concern the committee may not find the staff able to function as a consumer advocate, split off from the commission. He feared an executive director appointed by the governor would lack independence, and unclassified staffs would be less willing to really advocate for issues which might not please their superiors. He stated the budgets provided for indicate massive increases of one million dollars whereas the Initiative Proposal suggests a very modest budget of \$297,000 to \$400,000. He feels the citizens of Nevada would get a much leaner, more effective consumer advocate under the attorney general's office than under the governor. In conclusion, Mr. Schwartz restated what this study had led them to find and called the committee's attention to page 27 of the summary (see Exhibit C) which lists the conclusions reported.

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In response to Senator Close's question as to the group he was representing, Mr. Schwartz replied that he was appearing on behalf of the Coalition for Affordable Energy, as indicated on the top of his statement (see Exhibit C).

Senator Ashworth asked if the position of consumer advocate was a long-standing position in some states or had it just arisen because of escalation of related costs that bear on utilities. Mr. Schwartz's response to the statement pointed out such offices are a relatively recent institution which got started after the 1973 embargo when the cost of fuel, plus utility rates, began escalating dramatically. One of the points made in his statement was the achievement of a rate of success by such offices, which have been very effective in protecting consumers.

Senator Ashworth commented that Mr. Schwartz appeared to be making the point, with the increase swinging way up, that the utilities are actually chipping off more than is in that swing. He felt the bottom line was if the utility rate of return was factored into inflation, they were more ahead of the gain than they were five years ago. Mr. Schwartz said he did not feel that was the issue he was addressing. What has happened is the rate increase proposals by utilities have gone up very markedly. Rate increase applications before public utility commissions are not only more frequent, they are of greater magnitude than in the past, which has created tremendous pressure on utility bills to the consumers. At this point, such a high proportion of income must go for paying utility bills that the choice comes down to paying the rent or the utilities or cutting back on consumption of needed food. It is at the lower income levels where this is felt most painfully and where there is a welling up of complaints against the tremendous escalation of utility rates. In reply to Senator Ashworth's question if it was any different from the gasoline business, Mr. Schwartz said it was because the utilities are essential services whereas there are transportation alternatives such as public transportation, joint car pools and other alternatives. He referred to the original comment by Senator Ashworth relative to the vertical line issue of the rate increases and agreed they were responsible for the demand for the explicit, specific, offices for consumer representation to provide an examination into these tremendous rate increases to indicate a source of maximum protection for rate payers, to exert downward pressure.

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Senator Blakemore asked Mr. Schwartz whether, when there is only one utility in the state which generated less than ten percent of their power within their own service district and have had to play catch-up since 1963, there was any possible way for such a utility to reduce their rates. Mr. Schwartz replied it was their responsibility, under their certificates, to provide such service.

Senator Blakemore commented an alternative would be for them to reduce the size of their services. Mr. Schwartz explained it would pay the commission and/or the consumer advocate's office to postpone new construction and look to availability of power supply from existing utilities with more-than-adequate reserve margins, to negotiate through exchanges or direct purchases of power which would be cheaper rather than construct new plants. Mr. Schwartz stated when he testified for the Office of Consumer Affairs, in Colorado, one of the issues which pertained to the Fort St. Vrain Nuclear Unit of the Public Service Company of Colorado, was whether or not they should really go into a massive new building program. The commission ordered an engineering study to try to determine whether Tucson Electric had power available, or a number of the cooperatives in the state had power available, or there was an alternative power supply available to obviate the necessity to construct new plants. He noted other alternatives are further interconnection and coordination, and pooling arrangements with other utilities who have reserve margins more than adequate to meet their own peak loads with power to spare to a utility which is power short.

Senator Blakemore remarked the problem of the West was he did not feel the utilities were available. Mr. Schwartz said he had not looked at the specific situation. He was merely saying there is an alternative. Senator Blakemore indicated he had not asked for an alternative but wanted to know, given the fact of building a plant from zero, in twenty years expanding again with oil fuel costing double, if there was any way of reducing rates. Mr. Schwartz commented if the plant was already built, there was no way of avoiding those costs. The question was whether future costs can be avoided in terms of proposed new generation. He stated, with this problem, the commission should do exactly what the Colorado commission did. They hired an engineering expert to canvas the available sources of power in their bordering areas to determine whether there were lowering cost alternatives to new construction. The study indicated there was significant power available by other systems with reserve margins above their own needs. Thereby, they could purchase power and not have to construct new plants.

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Senator Blakemore indicated this was information the committee did not have. He said they are caught in Catch 22, specifically with the environmental problems. Mr. Schwartz stated again he offered one alternative and could offer a few more. However, he did not feel they would be of the major magnitude of the one just discussed. He said through conservation efforts, requirements for new capacity can be reduced, or load leveling, rate design, i.e., time of day rates; and there are some other areas which are important. However, none of them are as important as the potential of using the capacity already existing in other systems.

Senator Hernstadt mentioned several cities and counties have a sales tax on utility charges (electric, gas, telephone, etc.), and he wondered if Mr. Schwartz perceived the role of consumer advocate only to oppose applications for rate increases; or would they be able to work to get the sales tax removed which he had tried to do, unsuccessfully, the last two sessions. Mr. Schwartz replied if the senator was unsuccessful, the chances were bleak for a consumer advocate.

(Note: Chairman Wilson returned to committee hearing.)

Senator Wilson commented a consumer advocate's office would need to have the jurisdiction to either file complaints or to proceed by petition or application before the commission when it sees sufficient reason to do so. He understood they ought to have the jurisdiction to intervene in the utilities' rate cases to protect the rate payer. However, he would assume they ought to have jurisdiction, although intervention is not discretionary but mandated by statute, of filing complaint, petition, or application on its own initiative before the commission. This would pertain, whether or not the challenge is the rate structure, rate category deficiency, seasonal rate deficiency, regional differential, irrigation rates, etc. He said these are matters which might not wait for a rate case to raise or in which it might be desirable to supersede to raise because the rate structure is not adequate to protect the consumer. Senator Wilson assumed the consumer advocate's office ought to have those powers.

Mr. Schwartz stated he was not a lawyer and as the questions posed had an underlying legal premise, Mr. Stitser was present to directly address those issues. As a regulatory economist, Mr. Schwartz did not want to overstep his bounds of expertise in regulation to comment on the legal presentation.

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Mr. Schwartz stated, in his reading of General Order No. 3 relative to intervention and discovery, he was led to conclude the authority in Nevada is no different from that which exists in other states, if a direct substantial interest can be shown. Senator Wilson commented it was his assumption intervention was automatic and Mr. Schwartz agreed this was correct. However, the issue was of petitioning the commission for issues that had not been raised by other parties. He said his understanding was there is a broad enough latitude to permit the attorney general or any of his designates to petition the commission. He said Mr. Stitser would address that point very specifically.

Senator Wilson indicated he was not asking procedural questions as to the vehicle to be used but rather should a consumer advocate have the power to proceed on its own initiative. Their primary focus, replied Mr. Schwartz, will be responses to rate applications coming in. However, when there are other issues which are not addressed by the other parties, it is his understanding they do have that authority. Senator Wilson stated he was not asking if they had that authority; but rather whether they should have that authority. Mr. Schwartz indicated they should.

Senator Wilson stated there could be a whole series of questions which should not await some of these rate cases to intervene and then raise collaterally in the course of a general rate proceeding. There may be a lot of reasons for having a singular focus on a given issue on its own initiative, independent of a rate case; and he assumed Mr. Schwartz would agree the consumer advocate's office should that power and ability. Mr. Schwartz affirmed the conclusion.

Senator Wilson asked if Mr. Schwartz would agree, whether investigation is done by staff or a higher consultant, the advocate should have clear availability of the books and records of the utility with the power to inspect and if necessary, to audit and examine documents. Mr. Schwartz indicated there would be no way to operate effectively unless the advocate did have access; and he felt the authority was there for anyone who intervenes to have the same right as staff to the books, records, memoranda, etc. Senator Wilson agreed but stated they should also have the right to examine the books and records and verify, prior to a filing of a rate increase application, whether the increase was equitable. Mr. Schwartz explained, under the number procedure used, a party would petition the commission for the right to investigate and the commission would then rule on that petition. It is necessary to petition the commission before proceeding on a certain issue relevant to consumer protection so the commission might order an

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investigation or, the commission on their own motion might take action.

Senator Wilson said he was not asking whether or not the commission should order an investigation in which its own staff would respond. What he was asking was whether or not it made good sense for the advocate, in his own judgment as to the protection of the consumer, to decide to target an issue and to examine it before it is before the commission; and whether the advocate's office should have the statutory power to proceed. Mr. Schwartz said it should be done in a litigated context as that is where the decision will have to be made ultimately. He noted the course of action and stated he did not feel the consumer advocate's efforts should be defused relative to independent access to records when the use of the information has to eventually be presented for the commission's evaluation. Senator Wilson reiterated his query as to why it should have to wait for a rate case and Mr. Schwartz explained it does not; the commission is asked to investigate the rates on their own and does not just have to respond to a rate increase application. He continued, if the consumer advocate's office senses certain inequities in rates, their course should be to petition the commission to order an investigation which will ultimately lead to a remedy and redress of any wrong. This will have to be the judgment area, the litigated context. This saves time and money by putting matters within the regulatory process.

Mr. Robert Stitser, attorney in Reno, testified next on behalf of the Coalition of Affordable Energy. He stated his understanding the legislature was interested in three legal issues regarding the Initiative Petition, two or three of which had already been addressed by Chairman Wilson. He said these issues are:

- 1) Whether a consumer advocacy office should be a primary party automatically to any public service commission action, or whether it should have the discretionary right to intervene;
- 2) The rights of discovery, of the consumer advocacy office; and
- 3) The right to initiate action, in the examples given previously by Chairman Wilson.

Mr. Stitser stated his research led him to believe the discretionary right to intervene would be more cost-effective than

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automatically making the office party to every public service commission investigation because it would load the small staff down, with its contemplated minimum budget of \$300,000 to \$400,000.

Mr. Stitser continued, where the public service commission rule regarding intervention is addressed on page 3 of his presentation (see Exhibit E), it appears to be somewhat discretionary on the part of the public service commission in granting a lien intervention. However, his research and a conversation with the former chairman of the public service commission, would indicate where there is a substantial public interest in anyone representing rate payers, it is unlikely the courts would sustain an arbitrary refusal to grant a lien to intervene. This is supported by the 1975 Nevada Power Company case (see Exhibit E).

With regard to discovery rights, Mr. Stitser told the committee there is a bill presently before the legislature, Assembly Bill No. 54, which does give the attorney general subpoena power in all civil and criminal investigations regarding actions the attorney general would initiate on his own.

In response to Senator Ashworth's question as to whether the attorney general already had that power, Mr. Stitser replied there was a question about it. On discovery rights, he continued, the public service commission does have rules pertaining to the regulation of utilities (11.170, 11.180) and there are a number of statutes involving discovery among those in the category of utility regulation. (See page 5, Exhibit E.)

Senator Wilson asked if this bill would authorize the attorney general to issue a subpoena duces tecum, commanding a person to further examination of books, records, etc. This is a subpoena issued by the district court, upon application by the attorney general, which provides for service in the manner provided for service in criminal pleadings. Senator Wilson assumed this contemplated matters of a civil or criminal matter over which the court does not have jurisdiction. Mr. Stitser answered this was probably true but he did not know if it could be interpreted so narrowly that it would not apply to any civil investigation which might be undertaken by the attorney general.

Senator Wilson questioned whether it made sense, if they were going to vest jurisdiction in the attorney general's office to do something, to add to those powers. He continued whether, in the advocate's office, they should simplify by providing the power to examine and inspect without requiring the district court

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to get a subpoena. Senator Wilson thought this would be more effective and Mr. Stitser agreed, with the reservation there should be some safeguard from just conducting "witch hunts". However, Mr. Stitser agreed wholeheartedly because there are some things presently taking place, which he felt should be looked into.

Mr. Stitser then addressed the last issue, of the right of the attorney general to initiate action against the utility acting unreasonably, and stated it appears under the duties of the attorney general, NRS 703.210, where he has the express duty of aiding the commission in the performance of its duties. Mr. Stitser added there are a number of statutes providing for the lodging of complaints with the public service commission enabling the commission to launch an investigation, set hearings, etc. if the complaints are not addressed. There is legal precedent for the commission acting on complaint on its authority, without any applications from utilities, and to change rate structures which have already been granted.

Senator Wilson questioned whether NRS 703.210 authorized the attorney general to be counsel and attorney for the commission. He cited the provisions of Mr. Stitser's memorandum to the committee (see Exhibit E). He assumed Mr. Stitser would agree there should be no question that the consumer advocate's office could proceed on its own initiative. Mr. Stitser did agree with Senator Wilson and, addressing Senator Close's question on conflict of interest, said that the commission should have its own attorney in that event.

Senator Wilson agreed that was resolved; however, what concerned him was certain language of the petition giving the consumer advocate the right to intervene. He wondered if the committee should provide additional powers with the petition and complaints to comply independently and unilaterally, without having to react. Mr. Stitser replied the petition is circumscribed somewhat, but he thought it was to repeal and intervene and perhaps the attorney general's duties under that one statute could be clarified.

Senator Wilson stated the statute was in the context of representing the commission and, especially if they advocate, the commission should have its own attorney to avoid conflict. He felt if a perfect bill was to be written, this issue had to be addressed and provide the powers to become independent.

Mr. Stitser agreed that could be true and, after litigating with Sierra Pacific for the last ten years, he felt there was a pressing

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need for a consumer advocacy office immediately. Addressing Senator Blakemore's question, Mr. Stitser said that Sierra Pacific for the last few years has inflated its forecast of electricity by about 50 percent and has succeeded in putting in all these plants. He continued that, as Mr. Schwartz had informed Senator Hernstadt, the big cost is capital cost and so the consumer advocate's office is needed in place right away to bring out this information that never gets brought out.

Senator Wilson stated his concern that, if they are going to create the office, the power should be clear on the rights to inspect and examine and to proceed unilaterally, without having to wait to intervene. Otherwise, it presents an intriguing target for the imaginative lawyer who wants to tie the office up legally and frustrates its mission. No one wants that, least of all the advocate's office.

Mr. Stitser agreed; but suggested the Initiative Petition would create the office and the committee might give these powers to the attorney general's office by separate bill. He felt the petition appeared to be a reasonable vehicle to create the office. Senator Wilson said he understood the basis on which they were proceeding and that is the obligation to produce the best bill they can. He said if the policy judgment is to go with the consumer advocate's office in lieu of some other alternative and create it by statute, they they should do the best job they can to give the advocate's office the powers it needs, the budget it needs, the staff it needs, and the mandate it requires, so as not to present it as a target to tie up legally. Its mission should be clear as should its powers to execute that mission. Senator Wilson continued that he did not want to have to decide this question on whether it is going to the ballot, if it is not passed as is.

Mr. Stitser said he saw the senator's point. However, he felt that whatever it takes to establish this office effective July 1 or whenever the bill would be effective, should be accomplished. Senator Wilson stated he had no quarrel with that; he just did not want the judgment of a good work product to be influenced by the feeling it had to be accepted in this form or it goes to the ballot. He wanted to see the office having power it needs to do the job, without any legal targets for a lawyer to pick it apart, down the road.

Mr. Andrew Barbano, representing the Coalition for Affordable Energy, wanted to address some questions which he felt were not fully answered. With regard to Senator McCorkle's question on

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election of the head of the office of consumer representation or advocacy, Mr. Barbano said the coalition has essentially opposed the idea of electing the head of the office of consumer representation as they have opposed the idea of electing the public service commissioners. Their opposition is based on where the funds for candidates for these offices would come from. His answer to that would be the utilities, which would breed more problems than it would solve. Mr. Barbano said the official position of the coalition with respect to election of the head of the advocate's office, is that they are against it.

Senator McCorkle commented that every tax-paying business in Nevada would support a consumer advocate. Gaming in mass would support it; the only ones against it would be the utilities. Mr. Barbano replied that office would end up politically, with a very low interest, and the campaign money would come from only one place.

Mr. Barbano then commented on the idea of insulating the consumer advocate with a term appointment as opposed to making him easily terminated. He stated the reason this provision was included was due to some of the proceedings before the Legislative Commission's Interim Subcommittee (ACR 22) on the Public Service Commission. Their conclusion was, that to make the office most responsive, the head of the office should be easily terminated.

Senator Wilson stated he had the same problem with the governor's bill in that the governor can fire the chief of the division as proposed by the governor. He said he raised that question the other day and raised it with the petition as well. Mr. Barbano explained they wrote it into the Initiative because the interim subcommittee thought it was a good idea. He said they thought they had an agreement with the governor's office to allow the office of consumer advocacy to be under the governor with the compromise being legislative confirmation. The compromise, which was agreed to by the governor's representative in the committee, was rejected by the governor. So they were forced to go to the attorney general's office and they were trying to follow the agreement with the subcommittee.

Mr. Barbano stated that a long-time utility activist made the comment last week that essentially all the power in the state is vested in the governor and very little anywhere else and there is a tendency for the attorney general not to criticize the governor. Consequently, if the office of consumer advocacy were under the governor, the attorney general is not likely to be too critical.

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As a case in point, Mr. Barbano referred to the relationship between Mr. O'Callahan and Mr. List, and also to the fact Mr. Bryan has not necessarily been too critical of Mr. List, on two occasions, one of which is consumer advocacy.

Senator Wilson pointed out, if the consumer advocate's deputy is going to be critical, and the attorney general's office pattern has not been too critical, would it not be better for the deputy to have a specific term.

Mr. Barbano stated he would address that when he finished his statement. He said if the office of advocacy were under the attorney general and was not doing a good job, the governor might become openly critical of the conduct of that office of consumer advocacy, which might make it a little hot for the attorney general. However, if the advocate is doing a good job, that is excellent. If he is doing a lousy job, everyone on the subcommittee last summer, including Senator Ashworth, was of the opinion he should be easily terminated. Senator Wilson said Mr. Schwartz had indicated the same opinion. Mr. Barbano said the only addendum he could make was the governor would be in a better position to criticize the attorney general, where it does not very often work that way.

Senator Wilson explained that was the argument with a fixed term. If attorney generals are loathe to criticize governors, their deputies, or division heads would be loathe as well. The governor identifies with the people he appoints. The commission, the commission staff, and attorney generals would be averse to disagreeing too strongly with policy decisions and maybe the head of the consumer advocacy division might feel the same way unless he had political autonomy with a specific term.

Mr. Barbano stated if the advocate was under the governor he might easily want a term appointment while under the attorney general he might be more responsive if he had no term because the criticism would come the other way. Senator Wilson said that depends on what premise he wished to argue.

Mr. Barbano commented the problem of attorney general conflict was not new because the issue of attorney general versus attorney general conflict was an issue which came up in Assembly Bill No. 364 hearings in 1979. He said the committee might not be aware the attorney general's office did a lot of work studying this question in Nevada and other jurisdictions, which is why he recommended earlier in the week that the attorney general's office be asked to send representatives to today's hearing.

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Senator Wilson stated he had called the attorney general's office and they will be testifying later on in the week.

Senator Hernstadt questioned whether the attorney general supports the coalition's position. Mr. Barbano replied he did not think the attorney general's office had taken a position. However, he stated they had a case citation in which a public utility felt there was a conflict of interest of attorney general versus attorney general with one representing a public utility and the other representing a consumer advocate. The public utility sued to test the viability of the situation and the courts upheld the viability of the dual representation. Senator Wilson commented he did not feel this was critical of the situation one way or the other.

Mr. Barbano stated, with regard to Senator Ashworth's question as to the newness of consumer advocacy offices and Mr. Schwartz's comment, they had arisen essentially since the 1973 oil embargo and blamed it on the Arab oil syndrome. He said there were many problems within the industry before 1973, but they were not subject to such public outcry because the abuses were in the number one cause of increase in utility costs, the expansion of the rate base. When fuel costs went up suddenly there was a public outcry, but the heart of the problem is rate base expansion. Responding to Senator Ashworth's question on rate base, Mr. Barbano explained the biggest component of cost to consumers is rate base expansion which is largely due to new construction. Senator Wilson asked about cost of capital and Mr. Barbano said that capital cost is translated into facilities, and that is rate base.

Senator Ashworth asked if that had any effect on the growth rate in the west. Mr. Barbano stated each case must be decided on its own merits and they are highly questionable, with every case having two or three sides to it. He said growth, especially in Nevada, is being looked at now. There is a study to see what has been done in the State of Oregon where possibly new facilities are no longer necessary if proper weatherization programs could be implemented. Expansion of the rate base is something the utility will always say is needed; new plants and equipment are the peg to which the profits are attached.

With respect to Mr. Stitser's comments, Mr. Barbano referred the committee to NRS 704.645 and NRS 703.21 which Senator Wilson reported on earlier. Senator Wilson asked what NRS 704.645 referred to. Mr. Barbano replied it addresses remedies

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of the state cumulative; election of remedies. He said the remedies of the state provided for in this chapter, and no action taken by the commission constitutes an election on the part of the state or any of its officers, could mean the attorney general could take the initiative in that case.

Senator Wilson stated election of remedies does not mean that. He was not trying to be adversary however, he was suggesting the legal premises for the consumer advocate's office should be crystal clear and not have any ambiguity. He did not think that NRS citation answers the question. The proposal for the advocate needs improvement and that is what should be worked on rather than quibble over providing some construction of the election of power and remedies from a section of NRS to do it. Senator Wilson added that it was not helping the petition to do that. He continued that if the committee was going to go with the policy decision represented by the petition, they should do it right, completely, so as not to present a target for opponents to tie up the consumer advocate's office. The jurisdiction needs to be clear and unequivocal; there are some limitations provided in the petition and he was suggesting a mutual understanding to produce the best bill they can. He said the election of remedies section does not answer the question.

Mr. Barbano agreed, but stated his reservation that what comes out of the committee may not necessarily end up in the law. This enhances the coalition's reluctance to compromise with respect to the language of the Initiative, which was well-researched. Senator Wilson stated if the ultimate decision is to take it to the ballot box, they obviously have that choice, and if the bill produced is not a good one, obviously it will go to election. However, he felt the committee had an obligation to do the best they can; he felt the petition could use some improvement and the committee should provide it.

Senator Wilson asked if there any witnesses from out of town. Mr. Barbano stated they are expecting some but they were snowed in and unable to fly to Reno. He wanted to beg leave to allow them to address the joint session on Monday on some points, especially with respect to utility regulation. These people were coming from Wisconsin. Senator Wilson stated this would be up to Assemblyman Dini, because he was chairing that meeting and they were piggybacking his hearing. Senator Hernstadt asked, in the event Mr. Dini did not provide time for these witnesses to testify, if there would be time for the committee to hear them another time.

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Senator Wilson indicated they could. Mr. Barbano asked if the committee would let them know when they were needed for testimony as they needed plenty of time to get here from Wisconsin.

Ms. Rosalie Beesley, 25 E. Richards Way, Sparks, spoke representing the consumers. She stated she was in favor of the Initiative Petition, and reported the petition was signed by more than 38,000 registered voters last fall. She indicated the committee may not be aware that her own group of concerned citizens obtained the signatures of more than 20,000 Nevadans last summer. They circulated their petition as an expression of protest and frustration at the never-ending spiral of utility bills.

Ms. Beesley said it was their intention to present their petition to all major elected officials and the entire Washoe County Commission signed the first page of their petition. It was cordially received by Senators Howard Cannon and Paul Laxalt, and by Congressman Santini. It was presented to the Legislative Commission's Interim Subcommittee (ACR 22) on the Public Service Commission on August 29, 1980 and is on file in this building.

Ms. Beesley stated she went to many of the hearings last year on the Sierra Pacific Power Company's rate increases. She said some of the special interest groups were represented by legal counsel, but most of the residents of this state, composed of senior citizens, people engaged in businesses, trades and professions, home owners and renters, tax payers in various categories, and registered and qualified voters, had no representation. She said the power company is suing for ten million dollars, most of which is due to discrepancies in their bookkeeping and in their inventory. Ms. Beesley questioned whether the above-mentioned categories of Nevadans must continue to pay for the flagrant misdemeanors committed by the power company, and continue to be without representation. She stated that 20,000 concerned citizens and a hundred thousand just like them in Nevada beg the committee to pass the Initiative Petition immediately so they can have legal consumer advocacy at these hearings, and at the pending suit filed by the Sierra Pacific Power Company. The discrepancies referred to are in the September 18, 1980 hearings.

Mr. Randolph Townsend, Chairman of the Coalition for Affordable Energy, submitted a prepared text, given to each committee member (see Townsend presentation, Exhibit G). He stated his reason for addressing the committee briefly was in respect to Senator Hershstadt's question specifically directed to regulation of the rate structure in Nevada.

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Mr. Townsend said the two people who were to testify before the committee today on the rate structure, Dr. Rod Stevenson and Ms. Leigh Riddick, were snowed in at the Chicago Airport last night. He was anxious to make them available to the committee, but understood that depended on Chairman Dini, relative to Monday's hearings.

Senator Wilson stated the joint session started at 4:00 p.m. on Monday and was booked as a utility response to various alternatives; so from their standpoint they might want their witnesses heard on another date with more time for presentation. Mr. Townsend said he just wanted to make it clear the committee would have expert testimony available to them relative to specific rates in the state of Nevada which are of importance to their constituencies.

Senator Hernstadt responded the committee would appreciate that because Mr. Schwartz's general testimony was relative in terms of the national picture and did not touch on the problems of Nevada Power, Sierra Pacific and constructive criticisms they may have developed in their study. Senator Wilson inquired how much lead time they needed and Mr. Townsend answered probably a week.

With no further testimony, Chairman Wilson closed the hearing on the Initiative Petition.

(Short break was taken, 4:30 - 4:25)

ASSEMBLY BILL NO. 58

Mr. John Capone, representing the governor's office, stated he wanted to keep his remarks brief and still address the significant points and differences between the governor's proposal as indicated in Assembly Bill No. 58 and the other proposals being offered.

Senator Wilson asked if Mr. Capone was present during the testimony of Mr. Schwartz and, on being assured he was, stated Mr. Schwartz posed the question of autonomizing the commission staff or creating an office of consumer advocacy, but not necessarily as alternative proposals. He suggested that Mr. Capone address the creation of an office of consumer advocacy as a conceptual point.

Mr. Capone said he would make the distinction, explaining the real substance of Assembly Bill No. 58 and the governor's proposal.

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Mr. Capone said they are talking about establishing a comprehensive form of representation for the utility consumer. The scope of utility regulation and the scope of the impact of the various utilities on the public, goes far beyond merely electrical rate cases. He stated the governor's concept is to establish a large enough staff, with sufficient funds available to it, to handle a very comprehensive representative role. He said throughout the discussion today there was some general agreement that some representative voice in the public interest is necessary. The key question is, how comprehensive a voice is that representation going to be.

Senator Wilson replied the specific point he made, was the commission staff has the balancing role and assists primarily in an ultimate position by the commission, as opposed to the more polarized positions of the utility at one extreme asking for a rate increase; and the consumer at the other extreme, asking for no increase or a decrease. Senator Wilson remarked the consumer advocacy position must have sufficient force to counterpoint the extreme position of the utilities; which the commission staff and the long-term public interest may require for balance.

Mr. Capone stated the governor's proposal views the situation with the commission taking on quasi-judicial functions, with the consumer representative agency being responsible for presenting the public's side, of the public interest considerations on proposals submitted to the commission by the utilities. He said the commission, under the proposal, would have a sufficient and sizeable supportive staff retained under its authority to have expertise at the commission's level, to develop the balancing for the commission they were talking about. Senator Wilson said they proposed to leave the balancing function to the staff remaining with the commission, and asked Mr. Capone about the autonomizing of the staff, and how many would be left. Mr. Capone replied they were talking about a relative distribution of 60 positions in the consumer representative function and, in answer to Senator Wilson's question, there was a total of 20 positions in the commission, with a net gain in the overall proposal which would make a final balance of 60 (for the representative agency) and 20 for staff which would also consist of expertise in areas the commission would need to be aware of.

Senator Wilson commented Mr. Capone had testified in his presentation that the anatomy of the staff would remain with the commission. Mr. Capone affirmed that and, as he previously

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indicated, Mr. Capone submitted two diagrams at the previous hearing and would briefly outline the diagrams so the members of the committee would be aware of what he was talking about. Basically, in terms of technical assistance to the commissioners, positions would be retained in utility operations and the rate specialty area, two financial analyst positions and a position to be served in a public education and statistical analyst type of position. He stated there is support staff left with the commission, it is not being stripped bare of support.

Senator Wilson asked specifically what staff would be left with the public service commission in addition to the three commissioner's three administrative assistants, legal staff and the deputy commissioner. He asked if staff would be left per se, utility operations and rate specialists, public education and statistical analyst, a commission secretary, two financial analysts, assistant commission secretary, management assistant class III, two management assistants class I, account clerk, and tariff clerk. Senator Wilson commented he only counted nine.

Mr. Capone explained all of the positions existing on the chart add up to twenty positions, since the deputy attorney general function is a funded aspect of it. Senator Wilson then asked for the record if it was correct that nine are technical staff, and eleven are administrative relief. Mr. Capone affirmed that, based on that structure and, in reply to Senator Wilson's question, said that nine technical staff would be sufficient. He indicated discussions with the commissioners and staff confirmed this would be a sufficient number to maintain adequate support for the commission, allowing them to carry out their normal functions including the filing of various documents pertaining to rate cases and other matters. That is why there are so many clerical positions.

Senator Wilson asked why the positions are unclassified and Mr. Capone explained that decision came from one aspect of the Cresap report referred to in other testimony, the management study which was done on the public service commission. The essence of the matter being it was possible to attract better qualified people and retain them, with unclassified salaries than without, which point Senator Wilson and Mr. Capone both made. However, Mr. Capone stated there are two schools of thought on the problem, and he was not putting in a pitch for raising the unclassified salaries.

Mr. Capone commented in explaining the governor's proposal (see Exhibit H) he was talking about the creation of an independent

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agency for utility customer representation. The need for it has already been expressed because of the public outcry for some independent voice. Mr. Capone stated the means to achieve that goal were previously outlined and would establish an independent agency with a staffing level adequate to fulfill the requirements of that agency which would have an executive director who would be appointed by the governor, to serve at the pleasure of the governor. In reply to Senator Wilson's query about the executive director's appointment, Mr. Capone explained despite all the comments about potential conflict of interest and politicizing of the position, they feel the agency would be just as susceptible if it was in the attorney general's office.

Senator Wilson commented it was a little more direct in this case as the governor also appoints the public service commission. Ultimately he is politically responsible and, in this case under Assembly Bill No. 58, the director of the agency would not only be responsive to the governor for appointment but to serve at his pleasure rather than for a term. Mr. Capone agreed there are certainly good arguments for a term. However, he said, there is also substantial argument for an appointment at the pleasure of the governor if the particular person was not performing properly, the appointing authority would have the ability to terminate him. Senator Wilson said he understood Mr. Capone's conclusions, but wanted to reach the reasons behind these conclusions to help the committee reach a judgment of what they should decide. Mr. Capone replied the chief reason for having appointment at the pleasure of the governor was the experience with other state agencies with directors appointed by the governor. One of the chief watch-dogs of the director's performance is the public reaction as to the excellence of that performance. It is the chief barometer of public sentiment and, if the public is dissatisfied, the governor will react to that dissatisfaction. They feel the same barometer would apply to the director of a consumer representation agency, appointed by the governor.

Senator Ashworth asked Mr. Capone about the third alternative, the possibility of electing the director of the agency outright. Mr. Capone indicated there might be some problems with the election process as to whether the public would really be getting adequate representation and an independent director through the election process. Senator Ashworth felt the director would be more independent being elected by the people than just being an appointee of the governor or attorney general. Mr. Capone said the people have also elected the governor and attorney general, so they have indicated some faith in their judgment to appoint.

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Senator Ashworth answered that could be followed all the way down and have the governor appoint everybody in the whole state. Mr. Capone pointed out that Mr. Barbano had already indicated the governor had all the authority in the state anyway, which he disagreed with.

Senator Close asked about having the director report to the legislature as done in Ohio. Mr. Capone replied that was certainly one option but did the legislature really want to have that role in the overall process, when the governor is willing to take the responsibility for seeing that function is carried out. Senator Wilson commented he understood the issue but the question was not did the legislature want that responsibility, but should they have it. Mr. Capone explained as the highest elected official, the governor is in charge of many agencies whose directors are answerable to the public and he is capable of performing that task in this particular responsibility.

Senator Wilson questioned Mr. Capone as to whether he could see the conflict in having the governor appoint the public service commission as well as the director of staff who is supposed to advocate before the commission. Mr. Capone was in agreement with the potential of conflict as with the potential of politicism of the position; it could be argued either way. Senator Wilson commented he did not feel that strongly about it either way. Mr. Capone indicated he did feel strongly the governor should have the authority to appoint the director to serve at the pleasure of the governor. Senator Wilson asked what was the feeling on having the matter subject to the advice and consent of the legislature or, between sessions, of the legislative commission. In spite of that being a model in other states, Mr. Capone indicated he would still adhere to the view the governor should be able to exercise his authority of appointment for the position of executive director of the consumer agency.

Senator Wilson reminded Mr. Capone these hearings are not just a matter of form but are a necessary part of answering the questions the legislators will be asked as to the conclusions they reach. They have found the best way to advance and advocate a conclusion is give the reasons behind the conclusions which are more persuasive in response to the question why. He said he was asking Mr. Capone's help in reaching a conclusion on whether they should reach another one of their own; while understanding Mr. Capone's point of view, the committee wanted

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some guidance from him. Senator Ashworth commented to Chairman Wilson that he did not know if that statement was fair since Mr. Capone represented the governor and what could he be expected to say in that respect. Senator Wilson answered he assumed even the governor had a rational reason and would suggest it be supported.

Mr. Capone inquired whether the attorney general was going to get equal time on the question or was he going to have to sit there and answer the question by himself. Senator Wilson said to invite him if they want but Mr. Capone thought the attorney general was already invited. Mr. Capone indicated he was not trying to evade the question, he just did not know any other way to express to the committee his feeling on the proposal.

Senator Wilson explained the committee was troubled about what may ultimately be a conflict of having the same appointing authority for both commission and advocate and concerned about aggravating that situation by having the advocate serve at the pleasure of the governor. These are the questions the committee must resolve and be responsive on, to the electorate, and the Chairman must ask the same questions the committee will be asked about why they drew the bill the way they did. Senator Wilson assumed some analysis had been given to the proposal and one alternative is the advice and consent of the legislature. Mr. Capone agreed with that possibility, without any question. Senator Wilson understood it as a possibility but wanted to know if it was repugnant to the governor's position and if so, why? He indicated Mr. Capone was not just being singled out; they were asking for help and would ask anyone who comes to testify for their help and opinions.

Senator Hernstadt asked what would happen if the legislature passed the governor's proposal, the people were still annoyed with the power rates, and they passed the Initiative in 1982. What would exist legally, would there be two consumer advocates? Mr. Capone stated his understanding was if the referendum or Initiative Petition was passed by the electorate, anything on the books prior to that is defunct and the public has spoken as to what they want. Senator Wilson stated this may or may not be an alternative to his proposal. Senator Hernstadt was still concerned about ending up with two consumer advocacy offices, so Mr. Capone explained it in terms of the constitutional and statutory aspects of the referendum process. Senator Wilson commented the questions of method and nature of appointment had been exhausted.

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Mr. Capone asked the committee to refer to the diagram of February 3, 1981 (see Exhibit I) which was an outline of the governor's proposal and addressed some of the fiscal aspects and manpower impact touched on briefly. He stated it adds a little more definition to the charts outlining the positions contained in each of the two entities, if the governor's proposal is accepted.

Senator Wilson questioned the section, page 2, section 6, paragraph 4, where the director is forbidden to be a member of any political conventions, committees, or member of any political party. He wanted to know if the director has to be non-partisan. Mr. Capone stated that was the concept in terms of direct inactive involvement in those roles. Senator Wilson asked if that meant he would have to be registered non-partisan and did not attend the last convention. Mr. Capone replied the intent was to insure the director's political affiliations, whether Democratic or Republican, are not crucial to the determination of his qualifications. It is a question of having an active role in a political party which may be a conflict of interest with regard to his appointment or service. Senator Wilson stated that, unfortunately, the language put into a bill is jurisdiction and he thought that one was going to require considerable work, since it specified non-membership in any political party.

Mr. Capone then addressed the conclusions section of Mr. Schwartz's presentation (see page 27, Exhibit C) and said it might speed up the process to speak to some of those points which would clarify some differences in the two proposals. In his first assumption or conclusion, he indicates the utility rate increases continue to escalate nationwide as well as in Nevada, in spite of the various types of consumer advocate positions, offices and agencies throughout the country. He said at least there is recognition in that statement, in spite of these different proposals, there are still problems and will continue to be problems in this area. Mr. Capone said he would not want to give the people of Nevada the impression, no matter what proposal is accepted, there will be large scale savings to the public.

Mr. Capone explained some of the questions raised were about the current public service commission's structure and activities and he was not sure what direct impact or relationship they would have regardless of which proposal for the advocate wins acceptance. He stated the public service commission and its

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regulatory practices will still be around and Mr. Capone suggested if there is serious concern in that regard, that concern should be addressed.

Senator Wilson asked why, on page 41 of Mr. Capone's report (see Exhibit H) it specified the commission may not be made a party to, nor may it appear in, any action brought under this section, nor may the commission appear in an appeal therefrom. Mr. Capone replied that approach was designed to alleviate the conflict of interest problem raised earlier in the hearing, as far as having the attorney general's representation in court.

Senator Wilson inquired what if the consumer advocate wanted to seek an injunctive relief or get an order from the district court, staying an increase of rates. He said the courts are not going to have jurisdiction to stay an increase in rates if the commission is no party to the action. Mr. Capone said he was not sure if it was or not; his understanding was the agency in its own right could seek that kind of relief. Senator Wilson gave some examples and then said if this provision states the commission cannot be made a party, there is a jurisdictional defect in the bill. Mr. Capone stated he did not believe there was and he did not want to dispute his interpretation of it. Senator Wilson commented if Mr. Capone gave the conclusion it was not, then he should be prepared to explain his reasons for that conclusion.

Mr. Capone replied he would give the reasoning behind removing the commission from such actions. Senator Wilson asked was it the conflict of the attorney general representing both factions. Mr. Capone said there was that aspect and also that they viewed the commission, under their proposal, as a quasi-judicial entity. Senator Wilson was not satisfied with that answer and suggested the question is a jurisdictional one and an issue on which the committee has to have an answer. He suggested Mr. Capone might respond to this question so the committee could discuss it later.

Mr. Capone explained, in some of the conclusions drawn, items 4 and 5 (see Exhibit H), roles of the commission staff and the consumer advocate are sharply and distinctly differentiated. He does not think the governor's proposal disagrees with that. They are discussing a separate commission staff to support the commission in its function and expanding the authority and making more comprehensive the agency representation of the public. The final conclusions discuss generally other offices and jurisdictions and the advocate systems they are currently under.

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Mr. Capone submitted for the record a copy of the memorandum submitted earlier to the Assembly Government Affairs Committee (see Exhibit I). Basically, it was designed to illustrate the response to a question from one of the Assembly committee members to contact a number of different jurisdictions, with different types of structures for consumer advocacy and get some general comments from those agencies as to the rationale for setting up that particular type of structure in their state. Assuming the committee had not yet had time to look through it completely, he did not want to go into too much detail. However, he stated, one general conclusion really stood out in a number of the responses from some fifteen different states he contacted. That conclusion was there was no common rationale, what worked for one state would not necessarily work for another; success depended upon whatever would work best in their particular jurisdiction.

Mr. Capone pointed out in several states, where the head of the advocate's office is in fact an appointee of the governor, it appears they are functioning fairly well and not running into the kinds of problems and conflicts posed in other testimony today. Senator Blakemore indicated, in the states contacted, there were no western states who might have the same problems as Nevada of utilities, miles of service lines, etc. Mr. Capone said he had tried to contact Colorado and got a recorder both times but said he would try further if they wished him to. Senator Blakemore suggested he try New Mexico as the closest.

Senator Hernstadt asked if, in his contacts with the various states, they had indicated the way Nevada should go. Mr. Capone explained he only asked why they chose their course, not for advice as to how we should go. Senator Hernstadt questioned if they went their ways because of specific factors in their jurisdictions which led them to conclude their way was most appropriate for them. He wondered what were the underlying factors in our jurisdiction responsible for the bill under discussion. Mr. Capone explained, in the other states contacted, the general public perception was that an independent agency or representative of the consumer was needed because the existing public service staff was no longer adequate to provide that function.

Senator Hernstadt understood that reasoning but stated what he was asking was the specific conclusion leading to the form of Assembly Bill No. 58, rather than the Initiative Petition form which generated such public interest.

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Mr. Capone explained the underlying conclusion leading to the governor's proposal was the opportunity to establish a broader agency to serve the public at a broader level than most of the jurisdictions they looked at and not completely ignore or do away with existing expertise in a very technical area. Given the independence, authority and ability to intervene and appeal, the consumer advocate should be able to do a better job for the public.

Senator Wilson questioned whether the department, as defined by Mr. Capone, would not have any balancing function through the advocate; or should it also be the enforcement arm of the agency. Mr. Capone replied he thought it could and should do so, because enforcement of commission orders is as much a part of representation of public interest as intervention or appeal from other matters before the commission. Senator Wilson said the problem with that conception is if the new agency, which has sixty members of the present commission staff, is going to be a consumer advocate it ought also to have enforcement jurisdiction. Conceptually, this is more implicit in the nature of the regulatory agency itself than in an advocate agency. He stated Mr. Capone characterized the bill as creating the consumer advocate and just leaving sufficient staff to provide the balancing effect for the commission which was discussed earlier in the hearing. Senator Wilson said that did not seem totally consistent with the feeling the agency is the consumer representative.

Mr. Capone answered that perhaps it is a question of different definitions of advocacy. The governor's proposal is from the perspective that overseeing the proper compliance with commission rules and orders would be advocating the public interest. Senator Wilson pointed out the inconsistency of vesting both advocacy and regulatory powers in one agency. He said the bill indicated the new agency shall enforce regulations issued by the commission and yet, in other language, says the commission cannot be a party or appear in any action. He said it seems the commission does its own policing as a regulatory agency and is also a quasi-judicial body in the sense of making conclusions of law in findings and facts; exercises its regulatory jurisdiction but also enforces it. Senator Wilson said this bill splits off the enforcement jurisdiction and puts it in what they call a consumer advocate's agency. He said he did not understand how this could operate conceptually.

Mr. Capone explained the agency is envisioned to truly fulfill its role as a complete and comprehensive advocate.

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Senator Wilson stated he understood that, but what he is talking about is how this jurisdiction is going to operate; speaking of fulfillment of roles is not very specific language. In answer to Mr. Capone's question, Senator Wilson suggested he make a note of the question and they would get the answer later.

Mr. Capone summarized his presentation with the statement he had gone over Mr. Schwartz's conclusions but he wanted to make clear that the governor's proposal is the most comprehensive, covers the widest range of true representation for the public interest as well as providing for adequate staff and adequate funding to get the job done and done right. He said if there are any other questions he would write them down and try to get the answers. Senator Hernstadt remarked one question he could write down, with reference to Mr. Capone's remark this bill was the most comprehensive solution to public interest, is what he means by public interest.

Senator Wilson asked Mr. Hardy if he intended to testify on this bill. Mr. Hardy replied not at this time but would do so at a later time. Senator Wilson then asked who was going to testify from the administration and Mr. Hardy answered he was going to research some of the questions posed today and he was the only spokesman for the governor's committee, and will also be testifying with regard to Assembly Bill No. 58.

Senator Wilson stated the utilities are going to respond on Monday, and the committee is going to piggy-back that hearing; and they may have additional hearings as well. Mr. Capone remarked that Assemblyman Westall would be testifying. Senator Hernstadt asked if the committee would meet before the 4:00 joint meeting on Monday. Senator Wilson replied they would meet at 1:30 p.m., before the 4:00 meeting.

Senator Wilson commented the committee did want some testimony from the commission and asked if anyone from the staff would testify. Mr. Hardy replied there would be people available if needed. Senator Wilson stated the committee had some legal questions, some questions as to whether the nine technical staff members will be adequate, and questions about vesting enforcement jurisdiction exclusive to this agency, which would mean the commission would not have it. Mr. Hardy remarked he did not think the latter statement was entirely correct. Senator Wilson suggested he read the bill, because the commission can not be named, according to the bill. Mr. Hardy said only actions in appeal, as in NRS 704.540.

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Mr. Hardy explained to Senator Wilson the governor's committee used the North Carolina commission as a model for the governor's proposal. Their commission and its immediate technical staff was considered much like a court and therefore should be exempt from defending commission decisions as a court is exempt from defending its decisions.

Senator Wilson brought up certain points such as the commission requesting a stay of order or the district court remanding, as it can by statute, and instructing the public service commission to make facts and determinations and, under certain conditions, to reconsider their order. Mr. Hardy did not agree with the statement, saying the commission does not have to be a party to an appeal in order for the upper court to stay an order to a lower court.

BILL DRAFT REQUEST NO. 53-646 (SB 230)

Chairman Wilson requested the committee's approval to introduce BDR 53-646 which requires a one-week waiting period before claimant is entitled to receive unemployment compensation benefits, and narrows eligibility requirements.

The committee unanimously agreed to the introduction of BDR 53-646.

BILL DRAFT REQUEST NO. 54-297 (SB 231)

Chairman Wilson requested the committee's approval to introduce BDR 54-297 which changes various provisions of the law governing physical therapists and their assistants.

The committee unanimously agreed to the introduction of BDR 54-297.

With no further testimony to be heard, Chairman Wilson adjourned the meeting at 5:10 p.m.

Respectfully submitted by:


Betty Steele, Committee Secretary

APPROVED BY:


Senator Thomas R.C. Wilson, Chairman

DATE: 2/3/81

EXHIBITS, FEBRUARY 11 MEETING

- ✓ Exhibit A is the Meeting Agenda
- Exhibit B is the Attendance Roster
- Exhibit C is Mr. Schwartz's Resumes and Summary
- ✓ Exhibit D is the Personnel Responsibility Report,
Public Service Commission
- Exhibit E is Mr. Stitser's Report
- ✓ Exhibit F is Assembly Bill No. 58
- Exhibit G is Mr. Townsend's Prepared Text
- Exhibit H is Mr. Capone's Report on the Governor's Proposal
- Exhibit I is Mr. Capone's Memorandum to Assemblyman Dini's
Government Affairs Committee

SENATE AGENDA

EXHIBIT A

COMMITTEE MEETINGS

Committee on Commerce and Labor, Room 213.

Day Wednesday, Date February 11, Time 1:30 p.m.

Initiative Petition

A. B. No. 58--Creates utility customers' representative agency.

A. B. No. 85--Creates office of representation to represent customers of public utilities in matters before the Public Service Commission of Nevada.

Note: Testimony will be heard from the proponents of each of the three proposals for reorganization of the Public Service Commission.

SENATE COMMITTEE ON Commerce and Labor

DATE: February 11, 1981

EXHIBIT B

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME ORGANIZATION & ADDRESS TELEPHONE

<i>Lee Alexander</i>	<i>Coalition for Affordable Energy</i>	<i>786-1455</i>
<i>David R. Schwartz</i>	" " " "	" "
<i>Robert D. Gilson</i>	" " " "	<i>323-1352</i>
<i>Andrew Barbano</i>	" " " "	<i>786-1455</i>
<i>John Capone</i>	<i>Governor's Office</i>	<i>885-5670</i>
<i>Andie Bagley</i>	<i>Legislative Petroleum Citizens</i>	<i>352-8138</i>
<i>Kenneth M. Smith</i>	<i>PSC - 505 E. King St CC</i>	<i>885-5516</i>
<i>John H. Clark</i>	<i>PSC</i>	<i>885-4326</i>
<i>HEGER P. HARDY</i>	<i>P.S.C.</i>	<i>885-4117</i>
<i>John Eck</i>	<i>Southern Pacific Trans Co.</i>	<i>329-2492</i>
<i>David Busek</i>	<i>S.W. Gas.</i>	<i>786-2366</i>
<i>VINCE LAVENGA</i>	<i>SIERRA PACIFIC POWER CO.</i>	<i>789-4326</i>
<i>BARBARA REEDY</i>	<i>NEV. SOC OF ANIMAL</i>	<i>329-9691</i>
<i>John W. Lyndall</i>	<i>Sierra Energy Group</i>	<i>322 2314</i>
<i>Bruce [unclear]</i>	<i>Pres</i>	<i>837 2963</i>
<i>TOWNSEND CRANTON</i>		<i>786-1455</i>
<i>SAM STERN</i>	<i>Navada FIRST Thrift</i>	<i>329-6543</i>
<i>CHUCK KING</i>	<i>CEN TEL</i>	<i>383-5501</i>
<i>Fred Dodgans</i>		<i>882-4702</i>

2/11/81

Statement of Qualifications

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

EXHIBIT C

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.

3/78 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."

3/77 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

1/53 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

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University of Wisconsin-Madison
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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 Pricing 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, 1979.

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 P. Timmer).

"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 Argued 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 Tecnologico 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
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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	Organizational Structure			Personnel-Professional		Budget 1980-81	
	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 #1 (continued)

Organizational Structure

Personnel-Professional

Budget 1980-81

State	Organizational Structure			Personnel-Professional		Budget 1980-81	
	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 (fee)
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

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).

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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
		Elimination of management group wage increase adjustment - \$821,000
Ohio Edison 78-1567-EL-AIR <u>et.al.</u>	\$10,625,000	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>
<i>Cleveland Electric Illuminating</i> 78-677-EL-AIR	\$ 4,243,000
<i>Columbus & Southern Ohio Electric</i> 78-1438-EL-AIR	\$ 1,254,000
<i>Columbia Gas of Ohio/Columbus</i> 78-1008-GA-AIR	\$ 1,301,026

Issues that Provided Savings

- 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
- Writ of Prohibition delaying rate increase for City of Columbus
- 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

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TABLE #3 (continued)

<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

Gross Receipts Tax offset - \$116,262

Labor expense adjustment - \$32,551

Reduction in charitable contribution -
\$565

Exclusion of electrical energy surcharge -
\$10,123

Exclusion of inflation adjustment - \$117,286

Revenue annualization - \$14,608

Rate case expense - \$6,204

Labor expense - \$7,562

Error in authorized rate - \$7,702

Customer deposits

West Ohio Gas
78-1445-GA-AIR

\$ 148,813

Ohio Water Service
78-712-WW-AIR

\$ 127,974

Oxford Natural Gas
78-1404-GA-AIR

\$ 36,386

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

\$ 388

TOTAL \$35,300,712.00

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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.

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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
<u>Major Cost Increases of 81-82 Budget over 80-81 Budget</u>		
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.

Utilities Try to Fend Off Inflation With Repeated Pleas for Rate Boosts

8/23/80 By JOHN CURLEY
Staff Reporter of THE WALL STREET JOURNAL

Last April, Philadelphia Electric Co. raised its utility rates to consumers by 7.7%, or a total \$88.8 million. Just three months later, Philadelphia Electric was back before Pennsylvania regulatory officials pleading for another rate increase, this one 18%, or \$304 million.

"I don't think we're going overboard in any fashion," says Joseph F. Paquette Jr., the utility's vice president of finance and accounting. "We've warned the Pennsylvania Public Utilities Commission that they can't keep us on a starvation budget."

Most electric utilities these days are feeling hunger pangs. Hit hard by soaring costs of construction, fuel and capital, they are lining up for rate increases as never before.

A glance at industry figures shows how fast the increases are accumulating in this year's first six months, 86 utilities filed for 108 rate hikes totaling \$5.75 billion, according to Edison Electric Institute, a trade group. By contrast, in all of last year, 61 utilities asked for \$5.74 billion of increases. The 1978 total was \$4.49 billion.

Quarterly Rises Faster

Quarterly figures are going up even faster. Between April and June, utilities filed for \$4.23 billion in rate raises, about triple the amount sought in the January-March quarter. Currently, there are \$7 billion of rate requests on file, up from \$4.87 billion outstanding at the end of 1979.

"We've never seen anything like this," says Peter Corcoran, an Edison Electric analyst. "We knew the increases were going up but we didn't expect it to be this large."

Ten years ago, increases of more than 10% were rare. Today, many requests are in the 20% to 30% range, and some higher. Puget Sound Power & Light in Bellevue, Wash., is seeking \$90 million, or 30%. Across the state in Spokane, Washington Water Power has filed for a 40% rate increase of \$5 million. In Arkansas, Oklahoma Gas & Electric is asking \$17 million, or 50%.

Inflation, plus the red tape and foot-dragging associated with getting requests through public-rate panels, get the blame from utility executives. "By the time you get rate relief from the public utility commissions, it's two years out of date," says a spokesman for Commonwealth Edison Co.,

Chicago, which is asking for a 19.7% rate increase of \$828 million. "It's a constant game of catch-up."

Regulators concede this is a problem. "In periods of high inflation you find the regulatory process doesn't work as well," says Charles A. Zielinski, chairman of the New York State Public Service Commission. "Regulators are probably more responsive to the needs of utilities today than they were in the '50s and '60s. But whether they're responsive enough to keep up with inflation is another question."

No New Trucks

With rate increases slow in coming, utilities are trying to beat inflation by slashing expenses. Oklahoma Gas & Electric Co., which has three increases pending including

Light issued first mortgage bonds at 12 1/2%, up from the 8 1/2% it offered in a similar issue three years earlier. "The faster we grow, the behinder we get," says Puget Sound's vice president for rates, Richard Swartzell.

Declining earnings and heavy debt payments have caused some utility bond ratings to drop. In Chicago, Commonwealth Edison's credit rating was downgraded three times in the last 18 months, from an AAA to an A rating. The utility's interest expenses rose 38% in the first half of 1980 from a year ago while earnings fell to \$217 million, or \$2.40 a share, the lowest per-share earnings level in 15 years.

"If we have normal weather and normal business, we might get back to our 1969 level (\$128 million net income or \$3 a share) by the end of the year," a company spokesman says.

Investors Snub Utilities

Equity financing is also difficult because investors don't want to buy utility stocks. They are selling for 80% to 85% of book value on average, says Barry Abramson, utilities analyst for Merrill Lynch, Pierce, Fenner, & Smith Inc. Telephone stocks, on the other hand, are selling around book value and gas pipeline companies are averaging 1.5 times book value.

Amid these worries, utilities are finding regulators more generous in approving rate hikes. The \$4.89 billion granted in the first half of 1980 was approximately 150% more than the \$1.96 billion awarded in the same period last year, according to Ebasco Services Inc., a utilities consultant. Awards for the first half of 1980 are about 80% of the amounts requested, up from an approval ratio of 60% in 1979 and 43% in 1978.

The flow of rate hike requests isn't likely to level off soon. Evern Wall, president of El Paso Electric Co., says rate filings will rise at least until the mid-1980s, "when most of the construction projects now on the boards will be completed." Mr. Wall adds: "Right now, many utilities are caught in a double situation—they have to pay for the high cost of oil and gas, and at the same time they have to pay for the construction of coal-fired and nuclear plants so they can convert to those cheaper fuels."

UTILITY	RATE INCREASE REQUESTED	REQUEST FILED
Gulf Power	\$46.4 million (22.5%)	March 1980
Kentucky Power	\$26.4 million (21%)	July 1980
Commonwealth Edison	\$828 million (18.7%)	August 1980
Consolidated Edison	\$449 million (15%)	April 1980
Appalachian Power (West Virginia)	\$51 million (15%)	July 1980
Southern California Edison	\$340 million (9%)	December 1979
Ohio Power	\$57.8 million (8%)	June 1980
Appalachian Power (Virginia)	\$23.6 million (7%)	July 1980

one for \$141 million or 31%, has reduced its 1980 construction budget to \$95 million from \$183 million. That means no new cars or trucks, and a two year delay in completing a new, coal-fired generator. "We're getting further behind the eight-ball," says Patrick J. Ryan, vice president and treasurer.

High interest rates on bank loans are also squeezing utility budgets. In April, when the prime lending rate hit 20%, Washington Water Power had to pay 22% interest on \$50 million of intermediate and short-term loans. As a result, the utility cut its \$100 million 1980 construction program by 30%, delaying until next year work on a wood-burning generator.

The cost of issuing bonds, another common way utilities raise capital, also has skyrocketed. Last year, Puget Sound Power &

ATTACHMENT B

REVENUES FROM RETAIL SALES

	Nevada Power Company		Sierra Pacific Power Company	
		Percentage Increase		Percentage Increase
1976	\$103,443,479	20.38	\$ 89,023,999	14.54
1977	\$124,527,865	13.92	\$101,965,155	16.30
1978	\$141,867,315	21.74	\$118,585,274	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	3.85	2,403,263,000	5.94
1977	4,339,204,138	9.55	2,545,911,000	4.81
1978	4,753,669,780	13.35	2,668,354,000	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	15.73	\$ 0.0370	8.38
1977	\$ 0.0287	3.83	\$ 0.0401	10.72
1978	\$ 0.0298	7.55	\$ 0.0444	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.
- congeneration 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¢ } 0.209¢
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¢ } 3.267¢ }	0.653¢
Off-Peak		

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. I, 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.

C-5

attachment C

-30-

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 1973. That's the year they took up the role of representing average residential utility customers before the New Mexico Public Service Commission (PSC).

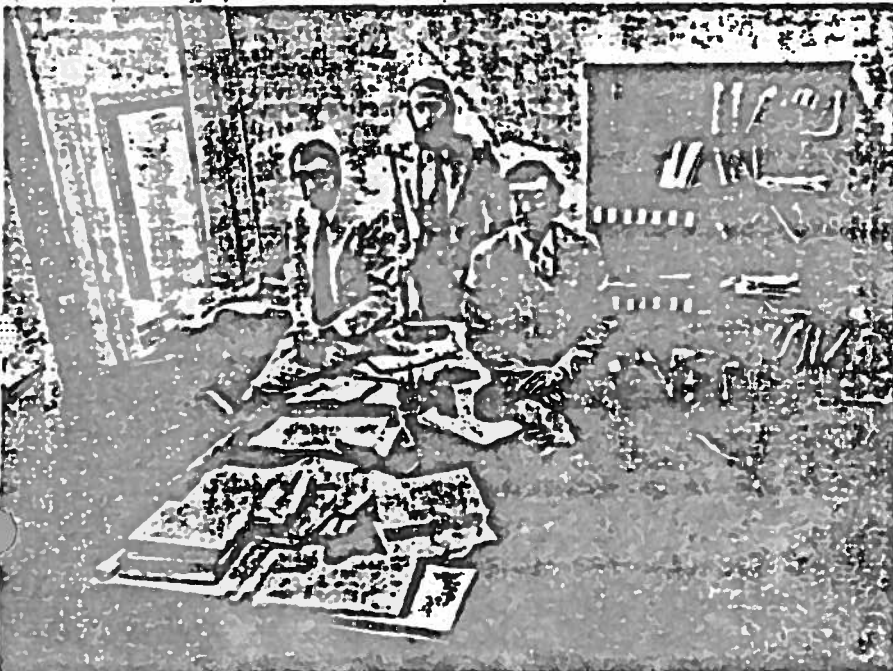
The PSC is the three-member body that

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 dant-



Those lawyers (from left), Jeff Fornaciari, William Primm and Paul Elderman, 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 of 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 Tony Anaya's administration. You may remember television commercials naming 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 — reasonably forcing utility rates higher.

"We're in kind 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 consumer."

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 parceled 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 on 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 \$33,000 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 Malcock, 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 Miles Slaton, had qualified praise for the AG's Energy Unit. "To the extent that the attorney general's office has caused modifications in total revenue

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 margin. The issue is one of excessive reserve margin, trying to keep the consumer from paying for ambitious building programs."

New generating plants cost around \$175 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 fix in the company." □

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ATTACHMENT E---page 1

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(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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1 ___ B. No. ___

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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1 R. No.

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 facillitate 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 facillitate 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 facillitate 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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1 B. No.

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 [~~57-8-1-10-57-8-35~~], 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, apportionment, 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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1 ___ B. No. ___

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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1 B. No.

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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1 B. No.

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 that date, and shall be published as are the reports of other departments of this
3 state.

4 54-1a-13. All money collected by the commission under any provision of this
5 title shall be deposited without deduction in the state treasury on or before the 15th
6 day of each month next succeeding the month in which the same was received,
7 accompanied by the statement showing the date received and the amount thereof.
8 A duplicate statement shall be delivered by the commission to the state auditor and
9 the state treasurer shall give his receipt for the money received and deliver a
10 duplicate thereof to the state auditor.

11 54-1a-14. (1) No commissioner or personnel of the commission shall, during
12 their services:

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

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

19 (c) Solicit, suggest, request or recommend directly or indirectly to any public
20 service company the appointment of any person to any office or place of
21 employment.

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

24 Section 3. Chapter 2 of Title 54, Utah Code Annotated 1953, is repealed and
25 reenacted to read:

26 54-2-1. For the purpose of this chapter:

27 (1) "Residential consumer" is a customer or user of a natural gas, electric or
28 telephone utility who maintains a permanent place of abode within the state of Utah.

29 (2) "Small commercial consumer" is a person or entity conducting a business or
30 engaged in agriculture, or other enterprise in the state of Utah having less than 25
31 employees or a gross income less than \$1,000,000 annually.

32 54-2-2. There is hereby established within the Department of Business
33 Regulation a Public Advocacy Division. The Public Advocacy Division shall have the
34 following duties and responsibilities:

35 (1) The division shall assess the impact of utility rate changes and other
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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 34-2-11. (1) No personnel of the Public Advocacy Division or member of the
4 Citizen's Advisory Council shall, during their services

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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EXHIBIT D

PUBLIC SERVICE COMMISSION
UTILITY CUSTOMER REPRESENTATIVE AGENCY

AB-58

SUMMARY OF PERSONNEL RESPONSIBILITY

Summary of
AB-58

SUMMARY OF A.B. 58

A.B. 58 creates a powerful agency dedicated to the representation of customer interests in all matters before the Public Service Commission of Nevada. Creation of the new agency is accomplished through a comprehensive and detailed reorganization of the existing Public Service Commission and its Staff into two separate agencies: the decision-making Public Service Commission and the consumer advocate Utility Customers' Representative Agency. Following is a brief topic summary of the amendments to the Nevada Revised Statutes which are necessary to accomplish the goal of providing efficient customer representation in the area of utility and transportation regulation:

Agency Operations

Creation - Sections 4 through 9

The Utility Customers' Representative Agency is established to provide independent representation and promotion of the interests of customers of public utilities in all regulatory matters before the Commission. The agency will be headed by a director independent of the industries regulated by the Commission. The director, in turn, will appoint the clerical personnel, experts and inspectors as may be necessary to represent utility customers. There is specific authority under the sections dealing with funding to permit the agency to hire consultants to assist it in carrying out its duties.

Funding - Section 10, 36, 37, 57, 77, 79, 94 and 98

In order to insure the independency of the new agency, a special revenue fund for the exclusive use of the agency is created. Revenues to fund the agency will come from assessments on public utilities and motor carriers. Initial funding of the agency will be obtained through transfer of funds from the Public Service Commission reserve; and, since the agency will not be operative in time to assess utilities for the first 1981-1982 fiscal year payment, there is a provision which will require the Public Service Commission

to make that assessment on behalf of the agency. Finally, there is a provision which would permit the agency and the Commission to enter into agreement for the cooperative use of equipment, such as Xerox machines, typewriters, materials and supplies, and personnel, presumably clerical, for a period of one year to enable the agency and the Commission to function during the transition period. It should be noted that the transition period is not intended as a period during which the agency will gradually become independent of the control of the Commission; rather, the agency will be totally independent of any direction or control by the Commission as of the first day of its inception.

General Obligations Section 11

The basic obligation of the agency is to appear and present expert testimony and evidence in any matter before the Commission in the agency's discretion, which affect customer interests. In addition, the agency is obligated to enforce the provisions of the Nevada Revised Statutes which are applicable to the regulation of utilities and carriers, and to insure that compliance with the Commission's orders and regulations is met. Such enforcement will not be carried out in the manner of policemen "walking the beat." Instead, enforcement is generally carried out through monitoring tariff filings and customer complaints to insure that the utilities are abiding by the law. It is not contemplated that there would ever be an instance where advising the Commission of violations of law and regulations would compromise the agency's obligation to represent customer interests.

Procedure Before Commission - Sections 12, 14, 17, 26 and 31

The agency is entitled to full status as a party in all matters before the Commission. The agency may intervene without leave or prior notice to the Commission. Further, to insure that the agency is fully advised of all

matters pending before the Commission, there are provisions requiring that the Commission serve copies of all filings on the agency within one day, and that the Commission give notice to the agency in all cases where notice is required to be given to any other person. Finally, in order to insure that the agency is not prevented from participation through exorbitant filing fees, the Commission is prohibited from charging the agency any filing fees, and is also prohibited from requiring the agency to pay for transcripts of proceedings.

Appeals - Sections 15, 40, 52, 53, 59, 66, 81 and 82

In line with the concept of a forceful and totally independent agency to represent customer interests, the agency is given full authority to appeal any and all decisions of the Commission which it deems are unreasonable or otherwise unlawful. That authority includes the right to seek temporary injunctive relief as well as ultimate orders reversing all or part of a decision of the Commission. A key change from existing appellate procedure is that the Commission would no longer be a party to any appeal. The Commission opinions and orders would have to stand on their own or be overturned.

Handling Customer Complaints: Sections 29 and 30

Within the agency, a division of consumer relations is established. That division will receive complaints from utility and carrier customers, and will attempt to resolve whatever problems are at the basis of such complaints. If the division is unable to satisfactorily resolve a complaint, the agency may, in its discretion, represent the individual customer in an action before the Commission; or, if the agency determines that the best interests of other customers do not permit it to represent the complaining customer, the agency may take whatever position regarding the customer's complaint that it deems appropriate.

Customer Representation in Matters Specifically Concerning Utilities -
Sections 38, 39, 42 through 51, and 54 through 58

The agency has the obligation to represent and protect customer interests in all areas concerning the regulation of public utilities. In order to allow the agency to carry out that obligation, the agency is given full authority to visit the offices of regulated utilities for the purposes of examining any and all books, records, documents and other papers that may be in the possession of the utility. In addition, the agency may require the utilities to compile additional information which may not be contained in those records. To insure that the agency is given full access to all of the information that it requires, the agency may bring an action either in court or before the Commission seeking substantial penalties for a utility's refusal to comply with the agency's attempt to obtain information.

Participation of the agency in general rate cases is more thoroughly described under the separate hearing entitled "Profile of a Rate Case: the Agency's View." However, it is important to note that the agency is given an opportunity, and indeed is obligated, to review all tariff filings. (Tariffs include all of the rates, charges, rules and regulations of a utility.) So that the Commission fully understands the import of all tariff filings, the agency is required to explain the nature of each tariff filing to the Commission, and is thereafter, given an opportunity to recommend acceptance or suspension of the tariff filing depending upon how it perceives the tariff filing as affecting the interest of customers.

In addition to reviewing filings by utilities, the agency has full authority to seek changes, repeal, or other modification to any and all rates, fares, charges, rules or regulations pertaining to utilities. The agency may also seek an order requiring a management audit of utilities, and will participate in the selection of any such auditor.

In the case of customer complaints regarding the reliability of utility facilities, the agency is given the authority to require testing of those facilities and is required to represent any customer who is a victim of defective facilities, particularly meters.

A final important aspect of utility regulation in which the agency is authorized to participate, is the initial certification of a public utility to serve customers in a particular area. The agency will review all applications for certificates of public convenience and necessity in order to insure that the utility will be able to furnish the potential customers with good service at reasonable rates. If the agency determines that the granting of a certificate of public convenience and necessity to a utility would not be in the best interests of the utility's potential customers, the agency is given full authority to represent those potential customers in hearings regarding the certification issue. Further, in regard to existing utilities, the agency is given full authority to seek suspension or revocation of a certificate if the utility is providing inadequate service or is otherwise failing in its obligations as a utility. In a related area, the agency may participate in any proceeding under the Utility Environmental Protection Act.

Customer Representation in Matters Specifically Concerning Railroads -
Sections 49 and 61

The agency is responsible for insuring that passengers and freight on intrastate railroad lines are protected. The agency may also act as the agent for the federal government in enforcing federal safety laws pertaining to railroads, and is specifically authorized to enter into agreements to receive federal funding for such inspections. In addition, the agency will be required to investigate any application by a railroad or a state agency (usually the Department of Transportation) for elimination or modification of railroad crossings.

Customer Representation in Matters Specifically Concerning Motor Carriers -
Sections 63, 64, 65, 67, 69, 70, 74, 75, 76, 78, 80, 83 and 84

The agency's obligations in matters specifically concerning motor carriers are almost identical to its obligations in tariff and certification proceedings pertaining to utilities. The agency is required to review all tariff filings and applications for certificates of public convenience and necessity to insure that the interests of motor carrier customers will not be harmed through approval of the new tariffs or the granting of certification.

An additional activity which is somewhat peculiar to motor carriers is the responsibility of the agency to monitor motor carriers to insure that they have insurance coverage at all times which is adequate to protect their customers and the general public. In addition, in the event the agency learns that a carrier is conducting operations with unsafe vehicles, or is conducting unsafe operations the agency has the authority to place those vehicles or operations out of service.

It should be noted that A.B. 58 provides for a transfer of almost all of the motor carrier enforcement duties to the Department of Motor Vehicles along with appropriate funding provisions.

Customer Representation in Matters Specifically Concerning Pipelines -
Sections 86, 87 and 88

The agency will be responsible for enforcing regulations adopted by the Commission which pertain to safety of all intrastate natural gas pipelines in Nevada. Separate bills have been introduced which would require the agency to enforce federal safety standards pertaining to all pipelines, including natural gas and hazardous liquids pipelines, in Nevada. Such enforcement, which is vital to the safety of the general public, as well as to customers receiving gas or other materials through those pipelines, is carried out under

contracts between the agency and the federal government which provide for 50% funding of the Pipeline Safety Engineer and the Engineering Technician who would carry out such enforcement.

In the event a new oil pipeline carrier applies for a certificate of public convenience and necessity, the agency would be responsible for insuring that the interests of potential customers would be served.

Customer Representation in Matters Specifically Concerning Warehouse Operators -
Sections 90, 91 and 92

The agency's responsibilities in the area of warehouse operators pertains to insuring that applicants for warehouse permits have sufficient experience, financial capability and insurance coverage so that the interests of their future customers will be served.

Commission Operations

While the primary purpose of A.B. 58 is to establish the Utility Customer Representative Agency, amendments to the Nevada Revised Statutes which are specifically aimed at Commission procedures and authority are necessary to enable the Commission to continue to function. Perhaps the most important modifications are: Section 21, which permits the Commission to employ analysts and consultants to assist it in reaching informed decisions; the sections mentioned under "Agency Operations" which eliminate the Commission's status as a party on appeal; and the declaration of the purpose of the Commission contained in Section 35. That declaration of purpose deserves special attention as it is the first complete and thorough directive to the Commission regarding the scope and direction of its obligations in regulating utilities.

PSC
COMMITTEES

THE PUBLIC SERVICE COMMISSION OF NEVADA UNDER A.B. 58

In General ...

The Public Service Commission of Nevada is a creature of the Legislature formed to regulate the various monopolistic industries providing service in the state. Some of the monopolies regulated by the Commission are considered "natural" monopolies, in that, through market pressures and economies of scale they would naturally tend to be able to monopolize the market. Such firms include the common utilities, e.g. providers of electric, gas, water, sewer and CATV service. Other monopolies regulated by the Commission include firms which could survive in a competitive market, but which, because of fears that price competition would lower the overall quality of service provided, have been given status as monopolies, e.g. firms in the trucking industry. Although providers of transportation services do compete to some extent, that competition is tempered by the Commission to insure that high quality service to transportation customers is maintained.

The Commission's powers and duties are both quasi-legislative and quasi-judicial. In some instances, the Commission acts in a legislative role: adopting regulations and setting fares for utilities and other persons regulated by it. In other instances, the Commission takes on a judicial role: deciding the merits of customer complaints, and prescribing penalties for violations of law and its regulations.

Like all agencies created by the Legislature, the Commission may only exercise that authority which is specifically granted to it by law. Although the law is sometimes interpreted by the courts as providing the Commission with powers seemingly beyond those which are expressly indicated, the Commission, in fact, has no implied powers. The rationale for this limitation of authority arises out of the desirability of retaining our basic form of representative government. If the Legislature were to grant authority to the Commission to act without limitation, the basic premise of representative government, that laws governing the body politic should be enacted by persons directly responsible to the body politic, would be defeated. Hence, only specific delegations of authority are permitted. The legislative function of the Commission is therefore limited and referred to as "quasi-legislative."

A second limitation on the Commission's exercise of power results from the separation of powers doctrine. Simply stated, the Legislature cannot

delegate to a creature of its own design, authority which the Legislature itself does not have. The Commission therefore cannot be given the full powers of a court of law. Its judicial function is, thus, termed "quasi-judicial."

A.B. 58 - A Design For The Future...

Responses of the Commission to the immediate and future needs of the people of Nevada are guided by directions of the Legislature. Neither the Governor, the Attorney General, nor any other individual in this state has any power to influence Commission decision-making. Although the Commissioners are appointed for a set term by the Governor, the law requires that Commissioners carry out their obligations only within the parameter set forth by the Legislature.

Section 35 of A.B. 58 provides a comprehensive and detailed road map of the directions the Commission should take in regulating public utilities.

Highlighting that scheme is the obligation of the Commission to

"[i]nsure the availability of adequate, economical and reliable service by public utilities within the state."

In fulfilling that obligation, the Commission is specifically directed to

"Encourage the orderly development of the resources of public utilities in a manner consistent with the state's needs and in a manner consistent with the productive use of the state's renewable sources of energy, including but not limited to geothermal energy, solar energy, and wind..."

"Encourage the orderly development of resources in a manner consistent with the national policy on energy as established from time to time by Congress and the President of the United States..."

"Encourage wise and efficient use of energy by public utilities and their customers...[and]"

"Encourage effective and efficient management of regulated public utilities."

These policies set forth in A.B. 58 are consistent with the federal policy suggestions contained in the Public Utility Regulatory Policies Act (PURPA), and will ensure that Nevada is able to cope with the world-wide problems of rapidly escalating energy production costs and diminishing resources.

A.B. 58 - A Design For The Future...

Responses of the Commission to the immediate and future needs of the people of Nevada are guided by directions of the Legislature. Neither the Governor, the Attorney General, nor any other individual in this state has any power to influence Commission decision-making. Although the Commissioners are appointed for a set term by the Governor, the law requires that Commissioners carry out their obligations only within the parameter set forth by the Legislature.

Section 35 of A.B. 58 provides a comprehensive and detailed road map of the directions the Commission should take in regulating public utilities. Highlighting that scheme is the obligation of the Commission to

"[i]nsure the availability of adequate, economical and reliable service by public utilities within the state."

In fulfilling that obligation, the Commission is specifically directed to

"Encourage the orderly development of the resources of public utilities in a manner consistent with the state's needs and in a manner consistent with the productive use of the state's renewable sources of energy, including but not limited to geothermal energy, solar energy, and wind..."

"Encourage the orderly development of resources in a manner consistent with the national policy on energy as established from time to time by Congress and the President of the United States..."

"Encourage wise and efficient use of energy by public utilities and their customers...[and]"

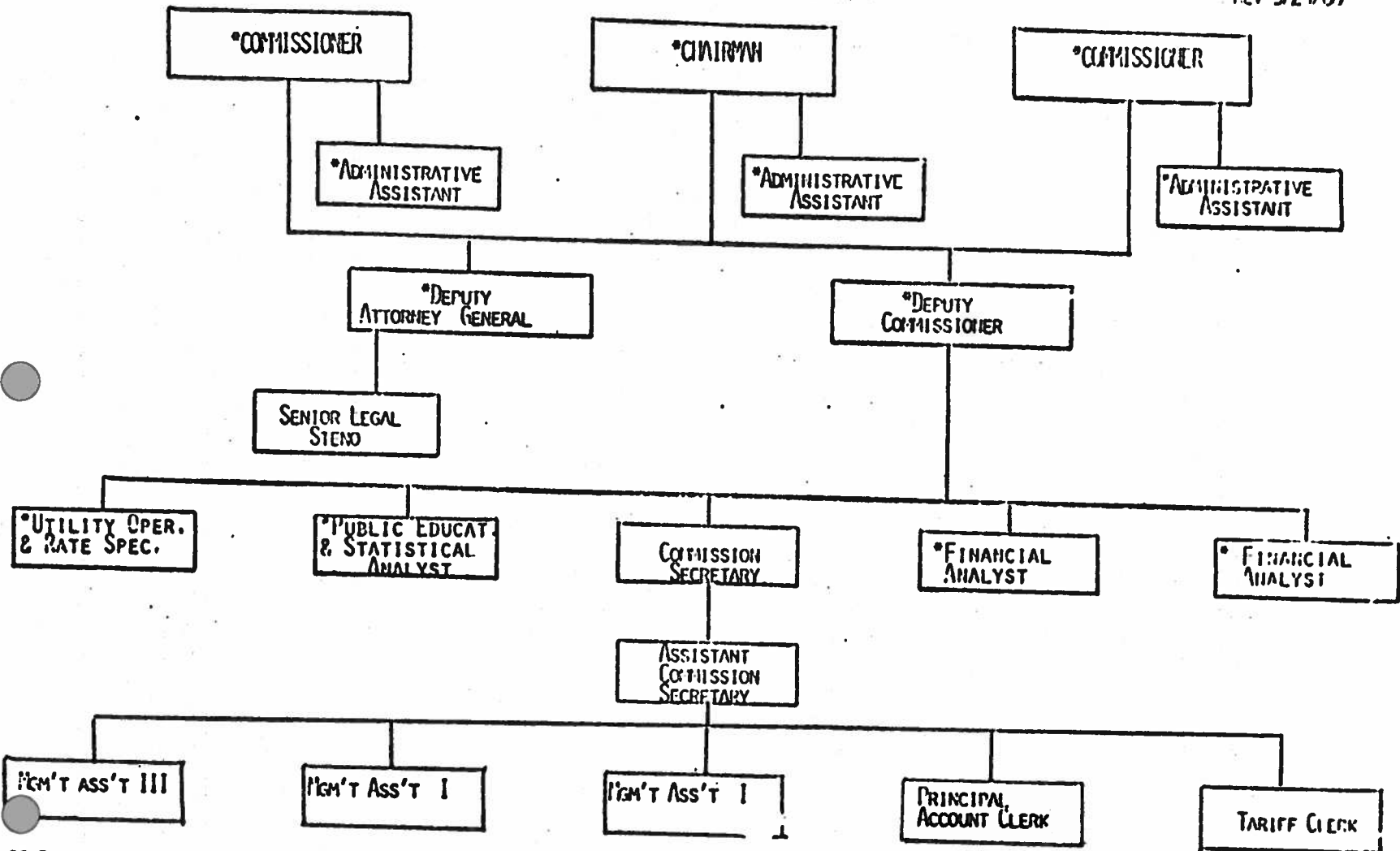
"Encourage effective and efficient management of regulated public utilities."

These policies set forth in A.B. 58 are consistent with the federal policy suggestions contained in the Public Utility Regulatory Policies Act (PURPA), and will ensure that Nevada is able to cope with the world-wide problems of rapidly escalating energy production costs and diminishing resources.

PSC -
Staff

PUBLIC SERVICE COMMISSION OF NEVADA

1/17/81
REV 9/21/80



TOTAL 20 POSITIONS (INCLUDING DEPUTY A.G.)

* INDICATES UNCLASSIFIED POSITIONS
TOTAL UNCLASSIFIED POSITIONS - 12

Commission Personnel...

The Public Service Commission of Nevada consists of three Commissioners, one of whom is appointed Chairman. The Commissioners are appointed by the Governor for four-year terms to carry out those duties and responsibilities set forth in the Nevada Revised Statutes. In addition to his general duties as a Commissioner, the Chairman is responsible for administrative overview of the affairs of the Commission.

Each of the Commissioners is provided with an Administrative Assistant to assist the Commissioner in reviewing and analyzing the matters before the Commission. Since the Administrative Assistants traditionally have legal backgrounds they are able to assist the Commissioners in drafting opinions which are in conformity with requirements of the courts.

The position of Deputy Commissioner was established during the 1979 legislative session to assist the Commission in giving full consideration to needed innovations in regulatory policy, particularly those suggested by the Public Utilities Regulatory Policies Act (PURPA). The Deputy Commissioner is also responsible for coordinating the activities of the Commission staff in an effort to promote the ability of the Commissioners to reach decisions which are responsive to the legislative mandate contained in the Nevada Revised Statutes.

Because of the sophisticated engineering concepts that will confront the Commission during its consideration of cases involving, for example, applications for certificates of public convenience and necessity, permits under the Utility Environmental Protection Act, electric generating plant construction, adequacy of plant design to provide required utility service, and power plant production efficiency, a Utility Operations and Rate Specialist qualified to provide assistance in understanding those concepts will be appointed. The Rate Specialist will also engage in research regarding service-level trends, energy conservation developments, and utility and transportation rate design so that the Commission will be able to fully analyze all alternatives of regulatory policy.

The Public Education and Statistical Analyst would utilize his required knowledge of the practices and methods of media presentation to provide understandable information concerning conservation and utility regulation to the general public. This Analyst's responsibilities will include the maintenance

of relevant statistics and the gathering of such data as might be valuable to the Commission in carrying out its obligations, as well as will be needed to provide a useful level of information to the public.

Two Financial Analysts with considerable financial and accounting experience as state or federal utility regulatory staff members will be responsible to assist the Commission in analyzing the finance issues contained in rate applications. The analysts will also prepare any financial schedules which may be requested by the Commission for attachment to its opinion and orders. Assistance from the analysts ensure that Commission opinions and orders contain technically proper accounting and financial expressions.

The Commission Secretary is the official custodian of the Commission's records, including the minutes of Commission meetings. In addition, the Secretary prepares and provides for adequate service of all notices required to be given by the Commission. Further, the Secretary is responsible for supervising the group of clerical and fiscal personnel assisting the Commission and members of the Commission staff.

The Assistant Commission Secretary is qualified to perform all of the duties of the Commission Secretary in the event of the Secretary's absence. The regular duties of the Assistant Secretary include the provision of secretarial assistance to the Commissioners, preparation of hearing files, and monitoring the Commission calendar to ensure compliance with statutory deadlines for Commission action.

The Management Assistant III will have primary responsibility for the word processing equipment used to store and retrieve information from Commission files. All typewritten orders and notices will be produced by this system. Other responsibilities may be assigned to the Management Assistant III by the Commission Secretary to assist him in performing the duties of his office.

Two persons in the Management Assistant I level positions will be assigned various clerical duties. In general, it is expected that these two Management Assistants will be working primarily under the direction of the Commission Secretary.

The Senior Legal Steno will provide whatever clerical assistance is required by the Deputy Attorney General assigned to the Commission. The Legal Steno may also be requested to assist the Deputy Commissioner with regard to any special legal projects required by the Commission.

The Tariff Clerk will be assigned the responsibility of receiving, sorting, classifying and filing the voluminous tariff changes submitted by utilities and motor carriers. The Clerk will maintain a current index, for use of the general public as well as the Commission, showing all currently-approved rate schedules and regulations.

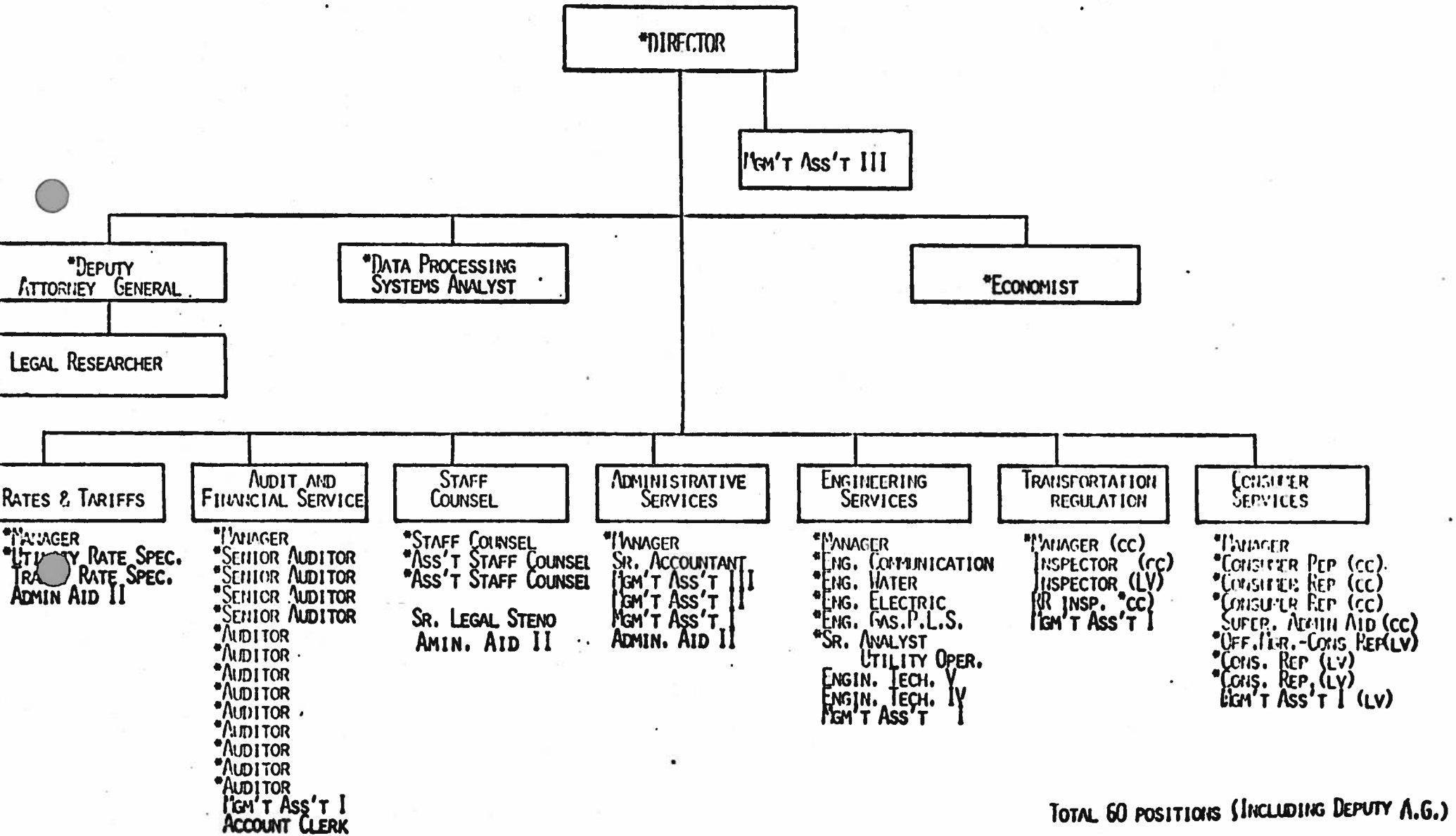
The Principal Account Clerk will be responsible for all receipts, disbursements, account balances, reports, reconciliations and all other fiscal accounting for the agency.

Under the A.B. 58 reorganization, the Commission would have a total of 20 positions as shown on the organization chart, with 19 of those positions being on the payroll and the Deputy Attorney General being paid out of other operating expenses. (The Deputy Attorney General's salary would be indicated on the payroll of the Attorney General).

Utility Customer
Rep. Agency

UTILITY CUSTOMER REPRESENTATIVE AGENCY

9/12/80
REV. 9/24/80



TOTAL 60 POSITIONS (INCLUDING DEPUTY A.G.)

The Utility Customer Representative Agency will have a total of 58 positions as are indicated on the organization chart. In addition, two positions from the Attorney General's office will be working within the Department; however, their salaries will be paid out of Operating Expenses through the Attorney General's Office.

**UCRA - Director
& Support Staff**

UTILITY CUSTOMER REPRESENTATIVE AGENCY

SUMMARY OF POSITIONS AND DUTIES

Director - The Agency Head

The Director is responsible for organizing, managing and setting policy for the agency. In carrying out those duties, the Director must actively pursue the interests of utility and transportation customers.

Employees:

1. Economist - assists in research of rate design, economic forecasts, and other economic matters that may be encountered by Agency Staff.
2. Data Processing Systems Analyst - responsible for developing a general management system using data processing techniques. He will have lead responsibility for the development and maintenance of the Agency "Operations Manual", and will act as liason with the State Data Processing Organization.
3. Management Assistant III - assists the Director in co-ordinating the activities of all divisions of the Agency.

UCRA - Audit and
Financial Services

UTILITY CUSTOMER REPRESENTATIVE AGENCY

SUMMARY OF POSITIONS AND DUTIES

Audit and Financial Services Division:

The Manager is responsible for the overall direction and supervision of the division. This division takes the lead role in all rate increase cases that are filed with the Public Service Commission. All accounting and financial matters involving jurisdictional companies must be studied by the personnel in this division.

Employees:

There are fifteen positions that are involved in the technical and regulatory rate-making activities.

1. Four of these positions are Audit Team Leaders who are C.P.A. Rate increase case assignments are made to each team to analyze, investigate and study. The team travels to the utility's place of business and by statutory authority examines each document, paper or other record. Following this examination, the Agency's case is constructed as explained under the Section "Profile of a Rate Case: the Agency's View"
2. Nine of these positions are Staff Auditors who comprise the audit teams under the supervision of a team leader. During the audit of a utility's books and records, workpapers are prepared to substantiate the Agency position to be presented to the Commission at the hearing.
3. Management Assistant I - Supervises and organizes the clerical workload of the auditors of the division. Also monitors deadlines for division action on the numerous rate cases filed by utility and transportation companies. This position uses a Mag Card II to prepare exhibits and expert testimony for the audit teams.

4. Account Clerk - this position is responsible for maintaining a complete record of the filed annual reports of utilities and motor carriers. This position assists in preparing exhibits and expert testimony for the audit teams.

UCRA - Consumer
Services

UTILITY CUSTOMER REPRESENTATIVE AGENCY

SUMMARY OF POSITIONS AND DUTIES

Consumer Services Division:

The Manager of this division has supervisory and action responsibility for the division. The Manager is responsible for a total of three consumer representatives in Carson City and three consumer representatives in Las Vegas, one of whom is an Office Manager. This division receives consumer complaints and inquiries concerning utility and transportation service as well as customer rates. The position must be knowledgeable in all tariff and rate schedule provisions.

Employees:

1. In addition to the consumer representatives there is a Supervising Administrative Aid located in Carson City. This position is responsible for the clerical support for the division. Also this position logs complaints and resolutions and maintains accumulated statistics for later investigation of the complaints.
2. Management Assistant I (Las Vegas) - this position is assigned to the Consumer Services Division in the Las Vegas office and is responsible for the clerical support for that office. This position also logs complaints and resolutions thereof, and is responsible for maintaining the Las Vegas office statistics.

UTILITY CUSTOMER REPRESENTATIVE AGENCY

SUMMARY OF POSITIONS AND DUTIES

Engineering Services Division:

The Manager is responsible for the overall direction and supervision of the division. The division conducts studies and investigations to determine the adequacy of service and efficiency of utility operations. The division has major responsibility for cases involving certificates of public convenience and necessity and amendments thereto.

Employees:

1. There are four engineers each of whom has a special field of expertise designed to assist Staff in the various aspects of utility service. The engineering fields covered are communications, water, electric, and pipeline safety. These employees may present expert testimony in Commission proceedings on subjects such as energy load management, reasonable construction cost, and service improvements required for reasonable and adequate service to the public.
2. Senior Analyst - this position works under the manager of engineering services. He assists in capacity planning, emergency management and load management projects.
3. Engineering Technicians (two positions) - one of these position is assigned to investigate consumer complaints which require technical measures related to the electric, water and natural gas meters and CATV components. Also, this position will verify land descriptions of proposed utility service areas for possible overlap or conflict with the existing service areas of other utilities. The other engineering technician position is assigned to assist in inspecting routine pipeline

construction that includes trench refill, aggregate, cathodic protection methods, verification of certified welders' cards and other pipeline safety functions under the direction of the pipeline safety engineer.

4. Management Assistant I - this position is assigned to the Engineering Services Division and will provide clerical support. All typing, filing, appointments and job assignment recording will be the responsibility of this position.

UCRA - Legal
Counsel

UTILITY CUSTOMER REPRESENTATIVE AGENCY

SUMMARY OF POSITIONS AND DUTIES

Staff Counsel

The Staff Counsel represents the Agency in all matters before the Commission. He will act as Case Manager on all matters that require a hearing before the Public Service Commission. Staff Counsel provides legal assistance and research to each of the other division during the Agency's investigation on each case.

Employees:

1. Assistant Staff Counsel (two positions) - represents the Agency in matters before the Commission. Along with Staff Counsel, acts as Case Manager on matters that require a hearing. Assistant Staff Counsel reviews all applications to determine if those applications comply with Commission regulations.
2. Senior Legal Steno - types and organizes legal briefs, correspondence and memos for the legal division. This position also maintains the record of cases that require a hearing.
3. Administrative Aid II - types general correspondence, files, copies documents, and generally assists in clerical duties within the division.

The legal staff includes a Deputy Attorney General and a Legal Researcher, both of whom are paid from the Attorney General payroll. The cost to the Agency is paid out of operating expenses.

UCRA - Rates and
Tariffs

UTILITY CUSTOMER REPRESENTATIVE AGENCY

SUMMARY OF POSITIONS AND DUTIES

Rates and Tariffs Division;

This new division was established to provide a focal point for review of rate schedules and rules within the tariffs. A complete tariff file is maintained in this division for use of the public and other agency divisions.

This division has the responsibility to propose or recommend changes in utility rate design that will equitably spread total Nevada revenue requirements to all classes of Nevada customers.

The Agency may seek assistance from outside consultants if "in house" expertise is not sufficient for the problem. Also, utility compliance with the terms and conditions of Commission Orders will be monitored by this division.

Employees:

1. Manager - this position has the overall responsibility for direction and supervision of the division. Long range projects are planned and implemented to correlate total division activities in concert with agency goals.
2. Utility Rate Specialist - this position is an expert on utility tariffs. It is the responsibility of this division to verify conformity of tariffs with conditions set forth in Commission Orders. Recommendations from this Specialist will be the basis for the Agency's position on most utility tariff filings.
3. Transportation Rate Specialist - this position has been assigned to receive and check motor carrier tariffs for proper form and content. This examination is necessary to ensure that the tariffs are capable of clear interpretation.

Recommendations from this Specialist will be on the basis for the Agency's position on most transportation tariff filings.

4. Administrative Aid II - this position will provide clerical assistance within the division of Rates and Tariffs. There is considerable filing and form preparation within the division which will require a full time assignment.

UCRA -
Transportation Reg.

SUMMARY OF POSITIONS AND DUTIES

Transportation Regulation:

The Manager of this division is responsible for analyzing motor carrier regulatory policy issues, reviewing motor carrier certificate and rate case filings, and preparing Agency presentations before the Commission.

Employees:

1. There are two positions for Motor Carrier Inspector. One located in Carson City and one located in Las Vegas. These positions are assigned to the Transportation Regulation Division. They will investigate new applicants for motor carrier certificates as well as inspect motor vehicle equipment for safety and adequacy in the proposed business. All consumer complaints will be investigated in the field by these individuals in the northern and southern portions of the state.
2. Railroad Inspector - this position is assigned to the Transportation Regulation Division to provide rail safety inspections under the Federal Railroad Act (FRA) by agreement with the State of Nevada. Federal funds will reimburse the state for 50% of the cost of inspection on a regular basis. This position operates from the Carson City office.
3. Management Assistant I - this position provides the clerical support for the Transportation Regulation Division. Also, the position assigns agency vehicles to Agency Staff travelers and co-ordinates the pooling of State employees who ride in State vehicles. The issuance of taxi cab plates and use fee plates are handled by this position.

UCRA - Admin's.
Service

UTILITY CUSTOMER REPRESENTATIVE AGENCY

SUMMARY OF POSITIONS AND DUTIES

Administrative Services Division

The Manager is the counterpart to the Secretary of the Public Service Commission. The manager will act as "Case manager" of all cases filed with the Public Service Commission that do not go to hearing, including most tariff change filings. He will monitor all pending cases before the Commission so that timely presentations of Agency position can be made to the Commission.

Employees:

1. Senior Accountant - maintains all fiscal records for the Agency. Prepares all budgetary records, including vouchers, inventory, reconciliations, and monthly reports.
2. Management Assistant III - in charge of word processing, including recording and storing documented information on the IBM "Display Writer". This position is the "hub" of the Case Management System used by all divisions of the Agency.
3. Management Assistant II - Maintains current working records of all correspondence, applications, complaints and general inquiries that are received by the Agency. This position maintains the records of all Agency recommendations, motions, and petitions made by the Agency to the Public Service Commission.
4. Management Assistant I - acts as telephone receptionist, directs calls and visitors to the proper division.
5. Administrative Aid II - has routine clerical duties, including mail distribution, co-ordination of travel accommodations, and is responsible for check-in and check-out of original docket files to Staff members.

Profile of A Rate
Case Part I - PSC

PROFILE OF A RATE CASE:
THE COMMISSION'S VIEW

A rate case begins with the filing of a rate application with the Commission Secretary. He assigns a docket number to the application and is generally responsible for ensuring that there is proper tracking of the application through the entire rate-making process. That responsibility is, initially, quite great since the new rates automatically go into effect within thirty days unless they are "suspended" by the commission.

Within one day of receipt, the Secretary serves a complete copy of the application on the Utility Customer Representative Agency (hereinafter "Agency"). At the same time, he informs the public of the rate filing through publication of a notice in newspapers of general circulation in the areas of Nevada that may be affected by the new rates.

Before the rates automatically go into effect, the Commission must make a determination as to whether to approve the new rates or whether to exercise its authority to suspend the effective date of the rates. If the Commission, for good cause, chooses the latter alternative, the effective date of the rates is postponed for up to 150 days. During this "suspension period," the application can be thoroughly reviewed and may be the subject matter of public hearings.

In making its initial decision as to whether to accept or suspend the proposed rates, the Commission may consider the recommendations of the Agency, matters contained in any protests filed by interested persons, and, of course, the supporting information contained in the application. Although the Commission has its own analysts and experts available to review any application, those analysts and experts will not ordinarily play a major role in the initial review of the application since the adversary relationship between the applicant and the Agency or other protestants naturally results in sufficient informational input to enable the Commission to reach a reasonable decision. Realistically, because of the extreme complexity of general utility rate filings, the Commission could probably never adequately examine such a request without suspension and hearings.

After the Commission determines that suspension of the rates is appropriate, the application is set for hearing. In the case of a general rate application by a major utility, the Commission usually sets an early date for hearing the direct case of the utility, and sets later dates for cross-examination of the utility's witnesses and for hearing the presentation of any other parties, including the Agency.

At the hearing on the direct case, the utility is responsible for fully supporting its requested rates. In addition, members of the Commission and the other parties may request information from the utility's witnesses to clarify the testimony and evidence in support of the application. In some instances, members of the Commission or the other parties may request that the applicant provide data that was not furnished in the application or provided at the direct testimony. The information requested may pertain directly to the issue of whether there is adequate support for the rates requested by the applicant, or may pertain to other matters which the Commission or any of the parties believe should be considered as part of the pending rate case. If the Commission determines that the data requested by a party is necessary to enable that party to prepare and present its case, the applicant may be ordered to comply with the party's "data request."

Prior to the second set of hearings, the Commissioners, their Administrative Assistants and the Commission analysts and experts review and analyze the pre-filed testimony and exhibits in order to become fully familiar with the issues presented by the applicant and other parties. In addition, the Commissioners may want to explore other issues which may not have been raised by the parties.

During the hearings held for cross-examination of the applicant and presentation of the other parties' cases, the remainder of the evidence and testimony upon which the Commission will issue its decision is presented. Part of the record of the hearings includes testimony and evidence presented in response to the questions of the Commissioners, and, in some cases the questions of their Administrative Assistants. Finally, if the Commission determines that it would be helpful to have the parties' positions presented in argument form, the Commission may order the parties to submit briefs.

After closing the hearings, and following receipt of any briefs from the parties, the Commission commences an orderly decision-making process. That process begins with an over-all analysis of the record by the Commissioner who was previously assigned primary responsibility for handling the rate case. With the aid of his Administrative Assistant and any or all of the Commission analysts and experts, the Commissioner reviews the testimony and evidence of record; and then, on an issue by issue basis, reaches a decision to be set forth in a written opinion which he will recommend to the other Commissioners resulting in appropriate resolution of the case.

Following completion of the written opinion, the matter is placed on the Commission's calendar to be discussed by all of the Commissioners at the next regular weekly meeting. By law, the Commissioners are prohibited from discussing the case or the recommended decision with each other prior to that open meeting. However, in order to enable the other Commissioners to thoroughly refamiliarize themselves with the issues of the case, a draft of the recommended opinion is furnished to them several days prior to the scheduled meeting. Between receipt of the draft and the meeting, the other Commissioners, with the aid of their Administrative Assistants and the Commission analysts and experts, review the record and the recommended decision.

At the scheduled meeting, all of the Commissioners discuss the case; and, by motion, either reject or accept each component of the recommended decision. Following agreement by a majority of the Commissioners on all of the issues, a final draft of the Opinion and an Order in conformity with the Commission's decision, is issued.

Profile of A Rate
Case Part 11-UCRA

PROFILE OF A RATE CASE:
THE AGENCY'S VIEW

Of all of the Utility Customer Representative Agency's work, by far the most visible is the presentation of a utility general rate case. The reason for that, of course, is that the customers' interests are "on the line" during rate hearings. Because of strong public need for zealous representation of customer interests during rate increase proceedings, A.B. 58 charges the Agency with the responsibility to insure that no rates go into effect which are not fully justified by the applicant utility. Such a tremendous obligation cannot be fulfilled merely through cross-examination of utility witnesses; rather, adequate customer representation requires thorough investigation and review of the manner in which an applicant utility operates and conducts its day-to-day affairs.

Within one day after filing with the Commission, any rate application must be served on the Agency by the Commission Secretary. At that time, an initial analysis of the application is begun to determine whether or not the proposed rates should be permitted to go into effect automatically. In some instances, such as in the case of an optional telephone service offerings, the Agency may be able to determine that the rate set for the equipment offering is reasonable and would not result in subsidization of the optional service by other customers. In other cases, the Agency may determine during its initial review of the application that the proposed rates are unreasonable or, as would probably always be the case in a general rate application, that there is insufficient time to thoroughly review the application prior to the date the rates would automatically go into effect. In those cases, the Agency petitions the Commission for an order "suspending" the effective date of the proposed rates so that the matter can be fully reviewed by the Agency.

When a decision is made to seek suspension of the rate application, the case is placed under the management of legal counsel. He is responsible for coordinating the efforts of all of the Agency divisions so that a complete and unified presentation of the Agency's case at hearing can be achieved.

Lead responsibility for investigating the operations and affairs of the utility is placed with the Audit and Financial Services Division. A team of auditors from the Division, along with consultants who may be under contract to assist the Agency, thoroughly audit and analyze the books and records of the utility. Because of the tremendous number of documents, and the necessity to obtain immediate answers to questions regarding the books and records, the

Agency is specifically authorized to examine those books and records at the utility's corporate offices. The objectives of the audit and financial analysis are to determine whether the utility has fairly and reasonably stated its costs of operation, and if not, what a fair and reasonable statement of those costs would be; whether the utility has fairly and reasonably stated its cost of capital (the expense, including interest expense, necessary to enable the utility to obtain financing for capital improvements); whether the utility has fairly stated the value of the "plant" which a "reasonable rate of return" may be allowed (rate base); and, finally, to determine the amount of operating revenues (to be collected from ratepayers) which will be necessary to cover the utility's operating expenses and to provide a rate of return sufficient to meet minimum constitutional limits.

In determining the reasonableness of operations expense and rate base items, the Audit and Financial Services Division will rely to a large extent upon the expertise provided by the Engineering Division. The Engineering Division is responsible for examining the manner and methods utilized by the utility in providing service. It will review the overall adequacy of service provided by the utility; the ability of the utility's existing facilities to provide service sufficient to meet present and future customers needs; in the case of energy generating utilities, the reasonableness of provisions for the sale and purchase of power; the usefulness of rate base items; the reasonableness and appropriateness of the depreciation rates utilized by the utility; and finally, the utility's overall efficiency in providing service. In the case of power plant efficiency, the Engineering Division will provide a sophisticated analysis of production data to enable the Agency to request penalties for inefficiency and incentives for highly efficient power generation.

The Rates and Tariff Division of the Agency is responsible for insuring that the revenue requirements of the utility are translated into rates which fairly and reasonably allocate the utility's expenses among its customers. If the Agency determines that existing rate designs do not serve the best interests of customers, the Division will assemble the data and information which is necessary to develop rate designs which will serve customers' interests. Because Nevada is a unique state in many respects, and because, therefore, the needs and habits of utility customers in Nevada are unique, the Division will not be able to merely advocate adoption of each innovative rate design concept that arises. Instead, constant study of the responses of Nevada utility customers to alternative rate design concepts will be necessary.

In addition, information from the Consumer Division will be used to flag those rules and regulations which may be causing problems for customers.

Through these combinations of individual Division efforts and inter-division cooperation, the final product will be an Agency presentation which truly advocates the interests of utility customers.

Revised Attorney

MEMORANDUM OF ROBERT D. STITSER
ON BEHALF OF COALITION FOR AFFORDABLE ENERGY EXHIBIT E

I am a counsel for the Coalition for Affordable Energy. I have been asked to respond to some legal questions that have been posed relative to the Coalition's Initiative Petition being considered by the Nevada Legislature to create an Office for Consumer Advocacy for Utility Customers. The questions are:

1. Should an Office of Consumer Advocacy automatically be made a party to every Public Service Commission proceeding affecting rates or should the Office have the discretion to choose significant cases in which to participate that have a major impact on consumers' costs of living.
2. Would the Office of Consumer Advocacy have sufficient rights of discovery to adequately represent the public in Public Service Commission cases.
3. Would the Attorney General, in whose office the Office of Consumer Advocacy would be located, have the authority to initiate action against a utility that was serving the public in an unreasonable manner.

I

Mandatory Party v. Discretionary Right to Intervene

A. Budget Considerations

The Office of Consumer Advocacy within the Attorney General's Office is envisioned as a highly cost-effective organi-

zation with an annual budget range of between \$300,000 and \$425,000. With this type of small budget, dramatic results in other states saving rate payers millions of dollars per year have been achieved. The way to achieve these very positive results for the rate payers appears to be devising a plan of action for the Consumer Advocacy Office that will allow the office to pick and choose utility regulation actions which have a substantial effect on rates. If the office were required to be a party to every Public Service Commission action, for instance, such as the regulation of taxi cabs, the granting of a certificate of public convenience and necessity to a small truck line, etcetera, it reasonably appears that the positive effect of a Consumer Advocacy Office would be substantially diluted by loading the office up with busy work. Another consideration is that Nevada statutory law (NRS 228.210) makes it a crime and subjects the Attorney General to removal from office if he neglects or refuses to perform any duty required of him. Of course, legal ethics require an attorney to zealously represent his client. Therefore, if the Legislature mandated that the Office of Consumer Advocacy be a party to every PSC action, then the Attorney General would risk penalties if he were not to pursue every PSC matter and thereby bog his office down in inefficient work. A huge budgetary increase for the Office of Consumer Advocacy and the AG office would probably be required if the Legislature mandates that the Office of Consumer Advocacy be a party in every PSC action.

B. Right to Intervene Protects the Public Interest

Public Service Commission Rule 6.040 governs the granting of Petitions for Intervention.

"6.040 Granting of petitions

If a petition for leave to intervene shows direct and substantial interest in the subject matter of the proceedings, or any part of the proceedings, and does not unduly broaden the issues, the Commission or the presiding officer may grant leave to intervene or otherwise to appear in the proceedings with respect to the matters set forth in the petition for leave to intervene, subject to those reasonable conditions that may be prescribed by the Commission. If it appears during the proceedings that an intervenor has no direct or substantial interest in the proceedings, and that the public interest does not require his further participation in the proceedings, the presiding officer may dismiss the party from the proceedings.

Nevada Supreme Court case law appears to dictate that ratepayers and their representatives have the absolute right to be notified and participate in actions of the P.S.C. substantially affecting them. Nevada Power Co. v. Public Serv. Comm'n., 91 Nev. 816, 544 P.2d 428 (1975), is illustrative of that view:

"We agree, as did the district court, with the conclusions of the Commission. In the State of Nevada, the public has a statutory right to both notice of a utility's rate increase application, including its contents, and notice of a Commission hearing on any such rate application. Additionally, a member of the public is entitled to participate in rate application hearings either as an intervenor or as an interested party."
Emphasis supplied. 91 Nev. 816 at 819.

"Members of the public may participate in a hearing pursuant to Rule 4.1, which states:

"At any hearing, all parties named in the preceding rule, except interested parties, shall be entitled to enter an appearance, to introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding. Interested parties who are or may be directly and substantially affected by the proceeding may enter an appearance, introduce evidence and, subject to the discretion of the Commission, may otherwise participate in the conduct of the proceeding." Emphasis supplied.
91 Nev. 816, at 820-821.

II

Discovery Rights

In administrative proceedings before the Public Service Commissions, the following rules and statutes provide for discovery.

Rules

"11.170 Order of commission for the attendance of witness or the production of books, papers, or other documents

1. Any party of record may request by motion that the Commission issue an order for the appearance of a witness at any designated place of hearing or for the production of a book, paper, or document. If the Commission determines that the requested book, paper, document, or witness is relevant to the proceeding, the Commission shall issue an order for the appearance of the witness or the production of the book, paper, or document.

2. The motion shall set forth reasons for the issuance of the Commission order for the attendance of the witness or for the production of the specific book, paper, or document.

11.180 Depositions

The Commission or any party of record may cause the depositions of witnesses to be taken in the manner prescribed by law and rule of court for depositions in civil actions."

Statutes

Nevada Revised Statutes 703.340 - 703.370 concern the PSC's subpoena powers including the production of documents and the enforcement of such subpoenas.

Experience with discovery rules in other states with an Office of Consumer Advocacy indicate that rules such as Nevada's allow adequate preparation of cases.

Of course, relative to State Court or Federal Court actions, the broad discovery provisions of the Nevada Rules of Civil Procedure or the Federal Rules of Civil Procedure are available relative to any additional evidence that can be introduced. See, for instance, N.R.S. 704.540 and N.R.S. 704.560.

III

The Right of the Attorney General to Initiate Action Against a Utility Acting Unreasonably

The Attorney General has express statutory duties in regard to enforcement of the State's laws concerning utility regulations:

"703.210 Duties of attorney general,
district attorneys.

1. The attorney general shall:
 - (a) Except as provided in subsection 2, be counsel and attorney for the commission in all actions, proceedings and hearings.
 - (b) Prosecute in the name of the State of Nevada all civil actions for the enforcement of chapters 704, 704A, 705, 706, 708, 711 and 712 of NRS and for the recovery of any penalty or forfeiture provided for therein.

(c) If the district attorney fails or refuses to do so, prosecute all violations of the laws of this state by public utilities and motor carriers under the jurisdiction of the commission and their officers, agents and employees.

(d) Generally aid the commission in the performance of its duties and the enforcement of chapters 704, 704A, 705, 706, 708, 711 and 712 of NRS...." Emphasis supplied.
~~91 Nev. 816, at 820-821.~~

Nevada Revised Statute 704.040 make unreasonable rates and less than reasonably adequate service of any public utility unlawful. Nevada Revised Statute 703.310 sets up a complaint procedure to the PSC leading to investigation and hearings to curtail unreasonable rates or actions of a public utility. Nevada Revised Statute 704.120 allows the PSC to substitute reasonable rates for unreasonable ones and N.R.S. 704.210 gives the PSC authority to make necessary and reasonable rules and regulations governing public utilities. The case law supports the proposition that executive agency action can be initiated to substitute reasonable rates and regulations for unreasonable ones. Public Serv. Comm'n. v. Ely Light & Power Co., 80 Nev. 312, 393 P.2d 305 (1964).

Dated: February 11, 1981.

Respectfully submitted,

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Counsel for Coalition for
Affordable Energy


Robert D. Stitser

A. B. 58

ASSEMBLY BILL NO. 58—ASSEMBLYMEN WESTALL, HORN, RUSK, BRADY, HAYES, BARENGO, COULTER, BREMNER, PRICE, REDELSPERGER, MARVEL, BERGEVIN, BANNER, DINI, THOMPSON, MAY, BENNETT, CHANEY, FOLEY, MELLO, POLISH, KOVACS, VERGIELS, ROBINSON, JEFFREY, HAM, MALONE, NICHOLAS, BEYER, DuBOIS, RHOADS, HICKEY AND SCHOFIELD

JANUARY 28, 1981

Referred to Committee on Government Affairs

SUMMARY—Creates utility customers' representative agency. (BDR 58-383)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

EXPLANATION—*Matter in italics is new; matter in brackets [] is material to be omitted.*

AN ACT relating to public utilities; creating an agency to represent their customers and enforce their safety; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. Chapter 703 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 17, inclusive, of this act.
3 SEC. 2. *As used in this Title, "commission's staff" means the deputy*
4 *commissioner, the secretary, the assistant secretary and other clerical per-*
5 *sonnel and experts appointed by the commission.*
6 SEC. 3. *Except as otherwise provided in NRS 706.481 to 706.631,*
7 *inclusive, as used in this Title, "agency" means the utility customers'*
8 *representative agency*
9 SEC. 4. 1. *The utility customers' representative agency is hereby*
10 *established.*
11 2. *It is hereby declared to be the purpose and policy of the legislature*
12 *in establishing the utility customers' representative agency to provide*
13 *independent representation and promotion of the interests of customers*
14 *of public utilities in all regulatory matters before the commission.*
15 SEC. 5. 1. *The governor shall appoint a director who shall supervise*
16 *the agency.*
17 2. *The director must be independent of the industries regulated by*
18 *the commission.*

1 3. The director serves at the pleasure of the governor.

2 4. The governor shall appoint the head of a division of the agency
3 as acting director for the period before the appointment of the director
4 or at any time a vacancy exists in the office of director. The acting direc-
5 tor has the authority and duties of a regularly appointed director, and
6 shall serve until such time as a new director is appointed. The acting
7 director is entitled to receive the same salary as the director.

8 SEC. 6. 1. The director of the agency must possess demonstrated
9 competence in the field of regulation and administration of public utilities.

10 2. The director may not be pecuniarily interested in any public utility
11 in this state or elsewhere.

12 3. The director shall not pursue any other business or vocation or
13 hold any other office of profit.

14 4. The director may not be a member of any political convention or
15 a member of any committee of any political party.

16 SEC. 7. 1. Before entering upon the duties of his office, the director
17 of the agency shall, in addition to the constitutional oath of office, swear
18 that he is not pecuniarily interested in any public utility in this state as
19 defined in chapter 704 of NRS.

20 2. The oath of office must be filed in the office of the secretary of
21 state.

22 SEC. 8. The director of the agency is entitled to receive an annual
23 salary in an amount determined pursuant to the provisions of NRS 284.-
24 182 and travel and subsistence allowances fixed by law for state officers
25 and employees.

26 SEC. 9. 1. The director of the agency shall appoint such clerical
27 personnel, experts and inspectors as may be necessary to carry out the
28 duties and responsibilities of the agency.

29 2. Employees in the unclassified service of the state are entitled to
30 receive annual salaries in amounts determined pursuant to the provisions
31 of NRS 284.182.

32 3. The compensation of other employees must be fixed in accordance
33 with the provision of chapter 284 of NRS.

34 SEC. 10. 1. A fund for the utility customers' representative agency
35 is hereby created as a special revenue fund. All money collected by the
36 agency pursuant to law must be deposited in the state treasury for credit
37 to the fund.

38 2. Money in the fund may be used only to defray the costs of:

39 (a) Paying the staff of the agency and acquiring or maintaining equip-
40 ment, supplies and facilities necessary to perform the functions of the
41 agency.

42 (b) Participation by the agency in all matters involving public utili-
43 ties and other persons subject to the jurisdiction of the commission.

44 (c) Audits, inspections, investigations, reports and the retaining of
45 consultants connected with the functions of the agency.

46 3. All claims against the fund must be paid as other claims against
47 the state are paid.

48 4. The director of the agency must furnish to any person upon
49 request a statement showing the balance remaining in the fund as of the
50 close of the preceding fiscal year.

1 SEC. 11. 1. *The agency may investigate and make appropriate rec-*
2 *ommendations to the commission with regard to all regulatory matters*
3 *before the commission.*

4 2. *The agency may investigate rates, tolls, charges, rules, regulations,*
5 *practices and service of public utilities and other persons subject to the*
6 *jurisdiction of the commission.*

7 3. *Whenever any rate, toll, charge, rule, regulation, practice or serv-*
8 *ice of a public utility or other person subject to the jurisdiction of the*
9 *commission is determined by the agency to be unjust, unreasonable,*
10 *insufficient, preferential, unjustly discriminatory or otherwise unlawful,*
11 *or if the agency determines that the service is inadequate, or that any*
12 *reasonable service cannot be obtained, the agency may petition the com-*
13 *mission for appropriate relief.*

14 SEC. 12. 1. *The agency may intervene in all regulatory proceedings*
15 *before the commission without prior notice to the commission and with-*
16 *out obtaining leave to intervene.*

17 2. *The agency may study and make appropriate recommendations to*
18 *the commission with regard to regulations of the commission relating to*
19 *the procedure, administration and enforcement of the provisions of chap-*
20 *ters 703, 704, 705, 706, 708, 711 and 712 of NRS.*

21 3. *The agency may institute or appear in an action in a district court*
22 *under this Title to review any order of the commission. The agency shall*
23 *be deemed a real party in interest in any such action.*

24 4. *The agency shall maintain files open to the public showing all*
25 *current tariffs, including any schedules of individual or joint rates, fares,*
26 *tolls or charges or any individual or joint regulations or rules of public*
27 *utilities and other persons subject to the commission's jurisdiction.*

28 5. *The agency shall enforce the provisions of chapters 703, 704,*
29 *705, 706, 708, 711 and 712 of NRS, and all regulations of the commis-*
30 *sion issued thereunder. Whenever an order of the commission requires a*
31 *public utility, motor carrier or other person subject to the commission's*
32 *jurisdiction to undertake any act, the agency shall observe its compliance*
33 *with the order. After the time set for compliance has elapsed, at the next*
34 *scheduled meeting of the commission which is reasonable under the cir-*
35 *cumstances, the agency shall report to the commission whether compli-*
36 *ance has been fully accomplished within the time established in the order*
37 *and its recommendation as to what action, if any, should be taken.*

38 SEC. 13. 1. *The inspectors employed by the agency have full author-*
39 *ity as peace officers for enforcement of chapters 703, 704, 705, 706,*
40 *708, 711 and 712 of NRS, and all regulations of the commission issued*
41 *thereunder.*

42 2. *Inspectors may carry firearms in the performance of their duties.*

43 SEC. 14. *The commission shall, within 1 day after filing, furnish to*
44 *the agency a reasonable number of copies of each report, record, state-*
45 *ment, tariff, pleading, complaint, petition, notice or other paper filed with*
46 *the commission.*

47 SEC. 15. *The attorney general shall:*

48 1. *Serve as counsel and attorney for the agency and represent the*
49 *agency in all actions, proceedings and hearings before courts of law.*

1 2. Generally aid the agency in the performance of its duties.

2 SEC. 16. The agency may, in carrying out its duties:

3 1. Cooperate with the Federal Government, its departments and
4 agencies.

5 2. Confer with nonprofit agencies or offices of other states on mat-
6 ters of mutual concern and benefit to persons served by the public
7 utilities, motor carriers and brokers of this state.

8 3. Use the services, records and facilities of federal and state regu-
9 latory agencies, and may participate in any joint hearings and joint con-
10 ferences held by the commission. All necessary expenses incurred in
11 attending hearings and conferences outside the state are a charge
12 against the state, and must be audited and paid as other claims against
13 the state are paid. The claims must be sworn to by the officer or
14 employee of the agency who incurred the expense and must be approved
15 by the director of the agency.

16 SEC. 17. Whenever notice in any matter pending before the commis-
17 sion is required to be given, the notice must also be given to the agency.

18 SEC. 18. NRS 703.010 is hereby amended to read as follows:

19 703.010 As used in this [chapter,] Title, "commission" means the
20 public service commission of Nevada.

21 SEC. 19. NRS 703.140 is hereby amended to read as follows:

22 703.140 1. The commissioners, [the deputy commissioner, the sec-
23 retary, and such clerks and experts as are employed,] members of the
24 commission's staff and members of the agency's staff are entitled to
25 receive from the state their necessary expenses while traveling on the
26 business of the commission [.] or agency, respectively, including the
27 cost of lodging and subsistence.

28 2. The expenditures must be sworn to by the person who incurred
29 the expense and must be approved by the chairman of the commis-
30 sion [.] or the director of the agency, as the case may be.

31 SEC. 20. NRS 703.145 is hereby amended to read as follows:

32 703.145 1. Any public utility or common or contract motor car-
33 rier subject to the jurisdiction of the commission which elects to main-
34 tain its books and records outside the State of Nevada [shall,] must, in
35 addition to any other assessment and fees provided for by law, be
36 assessed by the [commission] agency for an amount equal to the travel
37 expenses and the excess of the out-of-state subsistence allowances over
38 the in-state subsistence allowances, as fixed by NRS 281.160, of [com-
39 mission members and staff,] the agency, for investigation, inspections
40 and audits required to be performed outside this state.

41 2. The assessment provided for by this section [shall] must be deter-
42 mined by the [commission] agency upon the completion of each such
43 investigation, inspection and audit, and [shall be due and payable] is
44 due within 30 days of receipt by the affected utility or common or con-
45 tract motor carrier of the notice of assessment.

46 3. The records of the [commission] agency relating to the addi-
47 tional costs incurred by reason of the necessary additional travel [shall]
48 must be open for inspection by the affected utility or common or contract
49 motor carrier at any time within such 30-day period.

50 SEC. 21. NRS 703.147 is hereby amended to read as follows:

1 703.147 1. The public service commission regulatory fund is hereby
2 created as a special revenue fund. All money collected by the commis-
3 sion pursuant to law must be deposited in the state treasury for credit
4 to the fund.

5 2. Money in the fund may be used only to defray the costs of:

6 (a) [Maintaining staff and equipment] *Paying the staff, and purchas-*
7 *ing or maintaining equipment, supplies and facilities necessary to regu-*
8 *late adequately public utilities and other persons subject to the jurisdic-*
9 *tion of the commission.*

10 (b) [Participating in all rate cases involving those persons.

11 (c) Audits, inspections, investigations, publication] *Participation by*
12 *the commission or its staff in matters involving public utilities and other*
13 *persons subject to the jurisdiction of the commission.*

14 (c) *Publication of notices, reports [and retaining consultants connected*
15 *with that regulation and participation.] , orders and regulations.*

16 (d) The salaries, travel expenses and subsistence allowances of the
17 members of the commission [.] *and its staff.*

18 (e) *Retaining consultants in specific areas of the regulation of utilities*
19 *and other persons subject to the jurisdiction of the commission.*

20 3. All claims against the fund must be paid as other claims against
21 the state are paid.

22 4. The commission must furnish upon request a statement showing
23 the balance remaining in the fund as of the close of the preceding fiscal
24 year.

25 SEC. 22. NRS 703.150 is hereby amended to read as follows:

26 703.150 The commission shall [supervise and] regulate the opera-
27 tion and maintenance of public utilities and other persons named and
28 defined in chapters 704, 704A, 706, 708, 711 and 712 of NRS pursuant
29 to the provisions of those chapters.

30 SEC. 23. NRS 703.190 is hereby amended to read as follows:

31 703.190 All [biennial] reports, records, proceedings, papers and files
32 of the commission [shall] *and of the agency must* be open at all reason-
33 able times to the public; but when it is necessary to the public interest,
34 the commission *or agency* may withhold any facts or information in its
35 possession for a period not to exceed 90 days.

36 SEC. 24. NRS 703.191 is hereby amended to read as follows:

37 703.191 1. Each public utility, common and contract motor carrier
38 and broker which is regulated by the commission shall:

39 (a) Keep uniform and detailed accounts of all business transacted in
40 the manner required by the commission by regulation, and render them
41 to the commission upon its request [.] *or to the agency upon its request.*

42 (b) Furnish an annual report to the commission in the form and detail
43 which it prescribes by regulation.

44 2. Except as provided in subsection 3, the reports required by this
45 section must be prepared for each calendar year and submitted not later
46 than April 15 of the year following the year for which the report is
47 submitted.

48 3. A motor carrier may, with the permission of the commission,
49 prepare the reports required by this section for a year other than a

1 calendar year which the commission specifies, and submit them not later
2 than a date specified by the commission in each year.

3 4. If the commission or the agency finds that necessary information
4 is not contained in a report submitted pursuant to this section, [it] the
5 commission on its own motion or the agency by petition may call for the
6 omitted information at any time.

7 SEC. 25. NRS 703.195 is hereby amended to read as follows:

8 703.195 [Any commissioner or any officer or employee of the com-
9 mission who is designated by the commission,]

10 1. The director of the agency or a designated member of his staff
11 may examine during regular business hours the books, accounts, records,
12 minutes, papers and property of any public utility, motor carrier or
13 broker who does business in this state, whether or not the book, account,
14 record, minutes, paper or property is located within the state.

15 2. In addition to any other remedies provided under this Title, the
16 agency may petition the commission for an order requiring compliance
17 with the provisions of this section.

18 SEC. 26. NRS 703.197 is hereby amended to read as follows:

19 703.197 1. The commission may collect fees for the filing of any
20 official document required by this chapter and chapters 704, 704A, 705,
21 706, 708, 711 and 712 of NRS or by a regulation of the commission.

22 2. Filing fees may not exceed:

23 (a) For applications, \$200.

24 (b) For petitions seeking affirmative relief, \$200.

25 (c) For each tariff page which requires public notice and is not
26 attached to an application, \$10. If more than one page is filed at one
27 time, the total fee may not exceed the cost of notice and publication.

28 (d) For all other documents which require public notice, \$10.

29 3. If an application or other document is rejected by the commission
30 because it is inadequate or inappropriate, the filing fee must be returned.

31 4. The commission may not charge any fee for filing a complaint.

32 5. The commission may not charge the agency any fee for the filing
33 of any document or other paper.

34 SEC. 27. NRS 703.200 is hereby amended to read as follows:

35 703.200 Except in cases of emergency, [all the necessary printing of
36 the commission shall be done] forms and regulations of the commission
37 and the agency must be printed by the state printing and records divi-
38 sion of the department of general services. The superintendent of that
39 division shall have such printing done as expeditiously as possible.

40 SEC. 28. NRS 703.210 is hereby amended to read as follows:

41 703.210 1. The attorney general shall:

42 (a) Except as provided in subsection 2, [be] serve as counsel and
43 attorney for the commission and shall represent the commission in all
44 actions, proceedings and hearings [.] before courts of law.

45 (b) Prosecute in the name of the State of Nevada all civil actions for
46 the enforcement of chapters 704, 704A, 705, 706, 708, 711 and 712 of
47 NRS and for the recovery of any penalty or forfeiture provided for
48 therein.

49 (c) If the district attorney fails or refuses to do so, prosecute all viola-
50 tions of the laws of this state by public utilities and motor carriers under

1 the jurisdiction of the commission and their officers, agents and
2 employees.

3 (d) Generally aid the commission in the performance of its duties.
4 [and the enforcement of chapters 704, 704A, 705, 706, 708, 711 and
5 712 of NRS.]

6 2. Each district attorney shall:

7 (a) Prosecute any violation of chapters 704, 704A, 705, 706, 708, 711
8 or 712 of NRS for which a criminal penalty is provided and which
9 occurs in his county.

10 (b) Aid in any investigation, prosecution, hearing or trial held under
11 the provisions of chapters 704, 704A, 705, 706, 708, 711 or 712 of
12 NRS and, at the request of the attorney general or the commission, act
13 as counsel and attorney for the commission.

14 SEC. 29. NRS 703.290 is hereby amended to read as follows:

15 703.290 1. A division of consumer relations is hereby established
16 within the [commission.] agency.

17 2. [Pursuant to regulations adopted by the commission, the] The
18 division of consumer relations shall:

19 (a) Receive and investigate complaints made against any public utility,
20 motor carrier or broker;

21 (b) Conduct appropriate investigations of the service practices of util-
22 ity companies and motor carriers and brokers;

23 (c) Perform such other functions as are required by law or as the
24 [commission] director of the agency deems appropriate.

25 SEC. 30. NRS 703.310 is hereby amended to read as follows:

26 703.310 1. When a complaint, *filed with the commission or the*
27 *agency*, is made against any public utility, common or contract car-
28 rier or broker by any person, that any of the rates, tolls, charges or
29 schedules, or any joint rate or rates are in any respect unreasonable or
30 unjustly discriminatory, or that any regulation, measurement, practice
31 or act affecting or relating to the transportation of persons or property,
32 or any service in connection therewith, or the production, transmission or
33 delivery or furnishing of heat, light, gas, coal slurry, water or power, or
34 any service in connection therewith or the transmission thereof is, in any
35 respect, unreasonable, insufficient or unjustly discriminatory, or that any
36 service is inadequate, [and the division of consumer relations is unable to
37 resolve the complaint, the division shall transmit the complaint and its
38 recommendation to the commission. Within 10 days after receipt of the
39 complaint and recommendation, the commission shall provide the public
40 utility, carrier or broker complained against with a copy of the complaint
41 and recommendation. Within a reasonable time thereafter the commission
42 shall investigate the complaint.

43 2. If, as a result of its investigation, the commission determines that
44 probable cause exists for the complaint, it shall order a hearing thereof,
45 and give notice of the hearing as required by NRS 703.320, and conduct
46 the hearing as it would any other hearing.] *the division of consumer rela-*
47 *tions shall investigate the complaint. Within 5 days after receipt of the*
48 *complaint, the division shall provide the public utility, carrier or broker*
49 *complained against with a copy of the complaint. Within 15 days after*
50 *service of the copy of the complaint, the public utility, carrier or broker*

1 shall provide the division of consumer relations with its written response
2 thereto.

3 2. If the division of consumer relations is unable to resolve the com-
4 plaint, the agency shall, within a reasonable time, transmit the com-
5 plaint and the written response of the public utility, carrier or broker
6 complained against to the commission. Within a reasonable time there-
7 after the commission shall determine whether probable cause exists for
8 the complaint. The determination of probable cause must be made at a
9 regular meeting of the commission or at a hearing specially convened for
10 the purpose of making the determination. Each party, including the
11 agency, must be given at least 10 days' written notice of the meeting
12 or hearing, and must be given an appropriate opportunity to be heard
13 with regard to the question of probable cause. If the commission deter-
14 mines that probable cause exists for the complaint, it shall order a
15 hearing.

16 3. No order affecting a rate, toll, charge, schedule, regulation, meas-
17 urement, practice or act complained of may be entered without a formal
18 hearing at which both the complainant and the public utility, carrier or
19 broker are entitled to appear in person or by counsel and be heard,
20 unless a hearing is dispensed with as provided in NRS 703.320.

21 SEC. 31. NRS 703.330 is hereby amended to read as follows:

22 703.330 1. A full and complete record must be kept of all hearings
23 before the commission, and all testimony must be taken down by the
24 stenographer appointed by the commission, or, under the direction of
25 any competent person appointed by the commission, reported by sound
26 recording equipment in the manner authorized for reporting testimony
27 in district courts. The testimony reported by a stenographer must be
28 transcribed, and the transcript filed with the record in the matter. The
29 commission may by regulation provide for the transcription or safekeep-
30 ing of sound recordings. Cost of recording and transcribing testimony at
31 any hearing, except those hearings ordered pursuant to NRS 703.310
32 must be paid by the applicant. If a complaint is made pursuant to NRS
33 703.310 by a customer, by the agency or by a body politic or municip-
34 al organization, the complainant is not liable for any costs. Otherwise,
35 if there are several applicants or parties to any hearing, the commission
36 may apportion the costs among them in its discretion [.

37 2. Whenever any complaint is served upon the commission as pro-
38 vided in NRS 704.540 or 706.706 for the bringing of an action against
39 the commission,] , except that in no case may the agency be charged
40 for costs.

41 2. Whenever an action is brought to review an order or decision of
42 the commission as provided in NRS 704.540 or 706.706, before the
43 action is reached for trial, the commission shall file a certified copy of all
44 proceedings and testimony taken with the clerk of the court in which the
45 action is pending.

46 3. A copy of the proceedings and testimony [must be furnished to
47 any party, on payment of a reasonable amount, to be fixed by the com-
48 mission, which amount must be the same for all parties.] in any matter
49 in which the agency has appeared must be furnished to the agency with-
50 out charge. A copy of the proceedings and testimony must be furnished

1 *to any other party, on payment of a reasonable amount to the commis-*
2 *sion. The amount must be the same for all parties.*

3 SEC. 32. NRS 703.340 is hereby amended to read as follows:

4 703.340 1. [Either] Any party is entitled to an order by the com-
5 mission for the appearance of witnesses or the production of books,
6 papers and documents containing material testimony.

7 2. Witnesses appearing upon the order of the commission are entitled
8 to the same fees and mileage as witnesses in civil actions in the courts of
9 the state, and the fees and mileage must be paid out of the state treasury
10 in the same manner as other claims against the state are paid. No fees or
11 mileage may be allowed unless the chairman of the commission certifies
12 the correctness of the claim.

13 SEC. 33. NRS 703.370 is hereby amended to read as follows:

14 703.370 1. The district court for the county in which any [investi-
15 gation or] hearing is being conducted by the commission pursuant to the
16 provisions of this Title may compel the attendance of witnesses, the giv-
17 ing of testimony and the production of books and papers as required by
18 any subpoena issued by the commission.

19 2. If any witness refuses to attend or testify or produce any papers
20 required by a subpoena the commission may report to the district court
21 for the county in which the [investigation or] hearing is pending by peti-
22 tion, setting forth:

23 (a) That due notice has been given of the time and place of attend-
24 ance of the witness or the production of the books and papers;

25 (b) That the witness has been subpoenaed in the manner prescribed in
26 this chapter;

27 (c) That the witness has failed and refused to attend or produce the
28 papers required by subpoena before the commission in the [investigation
29 or] hearing named in the subpoena, or has refused to answer questions
30 propounded to him in the course of the [investigation or] hearing,
31 and asking an order of the court compelling the witness to attend and
32 testify or produce the books or papers before the commission.

33 3. The court, upon petition of the commission, shall enter an order
34 directing the witness to appear before the court at a time and place to
35 be fixed by the court in its order, not more than 10 days from the date
36 of the order, and show cause why he has not attended or testified or pro-
37 duced the books or papers before the commission. A certified copy of the
38 order must be served upon the witness. If it appears to the court that the
39 subpoena was regularly issued by the commission, the court shall there-
40 upon enter an order that the witness appear before the commission at
41 the time and place fixed in the order and testify or produce the required
42 books or papers, and upon failure to obey the order the witness must be
43 dealt with as if in contempt of court.

44 SEC. 34. Chapter 704 of NRS is hereby amended by adding thereto
45 the provisions set forth as sections 35 to 40, inclusive, of this act.

46 SEC. 35. *The legislature hereby finds and declares that:*

47 1. *It is the intent of the legislature in enacting this chapter to confer*
48 *upon the public service commission of this state the authority to regulate*
49 *the operations, safety, services, rates and charges of public utilities in*
50 *order to:*

1 (a) Insure fair and equitable regulation of public utilities in the interest
2 of the public;

3 (b) Insure the availability of adequate, economical and reliable service
4 by public utilities within the state;

5 (c) Encourage the orderly development of the resources of public
6 utilities in a manner consistent with the state's needs and in a manner
7 consistent with the productive use of the state's renewable sources of
8 energy, including but not limited to geothermal energy, solar energy, and
9 wind;

10 (d) Encourage the orderly development of resources in a manner con-
11 sistent with the national policy on energy as established from time to
12 time by Congress and the President of the United States;

13 (e) Encourage wise and efficient use of energy by public utilities and
14 their customers;

15 (f) Encourage effective and efficient management of regulated public
16 utilities;

17 (g) Insure that rates and charges for the services of public utilities are
18 fair, just, reasonable and applied without unjust discrimination or
19 preference.

20 2. The legislature intends that the public service commission serve as
21 a quasi-judicial body and charges it with the responsibility for appraising
22 and balancing the interests of current and future customers and the gen-
23 eral interests of the public utilities, including their stockholders, subject
24 to its jurisdiction in its deliberations and decisions.

25 3. It is legislative policy to insure that the legislature and the general
26 public become better informed regarding the regulation of public utilities
27 in this state and the conduct of the business of the public service commis-
28 sion. To aid in the achievement of this policy, the public service commis-
29 sion shall at each regular session of the legislature present to the
30 appropriate committee of each house a report which describes in a con-
31 cise manner:

32 (a) The major activities of the commission for the 2 calendar years
33 preceding the commencement of the legislative session;

34 (b) Important decisions reached concerning policy and programs com-
35 menced during the 2-year period; and

36 (c) Other information considered by the commission to be important
37 or requested by the committee, including recommendations for appropri-
38 ate legislation and the reasons for such recommendations.

39 4. It is legislative policy to encourage the public service commission
40 to cooperate with the department of energy to obtain the full cooperation
41 of public utilities in acquiring meaningful data relating to energy and to
42 the supply, demand and conservation of the sources of energy which is
43 produced, used or distributed by public utilities. The public service com-
44 mission shall also consider any proposal by the department of energy
45 which is intended to carry out the policies of the legislature set forth in
46 chapter 523 of NRS.

47 SEC. 36. 1. The agency shall levy and collect an annual assessment
48 from all public utilities subject to the jurisdiction of the commission.

49 2. The annual assessment must be not more than $2\frac{3}{4}$ mills on each

1 dollar of gross operating revenue derived from the intrastate operations
2 of such utilities in the State of Nevada, except that the minimum assess-
3 ment in any one year is \$10. The gross operating revenue of the utilities
4 must be determined for the preceding calendar year. In the case of:

5 (a) Telephone utilities, this revenue shall be deemed to be local service
6 revenue plus intrastate toll revenues.

7 (b) Railroads, this revenue shall be deemed to be revenue received
8 only from freight and passengers transported between points in this state.

9 (c) All public utilities, this revenue does not include the proceeds of
10 any commodity, energy or service furnished to another public utility for
11 resale.

12 SEC. 37. 1. On or before June 1 of each year, the agency shall mail
13 forms for reporting revenue to all public utilities under the commission's
14 jurisdiction, to their respective addresses on file with the agency. The
15 form is notice of the agency's intent to assess the utilities, but failure to
16 notify a utility does not invalidate an assessment.

17 2. Each public utility subject to the provisions of section 37 of this
18 act shall complete the revenue report referred to in subsection 1, com-
19 pute the assessment and return the completed revenue report to the
20 agency accompanied by payment of the assessment and any penalty due,
21 pursuant to the provisions of subsection 5.

22 3. The assessment is due on July 1 of each year, but may, at the
23 option of the public utility, be paid quarterly on July 1, October 1, Janu-
24 ary 1 and April 1.

25 4. The assessment computed by the utility is subject to review and
26 audit by the agency, and the amount of the assessment may be adjusted
27 by the agency as a result.

28 5. Any public utility failing to pay the assessment provided for in
29 section 37 of this act on or before August 1, or if paying quarterly, on or
30 before August 1, October 1, January 1 or April 1, shall pay, in addition
31 to the assessment, a penalty of 1 percent of the total unpaid balance for
32 each month or portion thereof that the assessment is delinquent, or \$10,
33 whichever is greater, but no penalty may exceed \$1,000 for each delin-
34 quent payment.

35 6. When a public utility sells, transfers or conveys substantially all
36 of its assets or certificate of public convenience and necessity, the agency
37 shall determine, levy and collect the accrued assessment for the current
38 year not later than 30 days after the sale, transfer or conveyance, unless
39 the transferee has assumed liability for the assessment. For purposes of
40 this subsection the jurisdiction of the commission over the transferring
41 utility continues until it has paid the assessment.

42 7. The agency may bring an appropriate action in its own name
43 for the collection of any assessment and penalty which is not paid as
44 provided in this section.

45 SEC. 38. 1. Within 30 days after the filing of any notice of a new
46 schedule or of changes to a schedule, the commission shall determine
47 whether to:

48 (a) Dispense with a hearing pursuant to subsection 6 of NRS 704.100;

49 (b) Suspend the schedule or defer the use of the rate, fare, charge,

1 classification, regulation, discontinuance, modification, restriction or
2 practice pursuant to subsection 2 of NRS 704.110; or

3 (c) Approve the changes to the schedule or the new schedule.

4 2. The determinations must be made at a regular meeting of the
5 commission or at a hearing specially convened for the purpose of making
6 the determinations.

7 3. The agency shall review the proposed new schedule or the pro-
8 posed changes to the schedule and shall, at the meeting or hearing held
9 pursuant to this section, report to the commission the nature and effects
10 of the changes or new schedule. The agency may make recommenda-
11 tions as to whether the tariff filing should be accepted as filed, modified
12 pursuant to agreement with the applicant, suspended for further review,
13 or suspended and set for hearing.

14 SEC. 39. 1. Whenever a public utility files with the commission an
15 application for issuance, modification or transfer of a certificate of public
16 convenience and necessity, the agency shall investigate the public con-
17 venience and necessity to be accorded by the service offered by the appli-
18 cant and the fitness, willingness and ability of the applicant to provide
19 that service.

20 2. Within 60 days after the filing of the application, or longer period
21 if approved by the commission, the agency shall report to the commission
22 the results of its investigation. The report must be made at a regular meet-
23 ing of the commission. If the matter of the application is set for hearing,
24 the report may be submitted in writing at or before the time set for hear-
25 ing.

26 3. The agency may make recommendations to the commission con-
27 cerning the application.

28 SEC. 40. The commission may not be made a party to, nor may it
29 appear in, any action brought under NRS 704.540. Nor may the com-
30 mission appear in an appeal from a decision rendered pursuant to NRS
31 704.540.

32 SEC. 41. NRS 704.033 is hereby amended to read as follows:

33 704.033 1. The commission shall levy and collect an annual assess-
34 ment from all public utilities subject to the jurisdiction of the commis-
35 sion.

36 2. The annual assessment [shall] must be not more than [4] 1¼
37 mills on each dollar of gross operating revenue derived from the intra-
38 state operations of such utilities in the State of Nevada, except that the
39 minimum assessment in any 1 year [shall be] is \$10. The gross operat-
40 ing revenue of such utilities [shall] must be determined for the preceding
41 calendar year. In the case of:

42 (a) Telephone utilities, [such] this revenue shall be deemed to be
43 local service revenues plus intrastate toll revenues.

44 (b) Railroads and airlines, [such revenues] this revenue shall be
45 deemed to be revenue received only from freight and [passenger intra-
46 state movements.] passengers transported between points in this state.

47 (c) All public utilities, [such revenue shall] this revenue does not
48 include the proceeds of any commodity, energy or service furnished to
49 another public utility for resale.

50 SEC. 42. NRS 704.100 is hereby amended to read as follows:

1 704.100 Except as may otherwise be provided by the commission
2 pursuant to NRS 704.095:

3 1. No changes may be made in any schedule, including schedules of
4 joint rates, or in the rules and regulations affecting any rates or charges,
5 except upon 30 days' notice to the commission [.] and to the agency,
6 and all changes must be plainly indicated, or by filing new schedules in
7 lieu thereof 30 days before the time the schedules are to take effect. The
8 commission, upon application of any public utility, may prescribe a less
9 time within which a reduction may be made.

10 2. Copies of all new or amended schedules must be filed and posted
11 in the stations and offices of public utilities as in the case of original
12 schedules.

13 3. Except as provided in subsection 4, the commission shall not con-
14 sider an application by a public utility if the justification for the new
15 schedule includes any items of expense or rate base which are set forth
16 as justification in a pending application, are the subject of pending litigation,
17 or have been considered and disallowed by the commission or a district
18 court.

19 4. A public utility may set forth as justification for a rate increase
20 items of expense or rate base which have been considered and disallowed
21 by the commission, only if those items are clearly identified in the applica-
22 tion and new facts or policy considerations for each item are advanced
23 in the application to justify a reversal of the commission's prior deci-
24 sion.

25 5. If the [commission] agency receives an application that is within
26 the prohibition of subsection 3, it shall, [within 30 days, notify the public
27 utility that the application is dismissed.] *within 7 days, file a petition with*
28 *the commission stating the grounds for dismissal of the application. Within*
29 *23 days thereafter, the commission shall, upon finding the application*
30 *within the prohibition of subsection 3, notify the public utility that the*
31 *application is dismissed.*

32 6. The commission shall determine whether a hearing must be held
33 when the proposed change in any schedule stating a new or revised indi-
34 vidual or joint rate, fare or charge, or any new or revised individual or
35 joint regulation or practice affecting any rate, fare or charge, will result
36 in an increase in annual gross revenue as certified by the applicant of
37 \$2,500 or less.

38 7. In making the determination the commission shall first consider
39 all timely written protests, [any presentation the staff of the commission
40 may desire to present,] *the recommendation of the agency, the applica-*
41 *tion and any other matters deemed relevant by the commission.*

42 SEC. 43. NRS 704.110 is hereby amended to read as follows:

43 704.110 Except as may otherwise be provided by the commission
44 pursuant to NRS 704.095:

45 1. Whenever there is filed with the commission any schedule stating
46 a new or revised individual or joint rate, fare or charge, or any new or
47 revised individual or joint regulation or practice affecting any rate, fare
48 or charge, or any schedule resulting in a discontinuance, modification or
49 restriction of service, the commission may, either upon complaint, *upon*
50 *request of the agency* or upon its own motion without complaint, at

1 once, and if it so orders, without answer or formal pleading by the inter-
2 ested utility, [enter upon an investigation or,] upon reasonable notice,
3 enter upon a hearing concerning the propriety of the rate, fare, charge,
4 classification, regulation, discontinuance, modification, restriction or prac-
5 tice.

6 2. Pending [the] *an investigation by the agency*, or hearing and the
7 decision thereon, the commission [.] *on its own motion or upon peti-*
8 *tion by the agency*, and upon delivering to the utility affected thereby
9 a statement in writing of its reasons for the suspension, may suspend the
10 operation of the schedule and defer the use of the rate, fare, charge, classi-
11 fication, regulation, discontinuance, modification, restriction or practice,
12 but not for a longer period than 150 days beyond the time when the
13 rate, fare, charge, classification, regulation, discontinuance, modification,
14 restriction or practice would otherwise go into effect.

15 3. Whenever there is filed with the commission any schedule stating
16 an increased individual or joint rate, fare or charge for service or equip-
17 ment, the public utility shall submit with its application a statement show-
18 ing the recorded results of revenues, expenses, investments and costs of
19 capital for its most recent 12-month period. During any hearing concern-
20 ing the increased rates, fares or charges determined by the commission to
21 be necessary, the commission shall consider evidence in support of the
22 increased rates, fares or charges based upon actual recorded results of
23 operations for the most recent 12 consecutive months for which data are
24 available at the time of filing, adjusted for any increased investment in
25 facilities, increased depreciation expenses, certain other operating
26 expenses as approved by the commission and changes in the costs of
27 securities which are known and are measurable with reasonable accuracy
28 at the time of filing and which will become effective within 6 months after
29 the last month of the actual 12-month results of operations; but no new
30 rates, fares or charges may be placed into effect until the changes have
31 been experienced and certified by the utility to the commission. The
32 commission may also consider evidence supporting depreciation expenses,
33 calculated on an annual basis, applicable to major electric generating plant
34 units placed into service during the recorded test period or the certifica-
35 tion period as set forth in the application. Within 90 days after the filing
36 with the commission of the certification required herein, or before the
37 expiration of any suspension period ordered pursuant to subsection 2,
38 whichever time is longer, the commission shall make such order in refer-
39 ence to those rates, fares or charges as may be required by this chapter.

40 4. After full investigation and *recommendation by the agency or after*
41 *hearing*, whether completed before or after the date upon which the rate,
42 fare, charge, classification, regulation, discontinuance, modification,
43 restriction or practice is to go into effect, the commission may make such
44 order in reference to the rate, fare, charge, classification, regulation, dis-
45 continuance, modification, restriction or practice as would be proper in a
46 proceeding initiated after the rate, fare, charge, classification, regulation,
47 discontinuance, modification, restriction or practice has become effective.

48 5. Whenever an application is filed by a public utility for an increase
49 in any rate, fare or charge based upon increased costs in the purchase of

1 fuel or power, and the public utility has elected to use deferred account-
2 ing for costs of the purchase of fuel or power in accordance with com-
3 mission regulations, the commission, by appropriate order after a public
4 hearing, shall allow the public utility to clear the deferred account not
5 more often than every 6 months by refunding any credit balance or
6 recovering any debit balance over a period not to exceed 1 year as deter-
7 mined by the commission. The commission shall not allow a recovery of
8 a debit balance or any portion thereof in an amount which would result
9 in a rate of return in excess of the rate of return most recently granted
10 the public utility.

11 6. Except as provided in subsection 7, whenever an application for
12 an increased rate, fare or charge for, or classification, regulation, dis-
13 continuance, modification, restriction or practice involving service or
14 equipment has been filed with the commission, a public utility shall not
15 submit another application until all pending applications for rate
16 increases submitted by that public utility have been decided unless, after
17 application and hearing the commission determines that a substantial
18 financial emergency would exist if the other application is not permitted
19 to be submitted sooner.

20 7. A public utility may not file an application to recover the
21 increased cost of purchased fuel, purchased power or natural gas pur-
22 chased for resale more often than once every 30 days.

23 SEC. 44. NRS 704.183 is hereby amended to read as follows:

24 704.183. 1. The commission may order an examination of the con-
25 dition and management of any public utility under its jurisdiction which
26 is a community antenna television system, telephone company, electric
27 light, heat and power company or a natural gas company.

28 2. The commission, *the agency* and the public utilities shall estab-
29 lish, and revise annually, a list of not less than 20 persons qualified to
30 conduct such examinations.

31 3. If an examination is ordered:

32 (a) The public utility shall select a person to conduct the examination
33 from such list; and

34 (b) The commission, *the agency*, the public utility and the person
35 selected shall determine the manner, scope and cost of the examination
36 and the content and form of reports issued at the conclusion of the
37 examination.

38 4. Except where the commission, after a hearing, determines that an
39 examination of a public utility is in the public interest, the commission
40 shall not order an examination if a prior examination has been conducted
41 within the preceding 5 years.

42 5. The costs of an examination are allowable expenses of the public
43 utility for the purpose of ratemaking.

44 SEC. 45. NRS 704.190 is hereby amended to read as follows:

45 704.190 1. Every public utility operating in this state shall, when-
46 ever an accident occurs in the conduct of its operation causing death, give
47 prompt notice thereof to the commission [.] and to the agency, in
48 such manner and within such time as the commission may prescribe. If
49 in its judgment the public interest requires it, the [commission may cause

1 an investigation to be made forthwith] *agency may conduct an investi-*
2 *gation of any accident, at [such place and in such manner as the com-*
3 *mission shall deem best.] a place and in a manner that the agency deems*
4 *best.*

5 2. Every such public utility shall report to the commission, at the
6 time, in the manner and on such forms as the commission [shall] by its
7 printed rules and regulations [prescribe,] *prescribes*, all accidents hap-
8 pening in this state and occurring in, on or about the premises, plant,
9 instrumentality or facility used by any such utility in the conduct of its
10 business.

11 3. The commission shall [promulgate and] adopt all reasonable
12 [rules and] regulations necessary for the administration and enforcement
13 of this section. [Such rules and] *The regulations [shall in any event]*
14 *must* require that all accidents required to be reported [herein shall]
15 *under this section* be reported to the commission at least once every
16 calendar month by such officer or officers of the utility as the commission
17 [shall direct.] *directs.*

18 4. The commission shall adopt and utilize all accident report forms,
19 which forms [shall] *must* be so designed as to provide a concise and
20 accurate report of the accident and which report [shall in any event]
21 *must* show the true cause of the accident. The accident report forms
22 adopted for the reporting of railroad accidents [shall] *must* be the same
23 in design as near as may be as the railroad accident report forms pro-
24 vided and used by the Interstate Commerce Commission.

25 5. If any accident reported to the commission [shall be] *is* reported
26 by the utility as being caused by or through the negligence of an employee
27 and thereafter such employee is absolved from such negligence by the
28 utility and found not to be responsible for the accident, [such fact shall]
29 *this fact must* be reported by the utility to the commission.

30 6. All accident reports [herein] required [shall] *under this section*
31 *must* be filed in the office of the commission and there preserved. [Not-
32 withstanding any other provisions of law, neither] *The commission shall*
33 *provide the agency with one copy of each report filed. Neither any*
34 *agency* made pursuant to any accident investigation
35 [commission] *agency* made pursuant to any accident investigation
36 made by it, [shall be] *is* open to public inspection or *may be* disclosed
37 to any person, except upon order of the commission, nor [shall] *may*
38 either or any of the reports, or any portion thereof, be admitted as evi-
39 dence or used for any purpose in any suit or action for damages growing
40 out of any matter mentioned in the accident report or report of any such
41 investigation.

42 SEC. 46. NRS 704.220 is hereby amended to read as follows:

43 704.220 1. The commission may, when necessary:

44 (a) Ascertain and prescribe for each kind of public utility adequate,
45 convenient and serviceable standards for the measurement of quality,
46 pressure, voltage or other conditions pertaining to the supply of the
47 product or service rendered by any public utility; and

48 (b) Prescribe reasonable regulations for the examination and testing
49 of such products or service and for the measurement thereof.

50 2. Any [consumer,] user or person served may have the quality or

1 quantity of the product or the character of any service rendered by any
2 public utility tested upon the payment of fees fixed by the [commission,
3 which fees, however, shall be paid by the public utility and repaid to the
4 complaining party if the quality or quantity of the product or the char-
5 acter of the service be found by the commission defective or insufficient
6 in a degree to justify the demand for testing; or the commission may
7 apportion the fees between the parties as justice may require.] agency.
8 *If the agency determines that the quality or quantity of the product or*
9 *the character of the service is defective or insufficient in a degree to jus-*
10 *tify the demand for testing, the agency shall petition the commission for*
11 *an order that the public utility pay the fees and that the commission*
12 *return the amount of the fees to the person who paid for the test. The*
13 *commission may apportion the fees between the parties as justice may*
14 *require.*

15 SEC. 47. NRS 704.240 is hereby amended to read as follows:

16 704.240 1. The [commission] agency may [, in its discretion,]
17 purchase such materials, apparatus and standard measuring instruments
18 for [such] examination and tests as it [may deem] deems necessary.

19 2. The [commission shall have the right and power to] agency
20 may enter upon any premises occupied by any public utility for the pur-
21 pose of making the examination and tests provided for in this chapter
22 and set up and use on [such] the premises any necessary apparatus and
23 appliances and occupy reasonable space therefor.

24 3. Any public utility refusing to allow [such] an examination to be
25 made [as herein provided shall be] pursuant to this section is subject to
26 the penalties prescribed in NRS 704.590.

27 SEC. 48. NRS 704.285 is hereby amended to read as follows:

28 704.285 1. The [commission,] agency, upon its own informa-
29 tion or knowledge or upon a complaint to the commission by any person,
30 firm, partnership or corporation that any public utility is acting in viola-
31 tion of the provisions of NRS 179.410 to 179.515, inclusive, or NRS
32 200.610 to 200.690, inclusive, or is knowingly allowing another person
33 to violate those provisions, shall proceed without notice to make an
34 investigation of the information or complaint.

35 2. If, after its investigation, the [commission] agency determines
36 that there is probable cause to believe that the utility is acting in viola-
37 tion of the provisions of NRS 179.410 to 179.515, inclusive, or NRS
38 200.610 to 200.690, inclusive, or allowing another to act in violation of
39 those provisions, [the] the agency shall petition the commission for
40 issuance to the utility of an order to cease and desist. The commission
41 shall forthwith issue [a cease and desist] this order to the utility. The
42 order is permanent unless the utility, within 20 days after receipt of the
43 order, files a written request for a hearing with the commission.

44 3. When a written request for a hearing is filed pursuant to sub-
45 section 2, the commission shall conduct the hearing pursuant to the pro-
46 visions of NRS 703.320 to 703.370, inclusive.

47 4. If, as the result of a hearing, it is determined that the utility is
48 acting in violation of the provisions of NRS 179.410 to 179.515, inclu-
49 sive, or NRS 200.610 to 200.690, inclusive, or allowing another to act
50 in violation of those provisions, the commission shall issue a permanent

1 **[cease and desist]** order to *cease and desist* and notify the district
2 attorney of the county where the violation occurred of its determination.

3 5. This section is applicable whether or not the utility involved is
4 required to have a certificate of public convenience and necessity from
5 the commission.

6 SEC. 49. NRS 704.300 is hereby amended to read as follows:

7 704.300 1. After an investigation **[and]** *by the agency and a hearing*,
8 which has been initiated either upon the commission's own motion,
9 or as the result of the filing of a formal application or complaint by the
10 department of transportation, the board of county commissioners of any
11 county, the town board or council of any town or municipality, or any
12 railroad company, the commission may determine, and order for the
13 safety of the traveling public:

14 (a) The elimination, alteration, addition or change of a highway
15 crossing or crossings over any railroad at grade, or above or below grade,
16 including its approaches and surface.

17 (b) Changes in the method of crossing at grade, or above or below
18 grade.

19 (c) The closing of a crossing and the substitution of another therefor.

20 (d) The removal of obstructions to the public view in approaching
21 any crossing.

22 (e) Such other details of use, construction and operation as may be
23 necessary to make grade-crossing elimination, changes and betterments
24 for the protection of the public and the prevention of accidents effective.

25 2. The commission shall order that the cost of any elimination,
26 removal, addition, change, alteration or betterment so ordered must be
27 divided and paid in such proportion by the state, county, town or municipa-
28 lity and the railroad or railroads interested as is provided according to
29 the circumstances occasioning the cost, in NRS 704.305.

30 3. All costs incurred by reason of any hearing held under this sec-
31 tion before the commission, including but not limited to publication of
32 notices, reporting, transcripts and rental of hearing room, must be appor-
33 tioned 50 percent to the governmental unit or units affected and 50 per-
34 cent to the railroad or railroads.

35 SEC. 50. NRS 704.330 is hereby amended to read as follows:

36 704.330 1. Every public utility owning, controlling, operating or
37 maintaining or having any contemplation of owning, controlling or oper-
38 ating any public utility shall, before beginning such operation or con-
39 tinuing operations or construction of any line, plant or system or any
40 extension of a line, plant or system within this state, obtain from the
41 commission a certificate that the present or future public convenience or
42 necessity requires or will require such continued operation or com-
43 mencement of operations or construction.

44 2. Nothing **[herein shall be construed as requiring a public utility**
45 **to secure such certificate]** *in this section requires a public utility to obtain*
46 *a certificate of public convenience and necessity* for any extension within
47 any town or city within which it **[shall theretofore have]** *has* lawfully
48 commenced operations or for an extension into territory either within or
49 without the city or town as long as **[such]** *the extension:*

1 (a) Is to serve a telephone toll station or stations to be located not
2 more than 10 miles from existing telephone facilities; or

3 (b) Remains within [service area] boundaries which have been estab-
4 lished by the commission as *service areas* for its railroad, line, plant or
5 system, and not then served by a public utility of like character.

6 3. Upon the granting of any certificate of public convenience, the
7 commission may make such order and prescribe such terms and condi-
8 tions for the location of lines, plants or systems to be constructed,
9 extended or affected as may be just and reasonable.

10 4. When a complaint has been filed with the commission alleging
11 that any utility is being operated without a certificate of public con-
12 venience and necessity as required by this section, or when the [com-
13 mission] agency has reason to believe that any provision of this section
14 is being violated, the [commission] agency shall investigate [such] its
15 operations. [and the commission shall have power,] if the agency deter-
16 mines that any provision of this section is being violated, it shall petition
17 the commission to issue to the owner or operator of the utility an order to
18 cease and desist. The commission may, after a hearing, [to] make its
19 order requiring the owner or operator of such utility to cease and desist
20 from any operation in violation of this section. The commission shall
21 enforce compliance with [such order under the powers vested in the
22 commission by law.] the order.

23 5. If any public utility in constructing or extending its line, plant
24 or system interferes or is about to interfere with the operation of the
25 line, plant or system of any other public utility already constructed, the
26 commission, on complaint of the public utility claiming to be injuriously
27 affected, after hearing, may make such an order prohibiting [such] con-
28 struction or extension, or prescribing such terms and conditions for the
29 location of the lines, plants or systems affected, as to it may seem just
30 and reasonable.

31 6. Whenever the commission, after a hearing upon [its own motion]
32 the petition of the agency or upon complaint, finds that there is or will
33 be a duplication of service by public utilities in any area, the commission
34 shall: [, in its discretion, either issue]

35 (a) Issue a certificate of public convenience and necessity assigning
36 specific territories to one or to each of [such utilities, or, by] the utilities;
37 or

38 (b) By certificate of public convenience and necessity, otherwise define
39 the conditions of rendering service and construction, extensions within
40 [such] those territories, and shall order the elimination of [such] dup-
41 lication, all upon such terms as are just and reasonable, having due
42 regard to due process of law and to all the rights of the respective parties
43 and to public convenience and necessity.

44 SEC. 51. NRS 704.440 is hereby amended to read as follows:

45 704.440 1. The [commission may, in its discretion,] agency may
46 investigate and ascertain the value of all property of every public utility
47 actually used and useful for the convenience of the public.

48 2. In making [such] an investigation the [commission] agency may

1 avail itself of all information contained in the assessment rolls of the vari-
2 ous counties and the public records and files of all state departments,
3 offices and commissions, and any other information obtainable.

4 SEC. 52. NRS 704.540 is hereby amended to read as follows:

5 704.540 1. Any party in interest being dissatisfied with an order of
6 the commission fixing any rate or rates, fares, charges, classifications,
7 joint rate or rates, or any order fixing any regulations, practices or serv-
8 ices, may within 90 days commence an action in the district court of the
9 proper county against the [commission] agency and other interested
10 parties as defendants to vacate and set aside [any such] the order on the
11 ground that the rate fixed in [such] the order is unlawful or unreason-
12 able, or that [any such] the regulation, practice or service fixed in [such]
13 the order is unreasonable.

14 2. The [commission and other] parties defendant shall file their
15 answers to the complaint within 30 days after [the service thereof,
16 whereupon such action shall be at issue and stand] its service. After the
17 filing by defendants, the action is at issue and stands ready for trial upon
18 20 days' notice to either party.

19 3. All actions brought under this section [shall] have precedence
20 over any civil cause of a different nature pending in [such] the court, and
21 the court shall always be deemed open for the trial thereof, and the
22 [same shall] action must be tried and determined as other civil actions.

23 4. Any party to [such] the action may introduce evidence in addi-
24 tion to the transcript of the evidence offered to the commission.

25 SEC. 53. NRS 704.550 is hereby amended to read as follows:

26 704.550 1. No injunction [shall] may issue suspending or staying
27 any order of the commission relating to rates, fares, charges, classifica-
28 tion, joint rate or rates, or any order fixing any regulations, except upon
29 application to the court or judge thereof, upon notice given the [com-
30 mission] agency, the affected public utility and all other parties to the
31 action within 20 days of the rendition of the order of the commission
32 complained of, and no such injunction [shall] may issue except upon
33 such notice being first given and a hearing of the petition therefor by the
34 court or judge thereof within 20 days thereafter. In any event all rates,
35 charges and regulations of the commission shall be deemed reasonable
36 and just until set aside by the court, and in all actions for injunction or
37 otherwise the burden of proof [shall be] is upon the party attacking or
38 resisting the order of the commission to show by clear and satisfactory
39 evidence that the order is unlawful, or unreasonable, as the case may be.

40 2. If an injunction is granted by the court and the order complained
41 of is one which permanently suspends a schedule of rates and charges
42 or a part thereof filed by any public utility pursuant to NRS 704.070
43 to 704.110, inclusive, or which otherwise prevents [such] the schedule
44 or part thereof from taking effect, the public utility complaining may
45 keep in effect or cause to be put into effect, as the case may be, the
46 suspended schedule or part thereof pending final determination by the
47 court having jurisdiction, by filing a bond with the court in such amount
48 as the court may fix, conditioned upon the refund to persons, firms,
49 companies or corporations entitled thereto of the amount of the excess

1 if the rate or rates so suspended are finally determined by the court to
2 be excessive.

3 3. Upon the final determination of the court that the rate or rates
4 in question are excessive and the public utility [shall have collected
5 such] *has collected the excessive rate or rates, [such] the public utility*
6 *shall compute and pay the excess or overpayment of the rate or rates*
7 *as to each individual ratepayer within 60 days from and after the entry*
8 *of final judgment of the court.*

9 4. Within 90 days after the entry of final judgment, the public utility
10 shall prepare and file with the commission a statement and report in
11 affidavit form stating that all ratepayers entitled to refunds have been
12 paid, and if there are ratepayers to whom payment has not or cannot
13 be made, the names, addresses and individual amounts of refund [shall
14 be listed in such] *must be listed in the report, and the public utility*
15 *shall pay the aggregate of all such unpaid refunds to the commission.*

16 5. The commission shall retain such aggregate refunds in the public
17 service commission regulatory fund subject to the claim of each rate-
18 payer for his [or its] share in the refund payment and shall pay all
19 such claims which are presented for payment within 2 years [from and]
20 after the date of the entry of final judgment of the court. All such
21 claimants [shall be required to] *must identify themselves to the satisfac-*
22 *tion of the commission before payment [shall] may be made.*

23 6. Any ratepayer [shall have] *has a right of action against the com-*
24 *mission in the event of a refusal of the commission to pay his [or its]*
25 *claim in the name of [such] the ratepayer appears in the report filed*
26 *by the [public] utility. Action against the commission must be brought*
27 *within 6 months [from and] after the refusal to pay the [same.] claim.*

28 7. The [commission] *agency shall investigate every case in which a*
29 *claim is presented to [it] the commission by a person claiming a refund*
30 *but whose name does not appear in the report of the public utility, and*
31 *if [such] the investigation results in a refusal by the public utility to pay*
32 *[such] the claim, then the claimant [shall have] has a right of action*
33 *against the public utility.*

34 8. Any unclaimed [moneys] *money remaining in the custody of the*
35 *commission at the expiration of the 2-year period [shall escheat]*
36 *escheats to the state.*

37 SEC. 54. NRS 704.590 is hereby amended to read as follows:

38 704.590 1. Any public utility or any officer, agent or employee of a
39 public utility who:

40 (a) Violates any of the provisions of this chapter or chapters 705,
41 708 and 711 of NRS;

42 (b) Violates any rule or regulation of the commission; [or]

43 (c) Fails, neglects or refuses to obey any order of the commission or
44 any order of a court requiring compliance with an order of the commis-
45 sion [.] ;

46 (d) *Willfully fails or refuses to fill out and return any blanks as*
47 *required by this chapter;*

48 (e) *Willfully fails or refuses to answer any questions therein pro-*
49 *pounded;*

50 (f) *Knowingly or willfully gives a false answer to any of the questions;*

1 (g) *Evades the answer to any of the questions when the fact inquired*
2 *of is within his knowledge; or*

3 (h) *Upon proper demand, willfully fails or refuses to exhibit to the*
4 *director or a designated employee of the agency any book, paper or*
5 *account of the public utility which is in his possession or under his con-*
6 *trol,*

7 *is liable for a civil penalty not to exceed \$1,000 per day for each day of*
8 *the violation and not to exceed \$100,000 for any related series of vio-*
9 *lations.*

10 2. The amount of any civil penalty to be imposed pursuant to this
11 [section, and the propriety of any compromise of a penalty, shall] *sec-*
12 *tion must be determined by a court of competent jurisdiction upon the*
13 *complaint of the [commission.*

14 3. Subject to the approval of the court, any civil penalty may be
15 compromised by the commission. In determining the amount of the pen-
16 alty, or the amount agreed upon in compromise, the appropriateness of
17 the penalty to the size of the business of the person charged, the gravity
18 of the violation and the good faith of the person charged in attempting
19 to achieve compliance, after notification of a violation, shall be con-
20 sidered.

21 4. Any penalty assessed pursuant to this section is not a cost of
22 service by the public utility and shall not be included in any new applica-
23 tion by a public utility for a rate adjustment or rate increase.] :

24 (a) *Commission for a violation of paragraphs (a), (b) or (c) of sub-*
25 *section 1.*

26 (b) *Agency for a violation of paragraphs (d) to (h), inclusive, of sub-*
27 *section 1.*

28 SEC. 55. NRS 704.600 is hereby amended to read as follows:

29 704.600 [Any officer, agent or employee of any public utility who
30 shall:

31 1. Willfully fail or refuse to fill out and return any blanks as
32 required by this chapter; or

33 2. Willfully fail or refuse to answer any questions therein pro-
34 pounded; or

35 3. Knowingly or willfully give a false answer to any such ques-
36 tions; or

37 4. Evade the answer to any such question where the fact inquired of
38 is within his knowledge; or

39 5. Upon the proper demand, willfully fail or refuse to exhibit to the
40 commission or any commissioners, or any person also authorized to
41 examine the same, any book, paper or account of such public utility
42 which is in his possession or under his control, shall be subject to the
43 penalty prescribed in NRS 704.590.]

44 1. *Subject to the approval of the court, the commission or agency,*
45 *whichever brought the action for recovery, may compromise any penalty*
46 *assessed pursuant to this chapter.*

47 2. *In determining the amount of the penalty, or the amount agreed*
48 *upon in compromise, the appropriateness of the penalty to the size of the*
49 *business of the person charged, the gravity of the violation and the good*

1 *faith of the person charged in attempting to achieve compliance, after*
2 *notification of a violation, must be considered.*

3 3. *Any penalty assessed pursuant to this section is not a cost of*
4 *service by the public utility and must not be included in any new appli-*
5 *cation by a public utility for a rate adjustment or rate increase.*

6 SEC. 56. NRS 704.643 is hereby amended to read as follows:

7 704.643 1. No certificate of public convenience and necessity issued
8 in accordance with the terms of NRS 704.010 to 704.810, inclusive, is
9 either a franchise or irrevocable.

10 2. At any time, for good and sufficient cause, the commission may,
11 after investigation and recommendation of the agency and upon 5 days'
12 written notice to the grantee, suspend any certificate of public conven-
13 ience and necessity for a period not to exceed 60 days.

14 3. Upon receipt of a written complaint or [upon its own motion,]
15 petition by the agency, the commission may [.] for good and suffi-
16 cient cause, after [investigation and] hearing, revoke any certificate of
17 public convenience and necessity. If service of the notice of revocation
18 proceedings cannot be made upon the grantee, or if the commission
19 receives a written relinquishment from the grantee of his interest in the
20 certificate of public convenience and necessity, the commission may
21 revoke [such] the certificate of public convenience and necessity without
22 hearing.

23 4. The proceedings thereafter shall be governed by the provisions
24 of NRS 704.540 to 704.580, inclusive [.] , and section 40 of this act.

25 SEC. 57. NRS 704.660 is hereby amended to read as follows:

26 704.660 1. Any public utility which furnishes, for compensation,
27 any water for domestic purposes shall furnish each city, town, village
28 or hamlet which it serves with a reasonably adequate supply of water at
29 reasonable pressure for fire protection and at reasonable rates, all to be
30 fixed and determined by the commission.

31 2. The duty to furnish a reasonably adequate supply of water pro-
32 vided for in subsection 1 includes the laying of mains with all necessary
33 connections for the proper delivery of the water for fire protection and
34 also the installing of appliances to assure a reasonably sufficient pressure
35 for fire protection.

36 3. The commission may fix and determine reasonable rates and pre-
37 scribe all installations and appliances adequate for the proper utilization
38 and delivery of water for fire protection. The commission may adopt
39 regulations and practices to be followed by a utility in furnishing water
40 for fire protection, and has complete jurisdiction of all questions aris-
41 ing under the provisions of this section.

42 4. All proceedings under this section must be conducted pursuant
43 to NRS 703.320 to 703.370, inclusive, and [704.010] 704.020 to 704.-
44 640, inclusive. All violations of any order made by the commission under
45 the provisions of this section are subject to the penalties for like viola-
46 tions of the provisions of NRS [704.010] 704.020 to 704.640, inclusive.

47 5. This section applies to and governs all public utilities furnishing
48 water for domestic use on March 26, 1913, unless otherwise expressly
49 provided in the charters, franchises or permits under which those utilities
50 are acting. Each public utility which supplies water for domestic uses

1 after March 26, 1913, is subject to the provisions of this section, regard-
2 less of any conditions to the contrary in any charter, franchise or permit
3 of whatever character granted by any county, city, town, village or
4 hamlet within this state, or of any charter, franchise or permit granted
5 by any authority outside this state.

6 SEC. 58. NRS 704.679 is hereby amended to read as follows:

7 704.679 1. The [commission shall] *agency must* be furnished a
8 copy of each application to any city, town, county or any planning
9 commission for new subdivisions or other land development projects
10 which require a water supply or connection with a sewer system. Filing
11 of each application with the [commission shall] *agency must* be made
12 within 48 hours of the filing with the appropriate city, town or county.
13 [level of government. The commission shall thereupon review such]
14 *The agency shall review the application and conduct an investigation, if*
15 *deemed necessary, to determine the continuity and adequacy of [sub-*
16 *ject] the water supply or sewer service. The agency shall report to the*
17 *commission at a scheduled meeting its recommendations for approval*
18 *or disapproval of the application.* Final approval of applications by any
19 [such local governmental entity shall] *local government may* not be
20 granted [unless and] until approval in writing has been given by the
21 commission.

22 2. The [commission] *agency* shall collect a fee not to exceed \$200,
23 which [fee shall] *must* be used to defray the cost of conducting any
24 investigation under the provisions of subsection 1.

25 3. The provisions of subsections 1 and 2 [shall] *do* not apply in
26 any case where:

27 (a) The person to furnish the water supply or sewer service has
28 already been granted a certificate of public convenience and necessity by
29 the commission to serve the area described in the application.

30 (b) Any county, municipality or other form of local government,
31 including but not limited to districts formed under the provisions of
32 chapter 318 of NRS, will furnish the water supply or sewer service to the
33 area described in the application.

34 SEC. 59. NRS 704.885 is hereby amended to read as follows:

35 704.885 1. The parties to a permit proceeding include:

36 (a) The applicant.

37 (b) The state environmental commission created pursuant to NRS
38 445.451.

39 (c) Each local government entitled to receive service of a copy of the
40 application under subsection 3 of NRS 704.870, if it has filed with the
41 commission a notice of intervention as a party, within 45 days after
42 the date it was served with a copy of the application.

43 (d) Any person residing in a local government entitled to receive
44 service of a copy of the application under subsection 3 of NRS 704.870,
45 if [such a] *that* person has petitioned the commission for leave to inter-
46 vene as a party within 45 days after the date of the published notice and
47 if [such] *the* petition has been granted by the commission for good
48 cause shown.

49 (e) Any domestic nonprofit corporation or association, formed in
50 whole or in part to promote conservation of natural beauty, to protect the

1 environment, personal health or other biological values, to preserve his-
2 torical sites, to promote consumer interests, to represent commercial and
3 industrial groups, or to promote the orderly development of the areas in
4 which the facility is to be located, if it has filed with the commission a
5 notice of intent to be a party within 45 days after the date of the pub-
6 lished notice.

7 (f) *The agency.*

8 2. Any person may make a limited appearance in the proceeding by
9 filing a statement of position within 45 days after the date of the pub-
10 lished notice. A statement filed by a person making a limited appearance
11 becomes part of the record. No person making a limited appearance
12 has the right to present oral testimony or cross-examine witnesses.

13 3. The commission may, for good cause shown, grant a petition for
14 leave to intervene as a party to participate in subsequent phases of the
15 proceeding, filed by a municipality, government agency, person or orga-
16 nization who is identified in paragraph (b), (c), (d) or (e) of subsection
17 1, but who failed to file a timely notice of intervention or petition for
18 leave to intervene, as the case may be.

19 SEC. 60. NRS 704.895 is hereby amended to read as follows:

20 704.895 1. Any party aggrieved by any order issued on an applica-
21 tion for a permit may apply for a rehearing within 15 days after issuance
22 of the order. Any party aggrieved by the final order of the commission
23 on rehearing may obtain judicial review thereof by filing of a complaint
24 in a district court *against interested parties* within 30 days after the
25 issuance of such final order. Upon [receipt of such] *receiving notice of*
26 *the* complaint, the commission shall forthwith deliver to the court a copy
27 of the written transcript of the record of the proceeding before it and
28 a copy of its decision and opinion entered therein, which shall constitute
29 the record on judicial review.

30 2. The grounds for and the scope for review of the court [shall be]
31 *are* limited to whether the opinion and order of the commission is:

32 (a) In conformity with the constitution and the laws of the State of
33 Nevada and of the United States;

34 (b) Supported by substantial evidence in the record;

35 (c) Made in accordance with the procedures set forth in NRS 704.-
36 820 to 704.900, inclusive, or established order, rule or regulation of
37 the commission; and

38 (d) Arbitrary, capricious or an abuse of discretion.

39 3. *The commission may not be made a party to, nor may it appear*
40 *in, any action brought under this section, nor may the commission appear*
41 *in an appeal therefrom.*

42 SEC. 61. Chapter 705 of NRS is hereby amended by adding thereto
43 a new section which shall read as follows:

44 1. *The agency shall conduct such investigations or surveillance, keep*
45 *such records, require such reports, make such inspections, and perform*
46 *such other duties as may be necessary to enforce the commission's regula-*
47 *tions governing passenger and freight operations by railroads in the State*
48 *of Nevada.*

1 2. The agency may engage in activities and programs for railroad
2 safety pursuant to an agreement with the United States Secretary of Trans-
3 portation.

4 3. The commission shall cooperate with the agency for the purpose
5 of applying for federal grants to aid programs and activities carried out
6 under this section. All such grants received must be deposited in the state
7 treasury for credit to the special revenue fund for the utility customers'
8 representative agency.

9 SEC. 62. Chapter 706 of NRS is hereby amended by adding thereto
10 the provisions set forth as sections 63 to 66, inclusive, of this act.

11 SEC. 63. The agency may examine, at any time during business hours,
12 the books, papers and records of any common, contract or private
13 motor carrier doing business in this state. The agency may examine in
14 other states the books, papers and records that are not maintained in this
15 state. Upon application by the agency, the commission may require by
16 subpoena the production inside this state of books, papers and records that
17 are not maintained in this state.

18 SEC. 64. 1. Within 30 days after the filing of any notice of changes
19 to a schedule or any new schedule, the commission shall determine
20 whether to:

21 (a) Dispense with a hearing pursuant to subsection 4 of NRS 706.321;

22 (b) Suspend the schedule or defer the use of the rate, fare, charge,
23 classification, regulation, discontinuance, modification, restriction or prac-
24 tice pursuant to subsection 2 of NRS 706.326; or

25 (c) Approve the changes to the schedule or the new schedule.

26 2. The determinations must be made at a regular meeting of the com-
27 mission or at a hearing specially convened for the purpose of making the
28 determinations.

29 3. The agency shall review the proposed changes to the schedule or
30 the new schedule and shall, at the meeting or hearing held pursuant to
31 this section, report to the commission the nature and the effects of the
32 changes or new schedule. The agency may make recommendations
33 as to whether the tariff filing should be accepted as filed, modified pur-
34 suant to agreement with the applicant, suspended for further review, or
35 suspended and set for hearing.

36 SEC. 65. 1. Whenever a motor carrier or broker files with the com-
37 mission an application for issuance, modification or transfer of a certifi-
38 cate of public convenience and necessity or permit to be a contract
39 carrier, the agency shall investigate the effect that the proposed services
40 would have on other authorized facilities in the territory for which the
41 certificate is sought, the public convenience and necessity to be accorded
42 by the service offered by the applicant, and the fitness, willingness and
43 ability of the applicant to perform the services of a motor carrier or
44 broker.

45 2. Within 30 days after the filing of the application, or a longer
46 period if approved by the commission, the agency shall report to the
47 commission the results of its investigation. The report must be made
48 at a regular meeting of the commission. If the matter of the application

1 *is set for hearing, the report may be submitted in writing at or before the*
2 *time set for hearing.*

3 SEC. 66. *The commission may not be made a party to, nor may it*
4 *appear in, any action brought under NRS 706.706 to 706.726, inclusive,*
5 *nor may the commission appear in an appeal therefrom.*

6 SEC. 67. NRS 706.151 is hereby amended to read as follows:

7 706.151 1. It is hereby declared to be the purpose and policy of
8 the legislature in enacting this chapter:

9 (a) Except to the extent otherwise provided in NRS 706.881 to 706.-
10 885, inclusive, to confer upon the commission the power [and author-
11 ity] and to make it the duty of the commission to [supervise and]
12 regulate common and contract motor carriers and brokers, and to regu-
13 late for licensing purposes private motor carriers of property when used
14 for private commercial enterprises on the highways of this state, and to
15 confer upon the department of motor vehicles the power and authority
16 to license all motor carriers [.] and to make it the duty of the agency and
17 the department to enforce the provisions of this chapter and the regula-
18 tions adopted by the commission pursuant to it, so as to relieve the exist-
19 ing and all future undue burdens on [such] the highways arising by
20 reason for the use of [such] the highways by vehicles in a gainful
21 occupation thereon;

22 (b) To provide for reasonable compensation for the use of [such]
23 the highways in [such] gainful occupation, and enable the State of
24 Nevada, by a utilization of the license fees, to provide more fully for the
25 proper construction, maintenance and repair thereof, and thereby pro-
26 tect the safety and welfare of the traveling and shipping public in their
27 use of the highways; and

28 (c) To provide for fair and impartial regulation, to promote safe,
29 adequate, economical and efficient service and foster sound economic
30 conditions in motor transportation, and to encourage the establishment
31 and maintenance of reasonable charges for such transportation [serv-
32 ices,] without unjust discrimination, undue preferences or advantages,
33 or unfair or destructive competitive practices.

34 2. All of the provisions of this chapter [shall] *must* be administered
35 and enforced with a view to carrying out the declaration of policy con-
36 tained in subsection 1.

37 SEC. 68. NRS 706.166 is hereby amended to read as follows:

38 706.166 The commission shall:

39 1. [Supervise and regulate] *Regulate* every common and contract
40 motor carrier and broker in this state in all matters affecting the relation-
41 ship between [such] the carriers and brokers and the traveling and
42 shipping public over and along the highways.

43 2. Regulate for licensing purposes private motor carriers of property
44 when used for private commercial enterprises on the highways.

45 3. To [implement] *carry out* the policies and objectives expressed
46 in paragraph (c) of subsection 1 of NRS 706.151, adopt regulations
47 providing for agreements between two or more motor carriers relating to:

48 (a) Fares;

49 (b) Rates;

50 (c) Classifications;

- 1 (d) Divisions;
- 2 (e) Allowances; and
- 3 (f) Charges, including charges between carriers and compensation
- 4 paid or received for the use of facilities and equipment.
- 5 **[Such regulations]** *Regulations* may not provide for collective agree-
- 6 ments which preclude the unrestrained right of any party to take free and
- 7 independent action.

8 SEC. 69. NRS 706.231 is hereby amended to read as follows:

9 706.231 Sheriffs and all other peace officers and traffic officers of
10 this state are charged with the duty, without further compensation, of
11 assisting in the enforcement of this chapter. They shall make arrests for
12 this purpose when requested by an authorized agent of the department,
13 **[commission,]** *agency* or other competent authority.

14 SEC. 70. NRS 706.246 is hereby amended to read as follows:

15 706.246 1. The provisions of all laws pertaining to the safe opera-
16 tion of vehicles upon the highways of this state are hereby declared
17 applicable to all vehicles coming within the terms of this chapter.

18 2. **[No]** *A common or contract motor carrier shall not permit or*
19 *require a driver to drive or tow any vehicle revealed by inspection or*
20 *operation to be in such condition that its operation would be hazardous*
21 *or likely to result in a breakdown of the vehicle, [nor shall any driver]*
22 *and a driver shall not drive or tow any vehicle which by reason of its*
23 *mechanical condition is so imminently hazardous to operate as to be*
24 *likely to cause an accident or a breakdown of the vehicle. If, while any*
25 *vehicle is being operated on a highway, it is discovered to be in such*
26 *unsafe condition, it [shall] may be continued in operation only to the*
27 *nearest place where repairs can safely be effected, and even such opera-*
28 *tions [shall] may be conducted only if it is less hazardous to the public*
29 *than permitting the vehicle to remain on the highway.*

30 3. Notwithstanding the provisions of this section and NRS 484.697,
31 **[no]** *a common or contract motor carrier [and no] or private motor*
32 *carrier subject to the provisions of subsection 2 of NRS 706.776 shall*
33 *not permit or require a driver to drive or tow, [nor shall any driver]*
34 *and a driver shall not drive or tow, any vehicle which by reason of its*
35 *mechanical condition is so imminently hazardous to operate as to be*
36 *likely to cause an accident or a breakdown and which vehicle has been*
37 *declared "out of service" by an authorized employee of the [commis-*
38 *sion.] agency or the department. When the repairs have been made, the*
39 *carrier shall so certify to the [commission] agency which declared the*
40 *vehicle "out of service" in accordance with the requirements of the com-*
41 *mission.*

42 SEC. 71. NRS 706.251 is hereby amended to read as follows:

43 706.251 1. Every person operating a vehicle used by any motor
44 carrier under the jurisdiction of the public service commission shall
45 forthwith report each accident occurring on the public highway, wherein
46 the vehicle may have injured the person or property of some person
47 other than the person or persons or property carried by the vehicle, to
48 the sheriff or other peace officer of the county where the accident
49 occurred. If the accident immediately or proximately causes death, the
50 person in charge of the vehicle, or any officer investigating the accident,

1 shall furnish to the [commission such] department a detailed report
2 thereof as required by the [commission.] department. *If in its judgment*
3 *the public interest requires it, the department may make an investigation*
4 *of any accident, at such place and in such a manner as the department*
5 *deems best.*

6 2. All accident reports required in this section [shall] *must* be filed
7 in the office of the commission and there preserved. An accident report
8 made as required by this chapter, or any report of the commission made
9 pursuant to any accident investigation made by it, is not open to public
10 inspection and shall not be disclosed to any person, except upon order
11 of the commission. Such reports shall not be admitted as evidence or
12 used for any purpose in any action for damages growing out of any
13 matter mentioned in the accident report or report of any such investiga-
14 tion.

15 SEC. 72. NRS 706.266 is hereby amended to read as follows:

16 706.266 1. Except as provided in NRS 706.521 and 706.526, it is
17 unlawful for any common, contract or private motor carrier to operate
18 as a motor carrier of intrastate, or interstate or foreign commerce within
19 or through this state without having furnished the commission the fol-
20 lowing:

21 (a) In the case of interstate or foreign commerce:

22 (1) Good and sufficient evidence satisfactory to the commission
23 that it has complied with all of the provisions of the Federal Motor
24 Carrier Act of [1935,] 1978, as amended, and the [motor carrier
25 safety rules and] regulations of the Department of Transportation *for*
26 *safety of motor carriers*, as amended.

27 (2) A current copy of its certificate, permits or exemptions which
28 have been issued by the Interstate Commerce Commission.

29 (3) Such other information as the commission may request.

30 (b) In the case of intrastate commerce:

31 (1) Where a person does not hold a certificate of convenience and
32 necessity or a permit to operate as a common or contract motor carrier
33 in the State of Nevada an affidavit certifying that the person intends to
34 operate as a private carrier.

35 (2) Such other information as the commission may request.

36 2. [The commission may waive any or all of such requirements.

37 3.] Upon being notified by the commission that all requirements
38 have been complied with and upon receipt of an application and the
39 payment of a license fee, or upon being satisfied that such fee is secured,
40 the department shall issue such intrastate or interstate or foreign motor
41 carrier identifying devices indicating the type of carriage such motor
42 carrier may perform in this state.

43 3. *The department shall enforce regulations issued by the commis-*
44 *sion under this section, and shall maintain current records of the evi-*
45 *dence, certificates, permits, exemptions and other information required*
46 *by the commission to be furnished.*

47 SEC. 73. NRS 706.267 is hereby amended to read as follows:

48 706.267 1. The [commission] department shall collect from all
49 motor carriers required by NRS 706.266 to furnish the [commission]

1 *department* any certificate, permit or exemption document issued by the
2 Interstate Commerce Commission, a fee for the registration of [such]
3 *those* documents with the [commission.] *department*.

4 2. [Such fee shall] *The fee must* not exceed the following amounts
5 for the following documents:

- 6 (a) For a certificate or permit, \$25.
- 7 (b) For each duplicate of such certificate or permit, \$10.
- 8 (c) For each exemption document, \$25.
- 9 (d) For each additional required document, \$10.

10 SEC. 74. NRS 706.291 is hereby amended to read as follows:

11 706.291 1. The commission shall require every common and con-
12 tract motor carrier, within such time and in such amounts as the com-
13 mission may designate, to file with the [commission] *agency* in a form
14 required and approved by the commission a liability insurance policy,
15 or a certificate of insurance in lieu thereof, or a bond of a surety and
16 bonding company, or other surety, in such reasonable sum as the com-
17 mission may deem necessary to protect adequately the interests of the
18 public.

19 2. [Such] *The* liability insurance policy or certificate, policy or
20 bond of a surety and bonding company or other surety [shall] *must* bind
21 the obligors thereunder to pay the compensation for injuries to persons
22 or for loss or damage to property resulting from the negligent operation
23 of [such] *the* carrier.

24 3. *The agency shall maintain current records of all insurance policies,*
25 *certificates and bonds required to be filed by this section.*

26 4. *Upon receipt of notice that any such policy, certificate or bond*
27 *of any common or contract motor carrier will be canceled, the agency*
28 *shall report the prospective cancellation to the commission and request*
29 *an order suspending the operations of the motor carrier effective on the*
30 *date of cancellation.*

31 SEC. 75. NRS 706.321 is hereby amended to read as follows:

32 706.321 1. Every common or contract motor carrier shall file with
33 the commission:

34 (a) Within a time to be fixed by the commission, schedules and
35 tariffs which [shall be] *are* open to public inspection, showing all rates,
36 fares and charges which [such] *the* carrier has established and which
37 are in force at the time for any service performed in connection therewith
38 by any such carrier controlled and operated by it.

39 (b) In connection with and as part of such schedule, all rules [and]
40 *or* regulations that in any manner affect the rates or fares charged or to
41 be charged for any service.

42 2. No changes [shall] *may* be made in any schedule, including
43 schedules of joint rates, or in the rules and regulations affecting any and
44 all rates or charges, except upon 30 days' notice to the commission, and
45 all such changes [shall] *must* be plainly indicated on any new schedules
46 filed in lieu thereof 30 days [prior to] *before* the time the [same]
47 *schedules* are to take effect. The commission, upon application of any
48 such carrier, may prescribe a shorter time within which a change other
49 than a rate increase may be made. The 30 days' notice is not applicable
50 when any such carrier gives written notice to the commission 10 days

1 prior to the effective date of its participation in a tariff bureau's rates
2 and tariffs, [provided such] *if the rates and tariffs have been previously*
3 *filed with and approved by the commission.*

4 3. The [commission] *agency may at any time* [, upon its own
5 *motion,]* investigate any of the rates, fares, charges, rules, regulations,
6 practices and services, and, *upon petition by the agency and after hearing,*
7 *the commission may by order* [,] *make such changes as may be just and*
8 *reasonable, [the same] as if a formal complaint had been made.*

9 4. The commission, in its discretion, may dispense with the hearing
10 on any change requested in rates, fares, charges, rules, regulations, prac-
11 tices or service, if, upon the expiration of the time fixed in the notice
12 thereof, no protest against the granting of the change requested in rates,
13 fares, charges, rules, regulations, practices or service has been filed by
14 *the agency or by or on behalf of any interested person.*

15 5. All rates, fares, charges, classifications and joint rates, rules,
16 regulations, practices and services fixed by the commission [shall] *must*
17 *be in force, and [shall be] are prima facie lawful, from the date of the*
18 *order until changed or modified by the commission, or in pursuance of*
19 *NRS 706.706 to 706.726, inclusive.*

20 6. All regulations, practices and service prescribed by the commis-
21 sion [shall be enforced and shall be] *must be enforced and are prima*
22 *facie reasonable unless suspended or found otherwise in an action*
23 *brought for the purpose, pursuant to the provisions of NRS 706.706 to*
24 *706.726, inclusive, or until changed or modified by the commission*
25 *itself upon satisfactory showing made.*

26 SEC. 76. NRS 706.326 is hereby amended to read as follows:

27 706.326 1. Whenever there is filed with the commission any sched-
28 ular or tariff stating a new or revised individual or joint rate, fare or
29 charge, or any new or revised individual or joint regulation or practice
30 affecting any rate, fare or charge, or any schedule or tariff resulting in a
31 discontinuance, modification or restriction of service, the commission
32 [shall have, and it is hereby given, authority, either] *may, upon com-*
33 *plaint or upon its own motion without complaint, or upon request by*
34 *the agency, at once, and if it so orders, without answer or formal pleading*
35 *by the interested common or contract motor carrier, [to enter upon an*
36 *investigation or,] upon reasonable notice, [to] enter upon a hearing*
37 *concerning the propriety of [such] the rate, fare, charge, classification,*
38 *regulation, discontinuance, modification, restriction or practice.*

39 2. Pending [such] *an investigation or hearing and the decision*
40 *thereon, the commission, on its own motion or upon petition by the*
41 *agency, and upon delivering to the common or contract motor carrier*
42 *affected thereby a statement in writing of its reasons for such suspension,*
43 *may suspend the operation of such schedule or tariff and defer the use of*
44 *such rate, fare, charge, classification, regulation, discontinuance, modifi-*
45 *cation, restriction or practice, but not for a longer period than 150 days*
46 *beyond the time when such rate, fare, charge, classification, regulation,*
47 *discontinuance, modification, restriction or practice would otherwise go*
48 *into effect.*

49 3. After full investigation *and recommendation by the agency or*
50 *hearing, whether completed before or after the date upon which the*

1 rate, fare, charge, classification, regulation, discontinuance, modification,
2 restriction or practice is to go into effect, the commission may make such
3 order in reference to [such] the rate, fare, charge, classification, regula-
4 tion, discontinuance, modification, restriction or practice as would be
5 proper in a proceeding initiated after the rate, fare, charge, classifica-
6 tion, regulation, discontinuance, modification, restriction or practice has
7 become effective.

8 4. The commission shall determine whether a hearing [shall] *must*
9 be held when the proposed change in any schedule stating a new or
10 revised individual or joint rate, fare or charge, or any new or revised
11 individual or joint regulation or practice affecting any rate, fare or charge,
12 will result in an increase in annual gross revenue as certified by the appli-
13 cant of \$2,500 or less [.] , *except that, upon petition by the agency*
14 *the commission must upon reasonable notice enter upon a hearing con-*
15 *cerning the propriety of the rate, fare, charge, regulation or practice.* In
16 making [such] its determination the commission shall first consider all
17 timely written protests, [any presentation the staff of the commission may
18 desire to present.] *the agency's recommendation*, the application and
19 any other matters deemed relevant by the commission.

20 SEC. 77. NRS 706.451 is hereby amended to read as follows:

21 706.451 1. Each tow car owner or operator subject to the jurisdic-
22 tion of the commission shall, before commencing to operate or continu-
23 ing operation after July 1, 1971, and annually thereafter, pay to the
24 [commission] *agency* for each tow car operated, a fee of not more
25 than \$36.

26 2. The fee provided in this section [shall] *must* be paid on or before
27 January 1 of each year.

28 3. The initial fee [shall] *must* be reduced one-twelfth for each month
29 which has elapsed since the beginning of the calendar year [prior to July
30 1, 1971, for those tow cars lawfully operating on such date or prior to
31 the commencement of operation of each tow car commencing such opera-
32 tion after July 1, 1971.] *in which operation is begun.*

33 SEC. 78. NRS 706.457 is hereby amended to read as follows:

34 706.457 The commission may, *upon petition by the agency*, by
35 subpoena require any person [believed by it] *alleged by the agency* to be
36 subject to any of the provisions of NRS 706.011 to 706.791, inclusive,
37 who has not obtained a certificate of public convenience and necessity
38 or a permit issued in accordance with those sections, to appear before
39 it with all of his relevant books, papers and records and to testify con-
40 cerning the scope, nature and conduct of his business.

41 SEC. 79. NRS 706.471 is hereby amended to read as follows:

42 706.471 1. Each taxicab motor carrier shall, before commencing
43 [the] operation [defined in NRS 706.126] and annually thereafter, pay
44 to the [commission] *department* for each taxicab which it operates, a
45 fee of not more than \$75. [as determined by a regulation of the commis-
46 sion.]

47 2. The fee provided in this section [shall] *must* be paid on or before
48 January 1 of each year.

1 3. The initial fee [shall] *must* be reduced one-twelfth for each
2 month which has elapsed since the beginning of the calendar year in
3 which operation is begun.

4 SEC. 80. NRS 706.701 is hereby amended to read as follows:

5 706.701 1. No certificate of public convenience and necessity, per-
6 mit or license issued in accordance with the terms of NRS 706.011 to
7 706.791, inclusive, [shall be construed to be] *is* either a franchise or
8 irrevocable.

9 2. The commission may at any time, for good cause shown, after
10 investigation *and recommendation by the agency*, and upon 5 days'
11 written notice to the grantee, suspend any certificate, permit or license
12 for a period not to exceed 60 days.

13 3. Upon receipt of a written complaint or on [its own motion,]
14 *petition by the agency*, the commission may, *for good and sufficient*
15 *cause*, after [investigation and] hearing, revoke any certificate, permit
16 or license. If service of the notice provided in subsection 2 cannot be
17 made or if the grantee relinquishes his interest in the certificate, permit
18 or license by so notifying the commission in writing, the commission
19 may revoke [such] *the* certificate, permit or license without a hearing.

20 4. Any person aggrieved by the order of the commission revoking
21 [such] *a* certificate, permit or license may within 30 days commence an
22 action in the district court in and for Carson City against the commis-
23 sion to vacate and set aside [such] *the* order on the ground that [such]
24 *the* order is unlawful or unreasonable.

25 5. The proceedings thereafter [shall be] *are* governed by the pro-
26 visions of NRS 706.706 to 706.726, inclusive [.] , *and section 66 of*
27 *this act*.

28 SEC. 81. NRS 706.706 is hereby amended to read as follows:

29 706.706 1. Any party in interest being dissatisfied with an order
30 of the commission fixing any rate or rates, fares, charges, schedules,
31 tariffs, classifications, joint rate or rates, or any order fixing any regula-
32 tions, practices or services, may within 90 days commence an action
33 in the proper district court against the [commission] *agency* and other
34 interested parties as defendants to vacate and set aside [any such] *the*
35 order on the ground that the rate fixed in [such] *the* order is unlawful
36 or unreasonable, or that [any such] *the* regulation, practice or service
37 fixed in [such] *the* order is unreasonable.

38 2. The [commission and other] parties defendant shall file their
39 answers to the complaint within 30 days after [the service thereof,
40 whereupon such action shall be at issue and stand] *its service. After the*
41 *filing by defendants, the action is at issue and stands* ready for trial upon
42 20 days' notice to either party.

43 3. All actions brought under this section [shall] have precedence
44 over any civil cause of a different nature pending in such court, and the
45 court shall always be deemed open for the trial thereof, and the [same
46 shall] *action must* be tried and determined as other civil actions.

47 4. Any party to [such] *the* action may introduce evidence in addi-
48 tion to the transcript of the evidence offered to the commission.

49 SEC. 82. NRS 706.711 is hereby amended to read as follows:

1 706.711 1. A court of competent jurisdiction may issue an injunc-
2 tion suspending or staying any order of the commission relating to rates,
3 fares, tolls, charges, schedules, tariffs, classification, joint rate or rates,
4 or any order fixing any regulations, practices or services only if:

5 (a) The applicant has first given notice to the [commission] agency,
6 the affected carrier or broker, and all other parties to the action within
7 20 days after the rendition of the order of the commission complained
8 of; and

9 (b) The court has held a hearing of the petition within 20 days after
10 the notice to the commission was given.

11 The decision of the commission on each matter considered must be
12 deemed reasonable and just until set aside by the court, and in all actions
13 for injunction or otherwise the burden of proof is upon the party attack-
14 ing or resisting the order of the commission to show by clear and satis-
15 factory evidence that the order is unlawful, or unreasonable, as the
16 case may be.

17 2. If an injunction is granted by the court and the order complained
18 of is one which permanently suspends a schedule of rates and charges
19 or a part thereof filed by any motor carrier pursuant to NRS 706.321
20 to 706.346, inclusive, or which otherwise prevents the schedule or part
21 thereof from taking effect, the motor carrier complaining may keep in
22 effect or cause to be put into effect, as the case may be, the suspended
23 schedule or part thereof pending final determination by the court by
24 filing a bond with the court in such amount as the court may fix, con-
25 ditioned upon the refund to persons entitled thereto of the amount of
26 the excess if the rate or rates so suspended are finally determined by the
27 court to be excessive.

28 3. Upon the final determination of the court that the rate or rates in
29 question are excessive and the motor carrier has collected an excessive
30 rate or rates, the motor carrier shall compute and pay the excess or over-
31 payment of the rate or rates as to each person within 120 days after the
32 entry of final judgment of the court.

33 4. Within 150 days after the entry of final judgment, the motor
34 carrier shall prepare and file with the commission a statement and report
35 in affidavit form stating that all persons entitled to refunds have been
36 paid, and if there are persons to whom payment has not or cannot be
37 made, the names, addresses and individual amounts of refunds must be
38 listed in the report, and the motor carrier shall pay the aggregate of all
39 refunds to the commission.

40 5. The commission shall retain the refunds subject to the claim of
41 each person for his or its share in the refund payment and pay all those
42 claims which are presented for payment within 2 years after the date of
43 the entry of final judgment of the court. Each claimant must identify
44 himself to the satisfaction of the commission before payment may be
45 made.

46 6. Any person has a right of action against the commission in the
47 event of a refusal of the commission to pay his claim if his name appears
48 in the report filed by the motor carrier. Action against the commission
49 must be brought within 6 months after the refusal to pay the claim.

50 7. The [commission] agency shall investigate every case in which

1 a claim is presented to it by a person claiming a refund but whose name
2 does not appear in the report of the motor carrier, and if the investiga-
3 tion results in a refusal by the motor carrier to pay the claim, then the
4 claimant has a right of action against the motor carrier.

5 8. Any unclaimed money remaining in the custody of the commission
6 at the expiration of the 2-year period escheats to the state.

7 SEC. 83. NRS 706.761 is hereby amended to read as follows:

8 706.761 1. Any agent or person in charge of the books, accounts,
9 records, minutes or papers of any private, common or contract motor
10 carrier or broker who refuses or fails for a period of 30 days to furnish
11 the [commission] agency or department with any report required by
12 either or who fails or refuses to permit any person authorized by the
13 [commission] agency or department to inspect such books, accounts,
14 records, minutes or papers on behalf of the [commission] agency or
15 department is liable to a penalty in a sum of not less than \$300 nor
16 more than \$500. The penalty may be recovered in a civil action upon
17 the complaint of the [commission] agency or department in any court
18 of competent jurisdiction.

19 2. Each day's refusal or failure is a separate offense, and is subject
20 to the penalty prescribed in this section.

21 SEC. 84. NRS 706.776 is hereby amended to read as follows:

22 706.776 1. [No] An owner or operator of a motor vehicle to
23 which any provisions of NRS 706.011 to 706.861, inclusive, apply carry-
24 ing passengers or property on any highway in the State of Nevada shall
25 not require, suffer or permit any driver of [such] the motor vehicle to
26 drive [any such motor vehicle] it in any one period longer than the
27 time permitted for such period by the order of the commission.

28 2. The commission [shall have authority to] may extend to private
29 carriers of explosives and other dangerous articles, as defined by the
30 rules and regulations of the Department of Transportation, the safety
31 rules and regulations applying to common or contract carriers of such
32 articles.

33 3. The labor commissioner, peace officers, and authorized personnel
34 of the [commission] agency and the department shall enforce the pro-
35 visions of this section.

36 4. Any violation of this section is a misdemeanor.

37 SEC. 85. NRS 706.856 is hereby amended to read as follows:

38 706.856 1. The owner or operator of a vehicle coming within the
39 provisions of the Interstate Highway User Fee Apportionment Act may,
40 in lieu of registering it pursuant to the provisions of NRS 706.836 to
41 706.851, inclusive, apply for and obtain a 48-hour temporary registration
42 upon payment of a fee of \$2.50, which fee is in lieu of all other fees and
43 service charges due pursuant to the provisions of NRS 706.801 to 706.-
44 861, inclusive.

45 2. A 48-hour temporary registration authorizes operation over the
46 highways of this state for a period of not more than 48 consecutive hours.

47 3. Any person exercising this option shall purchase the license at the
48 first available vender in the State of Nevada. The operator of a vehicle
49 obtaining a 48-hour temporary registration from a vendor elects this
50 option for this vehicle by virtue of the purchase. Any 48-hour period of

1 time for which a 48-hour temporary registration was not purchased
2 **[shall] must** be billed for 48-hour temporary registration on an audit
3 until the vehicle is licensed under NRS 706.836 to 706.851, inclusive.

4 4. Every person electing to pay fees on a 48-hour temporary regis-
5 tration basis shall keep a written record of every trip made into or
6 through this state and each 48-hour temporary registration so purchased,
7 which record **[shall] must** be open to inspection by any agent or
8 employee of the **[commission or the]** department. The **[commission and**
9 **the]** department may require any person to submit such periodic reports
10 and supporting data as they may deem necessary with respect to trips
11 made into or through this state.

12 5. Upon request, the department shall allow credit for the period
13 for which temporary registrations were purchased if the applicant applies
14 and prorates his vehicle registration within 60 days after the purchase
15 of the first temporary registration within a licensing year.

16 6. As a condition for exercising the privilege of reciprocity under
17 the provisions of NRS 482.390, the department may:

18 (a) Require the operator of vehicles eligible for reciprocity to file
19 annually an application listing the vehicles to be operated in this state;

20 (b) Issue identification devices for vehicles so listed;

21 (c) Collect an administrative fee of \$2 per vehicle identified; and

22 (d) Collect the 48-hour temporary registration fee from the owner
23 or operator of vehicles not so identified.

24 7. The provisions of this section do not apply to interchange trailers
25 if they are entitled to operate without payment of additional fees accord-
26 ing to the regulations of the department.

27 **SEC. 86.** Chapter 708 of NRS is hereby amended by adding thereto
28 a new section which shall read as follows:

29 1. *The agency shall keep such records, require such reports, make*
30 *such inspections, and perform such other duties as are necessary to*
31 *enforce standards of pipeline safety adopted by the commission.*

32 2. *The agency may undertake programs for pipeline safety under*
33 *agreements with the United States Secretary of Transportation.*

34 3. *The commission shall cooperate with the agency for the purpose*
35 *of applying for federal grants to aid programs carried out under this*
36 *section. All such grants received must be deposited in the state treasury*
37 *for credit to the special revenue fund of the utility customers' representa-*
38 *tive agency.*

39 **SEC. 87.** NRS 708.035 is hereby amended to read as follows:

40 708.035 1. **[Upon the filing of an application for a certificate of**
41 **public convenience and necessity, the commission shall fix a time and**
42 **place for hearing thereon, and shall proceed in the manner according**
43 **to the provisions of the laws of this state made applicable thereto.]**
44 *Whenever an oil pipeline carrier files with the commission an application*
45 *for issuance, modification or transfer of a certificate of public conveni-*
46 *ence and necessity or permit to be an oil pipeline carrier, the agency*
47 *shall investigate the effect that the proposed services would have on*
48 *other authorized facilities in the territory for which the certificate is*
49 *sought, the public convenience and necessity to be accorded by the service*

1 offered by the applicant, and the fitness, willingness and ability of the
2 applicant to perform the services of an oil pipeline carrier.

3 2. Within 30 days after the filing of the application, or a longer
4 period if approved by the commission, the agency shall report to the
5 commission the results of its investigation. The report must be made at
6 a regular meeting of the commission. If the matter of the application is
7 set for hearing, the report may be submitted in writing at or before the
8 time set for hearing.

9 [2.] 3. Before granting a certificate of public convenience and
10 necessity to an applicant, the commission shall take into consideration:

11 (a) Other authorized facilities in the territory for which a certificate
12 is sought;

13 (b) The public necessity and convenience to be accorded by the serv-
14 ice offered by such applicant; and

15 (c) Whether the applicant is fit, willing and able to perform the serv-
16 ices of a common carrier.

17 [3.] 4. The commission may, under such rules of procedure gov-
18 erning the application therefor as it may prescribe, issue a certificate
19 of public convenience and necessity to an oil pipeline carrier, or issue
20 it for the partial exercise only of the privilege sought, and may attach
21 to the exercise of the rights granted by such certificate such terms and
22 conditions as, in its judgment, the public convenience and necessity may
23 require.

24 5. The agency shall conduct an investigation concerning the applica-
25 tion and report the results of its investigation to the commission in the
26 manner provided by NRS 706.392.

27 6. The agency may make recommendations to the commission con-
28 cerning the application.

29 SEC. 88. NRS 708.080 is hereby amended to read as follows:

30 708.080 1. [Such common] Common carriers of crude oil or
31 petroleum shall make and publish their tariffs under such [rules and]
32 regulations as may be [prescribed] adopted by the commission.

33 2. The commission shall require such common carriers to make
34 reports, and the agency may investigate their books and records kept in
35 connection with such business, but no publicity [shall be given by the
36 commission] may be given by the agency to the reports as to the stock
37 of crude oil or petroleum on hand of any particular pipeline. In its dis-
38 cretion, the [commission] agency may make public the aggregate
39 amounts held by all the pipelines making such reports, and of their
40 aggregate storage capacity.

41 3. The commission [shall have the power and authority:] may:

42 (a) [To hear] Hear and determine complaints.

43 (b) [To require] Require attendance of witnesses and pay their
44 expenses.

45 (c) [To institute] Institute suits and sue out such writs and process
46 as may be necessary for the enforcement of its orders.

47 4. The agency shall enforce the provisions of this chapter and the
48 commission's regulations issued thereunder.

1 SEC. 89. NRS 711.120 is hereby amended to read as follows:

2 711.120 [The commission] 1. The agency shall from time to time
3 visit the places of business and other premises and examine the records
4 and facilities of all CATV companies to ascertain [if such] whether the
5 companies have complied with the [rules and] regulations and orders of
6 the commission.

7 2. If the agency finds that a CATV company has not complied with
8 a regulation or order of the commission, it may petition the commission
9 for appropriate relief.

10 SEC. 90. Chapter 712 of NRS is hereby amended by adding thereto
11 a new section which shall read as follows:

12 1. Whenever an application for a warehouse permit is filed, the
13 agency shall conduct an investigation concerning:

14 (a) The financial ability of the applicant to protect persons storing
15 property from loss or damage;

16 (b) Whether the applicant has sufficient assets, including working capi-
17 tal, to carry out the proposed service;

18 (c) Whether the applicant has sufficient experience in and knowledge of
19 warehouse storage of household goods and effects, and the commission's
20 rules and regulations governing the storage of household goods and
21 effects; and

22 (d) Whether the property to be used for storage of household goods
23 and effects is reasonably suitable for such purpose.

24 2. Within 30 days after the filing the agency shall make a report
25 of its investigation to the commission. The report must be made at a
26 regular meeting of the commission. If the matter of the application is set
27 for public hearing, the report may be submitted in writing at or before
28 the time set for hearing.

29 3. The agency may make recommendations to the commission con-
30 cerning the application.

31 SEC. 91. NRS 712.060 is hereby amended to read as follows:

32 712.060 The [commission or its agents] agency may:

33 1. Inspect any property proposed to be used for storage of house-
34 hold goods and effects to determine its suitability.

35 2. Examine the premises, books and records of any permitholder.

36 SEC. 92. NRS 712.080 is hereby amended to read as follows:

37 712.080 The provisions of NRS 706.701 to 706.726, inclusive, and
38 section 66 of this act, relating to revocation and suspension of certificates,
39 permits and licenses and judicial review thereof, [shall] apply to pro-
40 ceedings to suspend or revoke any permit issued under this chapter.

41 SEC. 93. NRS 481.023 is hereby amended to read as follows:

42 481.023 Except as otherwise provided therein, the department of
43 motor vehicles shall execute, administer and enforce, and perform the
44 functions and duties provided in:

45 1. Title 43 of NRS relating to vehicles.

46 2. Chapter 706 of NRS. [relating to licensing of motor vehicle
47 carriers and the use of public highways by such carriers.]

48 3. Chapter 366 of NRS relating to imposition and collection of taxes
49 on special fuels used for motor vehicles.

50 4. Chapter 233F relating to the state communications system.

1 SEC. 94. Chapter 482 of NRS is hereby amended by adding thereto
2 a new section which shall read as follows:

3 *The agency shall direct the state controller to transfer quarterly to the*
4 *public service commission regulatory fund 25 percent of all money col-*
5 *lected pursuant to NRS 706.536, and to transfer quarterly to the special*
6 *revenue fund of the utility customers' representative agency 75 percent*
7 *of all money collected pursuant to NRS 706.536.*

8 SEC. 95. NRS 484.348 is hereby amended to read as follows:

9 484.348 1. Any driver of a motor vehicle who willfully fails or
10 refuses to bring his vehicle to a stop, or who otherwise flees or attempts
11 to elude a peace officer in a readily identifiable police or regulatory
12 agency vehicle, when given a visual or audible signal to bring the vehicle
13 to a stop is guilty of a misdemeanor.

14 2. The signal by the peace officer described in subsection 1 may be
15 by flashing red lamp or siren.

16 3. As used in this section, "regulatory agency" means any of the
17 agencies granted police or enforcement powers under the provisions of
18 NRS 407.065, 481.048, 481.049, 501.349, 565.155, [703.155 and]
19 706.8821 [.] and section 13 of this act.

20 SEC. 96. NRS 484.787 is hereby amended to read as follows:

21 484.787 1. Except as provided in NRS 484.789, authorized emer-
22 gency vehicles are vehicles publicly owned and operated in the perform-
23 ance of the duty of:

24 (a) A police or fire department.

25 (b) A sheriff's office.

26 (c) The Nevada highway patrol.

27 (d) A public ambulance agency.

28 (e) A public lifeguard or lifesaving agency.

29 2. A vehicle publicly maintained in whole or in part by the state,
30 or by a city or county, and privately owned and operated by a regularly
31 salaried member of a police department, sheriff's office or traffic law
32 enforcement department, is an authorized emergency vehicle under the
33 following conditions:

34 (a) When such vehicle has such a permit from the department of
35 motor vehicles;

36 (b) Where such person operates such privately owned vehicle in
37 responding to emergency calls or fire alarms or highway patrol duty or
38 operates such vehicle in the pursuit of actual or suspected violators of
39 the law; and

40 (c) When the state, county or city does not furnish to such officer a
41 publicly owned vehicle for the purposes stated in paragraph (b).

42 3. Every authorized emergency vehicle shall be equipped with at
43 least one flashing red warning lamp visible from the front and a siren
44 for use as provided in this chapter, which lamp and siren shall be in
45 compliance with standards approved by the department of motor
46 vehicles. In addition, an authorized emergency vehicle may display
47 revolving, flashing or steady red or blue warning lights to the front, sides
48 or rear of the vehicle.

49 4. No person may operate a vehicle with any lamp or device thereon
50 displaying a red light visible from directly in front of the center thereof,

1 except an authorized emergency vehicle, a school bus or an official
2 vehicle of a regulatory agency.

3 5. No person may operate a vehicle with any lamp or device display-
4 ing a blue light, except an authorized emergency vehicle.

5 6. As used in this section, "regulatory agency" means any of the
6 agencies granted police or enforcement powers under the provisions of
7 NRS 407.065, 481.048, 481.049, 501.349, 565.155, [703.155 and]
8 706.8821 [.] and section 13 of this act.

9 SEC. 97. NRS 703.155, 703.180, 703.300, 704.010, 706.031,
10 706.176, 706.181, 706.201, 708.010 and 711.050 are hereby repealed.

11 SEC. 98. 1. In order to effect an orderly and smooth separation of
12 the functions of the department of representation from the public service
13 commission, the public service commission and the utility customer's
14 representative agency are authorized, for a period not to exceed 1 year,
15 to enter into agreements with each other for the cooperative use of exist-
16 ing equipment, facilities and personnel.

17 2. The state controller shall transfer to the special revenue fund of
18 the utility customers' representative agency 75 percent of the reserve
19 balance carried forward from the public service commission regulatory
20 fund at the close of the fiscal year 1980-1981.

Coalition for Affordable Energy

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- EXHIBIT G

Comments of Randolph Townsend, Chairman

Coalition for Affordable Energy

before Nevada State Assembly Committee
on Government Affairs 2/4/81

Hon. Joseph E. Dini, Jr., Chmn.

before Nevada State Senate Committee
on Commerce and Labor 2/11/81

Hon. Thomas R.C. Wilson, Chmn.

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.



3/11/81

EXHIBIT H

Robert List
Governor

The State of Nevada
Executive Chamber
February 10, 1981

Capitol Complex
Carson City, Nevada 89710

M E M O R A N D U M

TO: The Honorable Thomas R. C. Wilson
Chairman, Senate Commerce and Labor Committee

FROM: John W. Capone
Administrative Aide to Governor List

Attached are some additional exhibits that were submitted to the Assembly Committee on Government Affairs.

I hope this material will be of assistance to your committee.



2/11/81

The State of Nebraska
Executive Chamber
February 9, 1981

Robert List
Governor

Capitol Complex
Lincoln City, Nebraska 68500

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

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

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.

The Honorable Joseph Dini
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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.

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.

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 accommodate 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

The Honorable Joseph Dini
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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

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.

The Honorable Joseph Dini
February 10, 1981
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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.

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.



EXHIBIT I

Robert List
Governor

The State of Nebraska
Executive Chamber
February 3, 1981

Capitol Complex
Carson City, Nebraska 89710

M E M O R A N D U M

TO: The Honorable Thomas R. C. Wilson
Chairman, Senate Committee on Commerce and Labor

FROM: John Capone
Administrative Aide to Governor List

SUBJECT: Outline of Governor List's Proposal to establish
an agency for utility customer representation

Attached is a brief question and answer outline of the Governor's proposal currently before your Committee for consideration. I would request that this outline be made part of the record of hearing on this matter.

I will be available to answer any further questions regarding this subject at your convenience.

Thank you for your interest and consideration of this matter.



The State of Nebraska

Executive Chamber

February 3, 1981

Robert List
Governor

Capitol Complex
Carson City, Nevada 89710

1. What is the Governor's proposal?

Creates an independent agency for Utility Customer representation.

2. Why is such an entity necessary?

The public faith in current regulatory processes has diminished and must be restored. The Governor feels that the public should have an independent voice representing its interests in all matters before the Public Service Commission of Nevada.

3. What means will be utilized to achieve this goal?

Some 60 legal and technical experts currently under the administration of the PSC will be given independent authority and status as a separate agency for representation of utility customers.

This newly created agency will be separately funded and will be completely self-sufficient. Currently the Commissioners of the PSC have administrative responsibility for their staff.

4. How does the Governor's proposal differ from the existing structure of the PSC?

First, the staff of the new representative agency would have an independent and absolute right of appeal from all matters originating before the PSC.

Secondly, they would be able to initiate formal actions before the Commission on their own or upon complaint by a utility customer.

5. Why is the Governor's proposal more acceptable than others currently under consideration by the Legislature?

The Governor's proposal is the most comprehensive of all such proposals currently under consideration. It recognizes that total representation of utility customer interests transcends the arena of utility rate cases and

encompasses other equally important subjects as well.

Further, the Governor's proposal provides for realistic funding and staffing levels to allow for an efficient and effective customer representative agency.

6. What is the fiscal and manpower impact of the Governor's proposal?

In effect, the Governor's proposal would require an expenditure of \$200,000 above current budgeted costs for the PSC. The amount would represent the salaries for 7 new positions that would be distributed between the PSC and the representative agency. (It should be noted that the 7 new positions is a net increase).

The fiscal notes submitted on the proposal show a total biennial budget for the PSC of \$2,325,444 and for the customer representative agency of \$5,994,367.

The current source of funding by mil tax assessment will be retained with a maximum of 2 3/4 mil allocated to and assessed independently by the new agency.

A maximum of 1 1/4 mil will be allocated for use by the PSC. This formula will not exceed the maximum assessment of 4 mil currently authorized by statute.

General Comments

This committee is urged not to accept the initiative petition proposal for establishment of a consumer advocate under the Attorney General's Office. This proposal is too simplistic and will not afford the comprehensive protection for utility customers that the Governor's proposal offers.

Last year alone over 600 filings of various types were made with the PSC. To investigate and make recommendations on such a volume of cases, as well as carrying out effective representation of other matters on behalf of the general public, requires a reasonable staffing level.

The Governor's proposal incorporates most if not all of the significant components of the other concepts presented to your committee for consideration. The biggest difference in the Governor's proposal is the selection of an executive director for the new representative agency who would be appointed by and serve at the pleasure of the Governor.

The placement of the executive director under any branch of state government may give rise to accusations of politicism.

However, the Governor feels that this position, like others in state service, is ultimately answerable to the public and will not be misused by the Executive Branch.

I have attached a chart showing recent PSC action on certain rate requests filed this past year. You will see from these examples how current staff recommendations compare to increases granted on these requests by the Commission.

Under the Governor's proposal, staff would be able to pursue appeals on behalf of the public when they disagreed with a Commission decision such as those portrayed on the attachment.

Conclusion

The Governor's proposal is the most comprehensive and cost-effective way of ensuring true customer representation in utility matters.

Ultimately the public will hold all of us in state government accountable for ensuring that their interests are being properly considered in the area of utility regulation. I respectfully request that your committee give favorable consideration to the Governor's proposal to establish the Utility Customer Representative Agency.

ANALYSIS OF GENERAL RATE CASES
For the Twelve Months Ended December 31, 1980

Docket Number	Company	Date Filed	Date Decided	Amount Requested	Staff Adjustments	Amount Recommended By Staff	Percent Recommended	Amount Granted	Percent Received
2856	Sierra Pacific Electric	4/30/80	10/29/80	\$19,883,000	\$18,626,000	\$ 1,257,000	6.3	\$ 6,221,000	31.3
2857	Sierra Pacific Gas	4/30/80	10/29/80	1,844,000	1,404,000	440,000	23.9	954,000	51.7
2858	Sierra Pacific Water	4/30/80	10/29/80	4,099,000	2,942,000	1,157,000	28.2	2,369,000	57.8
2867	Southwest Gas North	4/30/80	10/27/80	7,968,251	1,818,211	6,150,040	77.2	6,120,972	76.8
2868	Southwest Gas South	5/06/80	10/27/80	17,418,788	4,661,135	12,757,653	73.2	14,168,879	81.3
2955	Nevada Power	7/02/80	12/22/80	20,509,000	22,592,574	(2,083,574)	10.2)	12,026,905	58.6
				<u>\$ 71,722,039</u>	<u>\$ 52,043,920</u>	<u>\$ 19,678,119</u>	<u>27.4%</u>	<u>\$ 41,860,756</u>	<u>58.4</u>