

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

SIXTY-FIRST SESSION  
NEVADA STATE LEGISLATURE  
February 2, 1981

The Senate Committee on Commerce and Labor was called to order by Chairman Thomas R.C. Wilson, at 1:35 p.m., Monday, February 2, 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 Melvin Close  
Senator William Raggio  
Senator William Hernstadt  
Senator Clifford McCorkle

COMMITTEE MEMBER ABSENT:

Senator Don Ashworth, (Excused)

STAFF MEMBERS PRESENT:

Betty Steele, Committee Secretary  
Mary Gump, Secretary

Chairman Wilson requested that individuals who wished to testify on this date's agenda address every item they wished to speak on rather than discussing each item individually.

Mr. Heber Hardy, chairman of the Nevada Public Service Commission (PSC), discussed with the committee the expansion of utility service area boundaries. Mr. Hardy questioned if the commission had the authority to request that a utility expand their boundaries based on a complaint or inquiry by individuals who would like to be served by the utility. Mr. Hardy commented that a Supreme Court ruling had indicated that the commission could not require that Sierra Pacific Power extend its

SENATE COMMITTEE ON COMMERCE AND LABOR  
FEBRUARY 2, 1981

certificated area beyond the area presently being served. This ruling was contrary to the commission's ruling ordering the utility to make this expansion. The basis for the ruling was that the order by the commission was unconstitutional. Mr. Hardy said to Senator Wilson that the issue of constitutionality was not litigated.

Mr. Hardy said that the PSC does have the authority to modify a certificated area in the event that the utility is not providing adequate service. However, he commented that the commission would not like to be in the position of being required by statute to force a utility to expand beyond the area currently being served. Chairman Wilson said that perhaps this problem could be solved with "permissive" legislation, giving the commission the option to exercise this authority. Mr. Hardy responded that he did not feel the government should be in the position of forcing a privately owned company to serve beyond the area which the company chooses to serve. Mr. Hardy commented that the major area of complaint for expansion of utility service is with privately owned water companies that are regulated by the commission. Chairman Wilson stated that in his opinion the commission should have the "moral" obligation to request that a water company expand its service if the community growth so demanded. Mr. Hardy responded again that he accepted the legal position that this order by the commission would be unconstitutional.

Chairman Wilson requested that Mr. Hardy submit a copy of the Supreme Court opinion discussed earlier. Mr. Hardy complied. (See Exhibit C.)

In regard to the agenda item entitled: "Water."  
1. The necessity of its acquisition or purchase by the service utility to meet public need", Mr. Hardy said that this issue is pending before the commission. He said a particular company was directed by the state division of water resources, department of natural resources and conservation, not to respond to a commission "will serve" letter unless the company can prove that there are adequate water resources available. The utility has indicated to potential applicants for service that their name will be placed on a list and as the company obtains additional water rights these applicants will receive service on a "first come, first serve" basis.

SENATE COMMITTEE ON COMMERCE AND LABOR  
FEBRUARY 2, 1981

Chairman Wilson asked Mr. Hardy if the PSC had the jurisdiction to compel the utility to acquire the water rights necessary to provide service within its service area. Mr. Hardy confirmed this, and stated this had been done in the past. Mr. Hardy said the utility has the obligation within a certificated area to obtain the necessary resources to furnish adequate water service. And, Mr. Hardy stated to Chairman Wilson that this authority by the PSC has not been challenged. Mr. Hardy said the water rights have been available for purchase. However, there have been arguments about the purchase price of these rights. Mr. Hardy felt it may be necessary to statutorily require that the utility pay "fair market" value. Mr. Hardy responded to Senator Hernstadt that the PSC did not have the right of condemnation in order to obtain water rights.

Mr. Hardy expressed to the committee that the general public has been concerned with the chemical content of the available water and the excess fee charged to consumers in order to reduce the content of arsenic in water. Mr. Hardy said this is particularly difficult for the smaller water companies who are attempting to determine which costs should be transferred to the rate payers. Currently, the PSC does not have the jurisdiction to determine the health standards, but does have the obligation to insist that the utility meet health standards. Mr. Hardy related the case of the Hidden Valley development in Washoe County wherein the owner was not able to obtain the necessary financing from investors to assist in the arsenic problem, and the property owners also would not accept a capital surcharge. The owner refused to continue water service. The property owners obtained a restraining order and subsequently a bankruptcy sale ensued.

Chairman Wilson remarked that a viable solution to the problem of comprehensively serving the needs of a community would be to create a quasi-municipal corporation or water district. Mr. Hardy concurred.

Chairman Wilson asked Mr. Hardy to address the next issue on the agenda: "Energy conservation by insulation installation." Mr. Hardy said the PSC has proposed that rate payers will be responsible for the actual installation of insulation or energy saving device.

SENATE COMMITTEE ON COMMERCE AND LABOR  
FEBURARY 2, 1981

Mr. Hardy said the utility will have the obligation to arrange for a convenient method of financing.

Chairman Wilson questioned if the PSC has the authority to require the rule of promulgation. Mr. Hardy said this has not been an issue of authority. The PSC does not require that a consumer invest in energy saving devices. The PSC only requires that the utility assist in obtaining acceptable financing and arranging for installation. Mr. Hardy said if the individual cannot qualify for the financing, as arranged, there are alternative solutions. The Community Service Commission has funds available for weatherization, and there are federal income tax credits available for installation of these devices.

Chairman Wilson asked Mr. Hardy to comment on the next agenda item: "Federal Power Commission." Mr. Hardy said that the Federal Power Commission is the Federal Energy Regulatory Commission. Mr. Hardy said in order for a utility in Nevada to purchase out-of-state service, the utility defers the costs for a six-month period and then applies to the PSC for recovery of the funds in a subsequent six-month to one year period. The PSC allows the utility to place a surcharge on the rate payers' bills in order to recover the costs which have already been incurred.

In regard to remaining items on the agenda: "Gas pipeline safety; Hazardous liquid pipeline facilities; Utility facilities in mobile home parks; Air carrier regulation; and Motor carrier regulation," Mr. Hardy said the PSC is currently requesting that legislation be drafted which will allow jurisdiction of these entities to be transferred from the federal government to the PSC. Mr. Hardy said the last item on motor carrier regulation was also being addressed in Assembly Bill No. 58.

Addressing the issue of "energy theft" (see page two of the agenda -- Exhibit A), Mr. Hardy distributed a copy of the current law on this issue. (See Exhibit D -- copy of NRS 704.800.) And, in regard to customer complaints, Mr. Hardy said the PSC has the right to review complaint statistics when conducting a rate hearing.

Senator Wilson recognized Mr. Joe L. Gremban of the Sierra Pacific Power Company.

SENATE COMMITTEE ON COMMERCE AND LABOR  
FEBRUARY 2, 1981

Mr. Gremban commented in regard to expansion of utility service area boundaries that economics also had to be considered. He said the Sierra Pacific Power Company has expanded their service boundaries. However, this has not been done in all cases due to the major expenses which would have to be incurred. Mr. Gremban said the limits of a service area are defined based on studies made by the Regional Planning Commission of Washoe County on the amount of water available; and boundaries are defined on the basis of zoning as well as water availability.

Senator Hernstadt commented that it appears that the utilities would like for the land developer to pay for the water rights; then the utility would like to purchase these rights from the developer at a lesser price; and, the consumer would like to receive the use of the water without having to assume any of the costs of the acquisition.

Mr. Gremban responded to Senator Raggio that water meters would cost approximately \$400 to \$500 per customer.

Mr. Gremban also stated that there is no provision in the statutes which will enable local governments to sell water rights to a utility. Currently, these rights can be leased, but not purchased.

Mr. Gremban said to Chairman Wilson that only 2 out of 16 wells in the Truckee Meadows area have serious arsenic content, and these 2 wells are not utilized.

In regard to the issue of energy saving devices, Mr. Gremban said the Sierra Pacific Power Company currently is not authorized to be in the business of insulation installation.

Mr. Gremban stated to the committee that a negotiated contract for either the importation or exportation of energy to another utility is not reviewed by the PSC before it is considered by the Federal Energy Regulatory Commission. However, Mr. Gremban said the PSC could appear at the federal hearing as an intervenor for the State of Nevada.

Mr. Clark Guild, an attorney representing the Southwest Gas Corporation, said the firm would withhold any comments until the bills being drafted were introduced and scheduled for hearing.

SENATE COMMITTEE ON COMMERCE AND LABOR  
FEBRUARY 2, 1981

Mr. Marvin Shaw of Southwest Gas Corporation, commented that it would be helpful to his company if the PSC were able to participate in Federal Energy Regulatory Commission hearings. Mr. Shaw felt the impact to Nevada necessitated this participation.

Mr. Nicholas Colonna, Northern Nevada Apartment Owner's Association, stated his association was specifically concerned with the energy conservation of insulation installation. Mr. Colonna said the owner of an apartment or rented house would not wish to carry the financial burden of insulation installation if the renter is paying for the utility costs. Senator Hernstadt suggested that an alternative would be for the owner to utilize his savings from this year's property tax reductions to install energy conservation devices rather than giving the renter a rebate. Mr. Colonna concurred that this would be effective and could be easily monitored.

Mr. Thomas J. Hall, representing four small water companies -- Glenbrook Water Company, Skyland Water Company, Logan Creek Water System and Franktown Water Company --, said not all water companies should be under the jurisdiction of the PSC. Mr. Hall said it would not be cost effective to have companies with customers of 25 or less regulated by the PSC. Mr. Hall also said the companies he represented were opposed to mandatory expansion of utility service area boundaries.

There being no further business, the meeting was adjourned at 3:50 p.m.

Respectfully submitted by:

APPROVED BY:

  
Betty Steele, Committee Secretary

  
Senator Thomas R.C. Wilson, Chairman

DATE: 3-16-81

SENATE AGENDA

COMMITTEE MEETINGS

Committee on Commerce and Labor , Room 213, with 131  
reserved if needed  
Day Monday , Date February 2 , Time 1:30 p.m.

Public hearing to review and determine the need for  
Public Service Commission jurisdiction over the following  
subject matters:

Utility service area boundaries, their location and  
change.

Water.

1. The necessity of its aquisition or purchase  
by the service utility to meet public need.
2. The necessity of its treatment by the serving  
utility to meet public need.

Energy conservation by insulation installation.

Authority for the electric utility to sell and  
install home insulation which is included in rate  
base until paid for at cost by the home owner.

Federal Power Commission. - (Interstate rates)

The necessity of PSCN participation in FPC hearings  
authorizing interstate energy rates:

1. Where expected from Nevada for out-of-state sale  
by Nevada utilities.
2. Where imported from out-of-state for purchase  
by Nevada utilities for resale in Nevada.

Gas pipeline safety.

Hazardous liquid pipeline facilities.

Utility facilities in mobile home parks.

Air carrier regulation.

Motor carrier regulation - transfer to the Department  
of Motor Vehicles.

SENATE AGENDA

COMMITTEE MEETINGS

Committee on Commerce and Labor

Monday, February 2

Page 2

Energy theft - enforcement and sanctions.

Customer complaints.

Rate applications requiring the Consumer Division to compile and present:

1. Those complaints remaining unresolved.
2. Those tariffs which are vague or need improvement for review by the commission before any rate increase is granted.

Public Service Commission of Nevada jurisdiction over all water companies, regardless of site.



SENATE COMMITTEE ON

Commerce & LaborDATE: 2/2/81

EXHIBIT B

PLEASE PRINT	PLEASE PRINT	PLEASE PRINT	PLEASE PRINT
NAME	ORGANIZATION & ADDRESS	TELEPHONE	
STAN MARTIN	Cave Rock Water Co Zephyr Cove	(916) 541-3700	
Robert Hartley	P.O. Box 65 <sup>TRHQA</sup> WILMINGTON NEV.	266-3764	
W. GODDARD	DMV	885-5340	
W. RICHARDS	DMV	885-5340	
W. HERNANDEZ	Public Service Commission of Nevada	885-5134	
Marian Milled	Southwest Gas	882-2126	
H. GENE MATTUCCI	Ne. Power Co	385-5628	
CLARK J. GUILD, JR	Southwest Gas Corp	786-2366	
R. W. HAVEN	SOUTHWEST GAS CORP	876-7200	
JOHN L. MAYO	✓ ✓ ✓	876-7378	
MARVIN R. SHAW	✓ ✓ ✓	876-7294	
John W. Capone	Governor's Office	885-5670	
JC MILLER	NEVADA BELL	789-6697	
VINCE LAVEGA	SIERRA PACIFIC POWER CO	789-4326	
JOE L. GREMBAN	" " " "	789-4276	
WALLIE WARREN	" " " "	322-6996	
Guy SHIPLER	KOH	882-3535	
Irish White	AP		
Martin Gifford	Ne. State Journal		
P. H. Sealey	T.R.E. HOME OWNERS		
G.P. Etcheverry	NEW LEAGUE OF CITIES	FF2-2121	
JOE CATHER	NORTH LAS VEGAS	FF2-2121	
CHUCK KING	CENTRAL TELEPHONE	383-5501	

SENATE COMMITTEE ON Commerce & Labor

DATE: 2-2-81

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
THOMAS J. HALL	Glendale Water Company 10000 Greenway Dist	286-2366
Don Rhodes	LCB	5637
Sam Hohmann	LCB	5637
R. Townsend	Coal. for Affordable Energy	986-1455
B. Hullett	Press	827-2463
Bob Sullivan	Carson River Basin COG	885-4680
V.L. Crocker	Topsy Ranch Estate, Property manager	266-3606
Grace Currier	P.O. Box 56, Wilmington, 89444	" "
Shirley Webster	Topsy Ranch Estate Property Manager	266-3783
John W. Clark	PSC	885-4326
Ag. Rep.	LCB	" 5782
James H. Benesch	T.R.E.P.O.A., P.O. Box 1811, Minden	266-3686
Nickolas Colonna	LCB Dist Assoc. (Hill)	348-7255
Terrence McShane	Stacy County Courthouse Virginia City	847-0537
DON PAFF	LAS VEGAS VALLEY WATER DIST.	870-2011
DARYL E. CAPERS	NEVADA MOTOR TRANSPORT ASSN.	331-6884
William Gaddard	D.M.V. Motor Carrier Div.	885-5340
Jack Webster	Topsy Ranch Est. Home phone	266-7783
Shirley	T.R.E.P.O.A. 5777 Greenway Wilmington	266-2223

2/13/81 Nelson 1/13

IN THE SUPREME COURT OF THE STATE OF NEVADA

EXHIBIT C

WARREN B. RICHARDSON, CONRAD PRIESS,  
WILLIAM T. AMICK, GERALDINE JONES,  
NORRIS JONES, JESSIE SAMBRANO, CONNIE  
SAMBRANO, LOUIS S. QUINN, DOROTHY QUINN,  
NICK PAULS, IRENE PAULS, HELEN NOYES,  
WENDELL G. LAWS, EVELYN M. LAWS,  
DUDLEY C. STAHR, JOHN R. STAHR, NAZIE A.  
ANSARI, MARY B. ANSARI, and WEST LAND  
EQUITY CORPORATION OF NEVADA,

Appellants,

No. 12403

vs.

SIERRA PACIFIC POWER COMPANY, SUN  
VALLEY WATER AND SANITATION DISTRICT  
and THE PUBLIC SERVICE COMMISSION OF  
THE STATE OF NEVADA,

Respondents.

RESPONDENT'S ANSWERING BRIEF

RICHARD H. BRYAN - Attorney General  
Hampton M. Young, Jr.  
Deputy Attorney General  
Attorney for Respondents  
Public Service Commission of Nevada  
505 E. King Street  
Carson City, Nevada 89710  
Telephone No. (702) 885-5037

So in resolving their "consumer complaint," appellants could only hope the Commission would either enforce the 1973 water service agreement or would force Sierra Pacific to extend its wholesale water service to Sun Valley beyond its presently certificated boundaries. No further remedies are conceivable.

Appellants have already conceded that the Commission lacks jurisdiction over questions of construction or enforcement of private contract rights. (Appellants' Brief, pp. 7-8)

a. THE COMMISSION CANNOT COMPEL A UTILITY TO EXTEND ITS SERVICE AREA

The rationale for the rule of law which generally prohibits a regulatory commission from ordering service area extensions is multifold. .

First, a Sierra Pacific decision regarding whether or not to expand its service area is a management function which the Commission cannot usurp.

" . . . [T]he commission should not substitute its judgment for that of management. (citation omitted)." Public Serv. Comm'n. v. Elv Light & Power, 80 Nev. 312 at 324 (1964).

"Public regulation must not supplant private management. (citation omitted)." Georgia Power Co. v. Georgia Pub. Serv. Comm'n. 211 Ga. 223, 85 S.E.2d 14 at 19 (1954).

Second, the Commission hasn't the authority, statutory or otherwise, to force Sierra Pacific to extend service beyond its present territorial limits.

"The power [of the Public Utilities Commission] to order 'additions, extensions, repairs, improvements' within the scope of dedication is extensive; without the scope of dedication the commission's

power is ineffective." Greyhound Lines v. Public Util. Comm'n., 67 Cal. Rptr. 97, 438 P.2d 801 (1968).

". . . [A] public utility may not be compelled to extend its service beyond the territorial limits of its dedication. This is true regardless of the nature of the utility involved." California Water & Tel. Co. v. Public Util. Comm'n., 51 Cal. 2d 478, 334 P.2d 887 at 895 (1959).

Finally, should the Commission force Sierra Pacific to extend its service area to plaintiffs involuntarily it would constitute an impermissible taking of property for public use, a violation of the U.S. Constitution.

"To require a public utility to devote its property to a service which it has never undertaken to serve is tantamount to taking that property for public use without just compensation." Georgia Power Co. v. Georgia Pub. Serv. Comm'n., supra at 18.

## 2. APPELLANTS LACK A LEGALLY PROTECTIBLE INTEREST

In Nevada one of the four conditions precedent to relief by declaratory judgment requires that, "the party seeking declaratory relief must have a legal interest in the controversy, that is to say, a legally protectible interest." Kress v. Corey, supra at 26.

In the case at bar appellants cannot lay claim to a legally protectible interest. In their complaint, appellants assert, "The Commission has a duty to assist consumers in disputes of this kind." (App. 5)

But appellants are not consumers. In their own complaint it is indicated they are not being served with water. Appellants through this action hope to become elevated to the status of water

IN THE SUPREME COURT OF THE STATE OF NEVADA

WARREN B. RICHARDSON, CONRAD PRIESS,  
WILLIAM T. AMICK, GERALDINE JONES,  
NORRIS JONES, JESSIE SAMBRANO, CONNIE  
SAMBRANO, LOUIS S. QUINN, DOROTHY  
QUINN, NICK PAULS, IRENE PAULS,  
HELEN NOYES, WENDELL G. LAWS,  
EVELYN M. LAWS, DUDLEY C. STAHR,  
JOHN R. STAHR, NAZIE A. ANSARI,  
MARY B. ANSARI, and WEST LAND EQUITY  
CORPORATION OF NEVADA,

Appellants,

-vs-

SIERRA PACIFIC POWER COMPANY, SUN  
VALLEY WATER AND SANITATION DISTRICT  
and THE PUBLIC SERVICE COMMISSION OF  
THE STATE OF NEVADA,

Respondents.

CASE NO. 12403

RECEIVED

JUN 20 1980

NEVADA PUBLIC SERVICE COMMISSION  
CARSON CITY, NEVADA

APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

APPELLANT'S REPLY BRIEF

CHARLES E. SPRINGER, LTD.  
333 Flint St.  
Reno, NV 89501

for provision of water services to appellants' properties.

The court is therefore warranted in ordering the Commission to proceed with the hearing of the consumer complaint.

6. BOTH THE COURT AND THE PUBLIC SERVICE COMMISSION  
HAVE POWER TO ORDER PROVISION OF WATER SERVICE  
TO APPELLANTS

Respondents SP and SV allege that neither the court nor the Commission can order Sierra Pacific to increase its service territory. They rely principally on California Water & Telephone Co. v. PUC, 51 Cal.2d 478, 334 P.2d 887 (1959), for this proposition. Yet, in that case, the court limited its holding to the circumstances of that case insofar as it refused to uphold the Commissioner's ruling ordering the utility to expand services beyond its dedicated area and contrary to its agreement. The court further stated that supply of water service to non-dedicated territory cannot be compelled "on terms other than those agreed to by the utility".

In the instant case, appellants complain of breach of an agreement to serve the area in which their properties are located. This is therefore not a case where California Water, supra, controls, but rather controlled by Hollywood Chamber of Commerce v. Railroad Commission, 192 Cal. 307, 219 P. 893 (1923) and Butte County Water Users v. Railroad Commission, 185 Cal. 218, 196 P. 265 (1921), both cited in California Water as standing for the rule that a utility may be ordered to supply water or services under appropriate circumstances.



IN THE SUPREME COURT OF THE STATE OF NEVADA

WARREN B. RICHARDSON, CONRAD PRIESS, )  
WILLIAM T. AMICK, GERALDINE JONES, )  
NORRIS JONES, JESSE SAMBRANO, )  
CONNIE SAMBRANO, LOUIS S. QUINN, )  
DOROTHY QUINN, NICK PAULS, IRENE )  
PAULS, HELEN NOYES, WENDELL G. LAWS, )  
EVELYN M. LAWS, DUDLEY C. STAHR, )  
JOHN R. STAHR, NAZIE A. ANSARI, )  
MARY B. ANSARI, and WEST LAND )  
EQUITY CORPORATION OF NEVADA, )

CASE NO. 12403

Appellants, )

vs. )

SIERRA PACIFIC POWER COMPANY, SUN )  
VALLEY WATER AND SANITATION DISTRICT, )  
and THE PUBLIC SERVICE COMMISSION OF )  
THE STATE OF NEVADA, )

Respondents. )

---

RESPONDENTS SIERRA PACIFIC POWER COMPANY  
AND SUN VALLEY WATER AND SANITATION DISTRICT'S  
ANSWERING BRIEF

---

ON APPEAL FROM THE SECOND JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF WASHOE

JOHN MADARIAGA and  
SUSAN L. OLDHAM  
Attorneys for Respondent  
Sierra Pacific Power Company  
100 East Moana Lane  
P.O. Box 10100  
Reno, NV 89510  
(702) 789-4349

JULIEN G. SOURWINE  
Fahrenkopf, Mortimer, Sourwine  
Mousel & Sloane  
Attorneys for Respondent  
Sun Valley Water & Sanitation  
District  
333 Marsh Avenue  
Reno, NV 89501  
(702) 323-8633



Appellants have not raised an issue of material fact as to the abuse of that discretion.

B. THIS COURT LACKS JURISDICTION OVER THE SUBJECT MATTER OF THIS ACTION INASMUCH AS NEITHER THE COMMISSION NOR THIS COURT CAN ORDER SIERRA PACIFIC TO INCREASE ITS SERVICE TERRITORY.

Appellants ask this Court to force Sierra Pacific to perform its "contract" with Sun Valley. Respondents assert that this Court does not have the jurisdiction to do so inasmuch as (1) this Court does not have the authority to substitute its judgment for the judgment of the Public Service Commission, and (2) the Public Service Commission does not have jurisdiction to force Sierra Pacific to serve beyond the scope of its dedication.

The legislature delegated to the Commission the duty of issuing certificates of public convenience and necessity to public utilities doing business within the State of Nevada.

Nevada Revised Statutes § 704.330(1) states:

"1. Every public utility owning, controlling, operating or maintaining or having any contemplation of owning, controlling or operating any public utility shall, before beginning such operation or continuing operations or construction of any line, plant or system within this state, obtain from the commission a certificate that the present or future public convenience or necessity requires or will require such continued operation or commencement of operations or construction."

It is a well settled principle of law that when the legislature makes such a delegation, the Court cannot substitute its discretion for that of the administrative body. The case of PSC v. The Eighth Judicial District Court, 61 Nev. 245, 123 P. 2d 237 (1942), discussed this very issue and decided:

"In the absence of fraud or gross abuse, equity cannot interfere with or in advance restrain the discretion of an administrative body's exercise of legislative powers."

This Court, therefore, cannot order the Commission to expand the scope of Sierra Pacific's certificate of public convenience and necessity.

The Appellants have stated that they do not want the Court to order the Commission to do anything, rather they are asking the Court for the relief.

Respondents submit that if this Court were to order Sierra Pacific to serve the Appellants, they would be ordering Sierra Pacific to commit a crime under NRS § 704.430 which makes it a misdemeanor for a public utility to violate the provisions of § 704.330.

Further, the Commission does not have the authority to force Sierra Pacific to extend its service territory.

In the case of California Water & Telephone Co. v. Public Utilities Commission, 51 Cal. 2d 478, 334 P. 2d 887 (1959), (Appendix p. 75) the Court stated: "A public utility may not be compelled to extend its service beyond the territorial limits of its dedication. This is true regardless of the nature of the utility involved."

The Nevada Commission found that it did not have the power to extend Sierra Pacific's boundaries and by implication that no dedication had occurred as will be discussed more fully hereinafter.

C. THIS COURT LACKS JURISDICTION OVER THE SUBJECT MATTER OF THIS ACTION INASMUCH AS NEITHER THIS COURT NOR THE COMMISSION CAN ORDER SUN VALLEY TO ANNEX TERRITORY.

Neither the Court nor the Commission can order Sun Valley to annex additional territory. Appellants, at page 16 and 17 of their Opening Brief, contend that NRS 704.030(5) which excludes political subdivisions from Commission jurisdiction applies only to political subdivisions that serve water to its residents and should be read to grant jurisdiction to the Commission over political subdivisions which serve water to nonresidents. This strained interpretation is not supported in law or fact and ignores the total lack in NRS Chapter 318 of legal authority for Sun Valley to serve "nonresidents", i.e., territory not part of the District.

Appellants are incorrect when they rely on NRS 704.030, subsection 5. Sun Valley is a general improvement district (see Affidavit of Sun Valley General Manager Bill Berrum dated January 12, 1979, attached to the January 23, 1979 Motion for Summary Judgment filed by Sierra Pacific and Sun Valley). General improvement districts were removed from the jurisdiction of the Public Service Commission in 1977 by the legislature. Chapter 293, Statutes of Nevada, 1977, deleted the following language from NRS 318.414 (dealing with water systems):

"Notwithstanding any other provision of this chapter, each district exercising the power granted in this section shall be under the jurisdiction of the Public Service Commission of Nevada in regard to rates charged and services and facilities furnished in the same manner as a public utility as defined in NRS 704.020. . .".

Thus, the Commission lacks jurisdiction over Sun Valley regardless of whether Sun Valley serves water to residents or nonresidents and the Commission lacks the jurisdiction to order Sun Valley to serve the Appellants. Indeed, to order Sun Valley to serve those whose land has not been annexed to the District would be to require conduct outside the authority granted by NRS Chapter 318. Appellants say "Sun Valley has served some consumers outside its borders." (Brief, p. 18) What Sun Valley actually did was set forth in its answer to Appellants' Interrogatory No. 8, as follows:

"8. Between October 24, 1973 and the present have you ever supplied water to any land or parties outside the boundaries of your district? If so, please state the dates, the names, addresses and telephone numbers of the persons, a legal description of the land, and the reasons therefor.

ANSWER 8: Yes. When the District was originally created in 1965, under the provisions of NRS 311, now repealed and replaced by NRS 318, certain small 'islands' within the District's external boundaries were excluded by the organizational decree entered by the Washoe County District Court. This legal situation was immediately forgotten and never recognized by anyone until after June, 1977 when the 1965 District Court organizational decree was reviewed by counsel in order to comply with certain changes in NRS 318 (relating to voting) enacted by the 1977 Nevada Legislature. From the inception of the District in 1965, these 'islands' were considered by the personnel of the District, the respective owners of the 'islands', and SPPC the PSC and the Washoe County Assessor's Office to be part of the District. The District's certificated area and the SPPC certificated service area established by the PSC reflects (sic) such property to be within the boundaries and service area of the District. Prior to June, 1977, various owners of property lying within such 'islands' have, upon application, been supplied water and are presently being supplied water by the District. The names, addresses and telephone numbers (if available) are reflected in the public records maintained at the office of the District, 5000 Sun Valley Drive, Washoe County. Further official plats reflecting the location of such 'islands' are available at the District Office, Washoe County Assessor's Office, and the Washoe County Registrar of Voters Office." (Record on Appeal, Vol. I, p. 172.)

Such erroneous service of water to the 'islands' inside the external boundaries of the District cannot be said to provide a basis for relief to plaintiffs whose land lies outside those external boundaries: Two wrongs don't make a right.

D. THE ALLEGED OCTOBER 24, 1973, AGREEMENT NEVER BECAME AN EFFECTIVE AGREEMENT.

Appellants claim rights under the October 24, 1973, agreement based upon their contention that they are third party beneficiaries.

Williston on Contracts 3d § 364A, states:

"The foundation of any right the third person may have, whether he is a donee beneficiary or a creditor of the promisee, is the promisor's contract. Unless there is a valid contract, no rights can arise in favor of anyone ... There can be no donee beneficiary or creditor beneficiary unless a contract has been formed between a promisor and promisee; and if a contract is conditional, voidable or unenforceable at the time of its formation ... the right of the donee beneficiary or creditor beneficiary under the contract is subject to the same limitation.

Broadly speaking, not only must any formal requirements be complied with, but the beneficiary also takes subject to the due performance of all express and implied conditions affecting the promise in which he is interested."

The alleged October 23, 1973, contract never became a binding and effective instrument because it was never approved by the Commission. The contract at page 10 states, "This agreement will not be binding upon Sierra Pacific Power Company until approved by the Public Service Commission." (Official Record, Vol. I, p. 254.)

Further, the conditions precedent to the Service Area B annexation were never performed. The Appellants never

3/2/91 Newberry

9

704.691 PUBLIC UTILITY REGULATION

3. This section does not apply to sporting events or other special events which are televised for viewing on a closed circuit only. (Added to NRS by 1979, 823)

TELEPHONE COMPANIES

704.691 Telephone companies must assist peace officers in investigating obscene, threatening telephone calls.

1. Every public utility furnishing telephone service in this state shall provide any lawful assistance requested by any sheriff or his deputy, or chief of police or policeman, in tracing any person who uses obscene language, representations or suggestions in addressing any person by telephone, or addresses to such person any threat to inflict injury to the person or property of the person addressed, when such request is made in writing to such public utility.

2. Good faith reliance by the public utility on such request shall constitute a complete defense to any civil or criminal suit against the public utility on account of assistance rendered by such utility in responding to such request.

3. The provisions of subsection 1 shall not be construed to permit wiretapping, which may be engaged in only pursuant to the provisions of NRS 179.410 to 179.515, inclusive. (Added to NRS by 1971, 856; A 1973, 1750)

INJURY TO PUBLIC UTILITY PROPERTY

704.800 Unlawful acts against public utilities: what is prima facie evidence; criminal, civil penalties.

1. Every person who willfully, and with intent to injure or defraud:

(a) Opens, breaks into, taps or connects with any pipe, flume, ditch, conduit, reservoir, wire, meter or other apparatus belonging to or used by any water, gas, irrigation, electric or power company or corporation, or belonging to or used by any other person, persons or association, or by the state, or by any county, city, district or municipality, and takes and removes therefrom or allows to flow or be taken or be removed therefrom any water, gas, electricity or power belonging to another; or

(b) Connects a pipe, tube, flume, conduit, wire or other instrument or appliance with any pipe, conduit, tube, flume, wire, line, pole, lamp, meter or other apparatus belonging to or used by any water, irrigation, gas, electric or power company or corporation, or belonging to or used by any other person, persons or association, in such manner as to take therefrom water, gas, electricity or power for any purpose or use, without paying through the meter or instrument or other means provided for registering the quantity consumed or used,

is guilty of a public offense, as prescribed in NRS 193.155, proportionate to the value of the property removed, aged or damaged and

Vertical line of markings on the right side of the page, possibly a scanning artifact or a reference line.

in no event less than a misdemeanor; and such person is also liable to the person, persons, association or corporations, or the owner or user whose property is injured, in a sum equal to treble the amount of actual damages sustained thereby.

2. In any prosecution under subsection 1, proof that any of the acts therein forbidden were done on or about the premises occupied by the defendant charged with the commission of such an offense, or that he received the use or benefit of such water, gas, electricity or power by reason of the commission of any such acts, is prima facie evidence of the guilt of such defendant.

[1911 C&P § 467; RL § 6732; NCL § 10416] + [1911 C&P § 468; RL § 6733; NCL § 10417]—(NRS A 1967, 656; 1979, 1493)

#### UTILITY ENVIRONMENTAL PROTECTION ACT

704.820 Short title. NRS 704.820 to 704.900, inclusive, shall be known and may be cited as the Utility Environmental Protection Act. (Added to NRS by 1971, 554)

#### 704.825 Declaration of legislative findings and purpose.

1. The legislature hereby finds and declares that:

(a) There is at present and will continue to be a growing need for electric, gas, telephone, telegraph, water and CATV utility services which will require the construction of new facilities. It is recognized that such facilities cannot be built without in some way affecting the physical environment where such facilities are located.

(b) It is essential in the public interest to minimize any adverse effect upon the environment and upon the quality of life of the people of the state which such new facilities might cause.

(c) Present laws and practices relating to the location of such utility facilities should be strengthened to protect environmental values and to take into account the total cost to society of such facilities.

(d) Existing provisions of law may not provide adequate opportunity for individuals, groups interested in conservation and the protection of the environment, state and regional agencies, local governments and other public bodies to participate in any and all proceedings before the public service commission of Nevada regarding the location and construction of major facilities.

2. The legislature, therefore, hereby declares that it is the purpose of NRS 704.820 to 704.900, inclusive, to provide a forum for the expeditious resolution of all matters concerning the location and construction of electric, gas, telephone, telegraph, water and CATV transmission lines and associated facilities.

(Added to NRS by 1971, 554)

704.830 Definitions. As used in NRS 704.820 to 704.900, inclusive, the words and terms defined in NRS 704.840 to 704.860, inclusive,

Nevada Power Company  
P.O. Box 230  
Las Vegas, Nevada 89151

Tariff No. 1-B  
cancels

Original \_\_\_\_\_ P.S.C.N. Sheet No. 100

Tariff No. 1-A (withdrawn)

Cancelling \_\_\_\_\_ P.S.C.N. Sheet No. \_\_\_\_\_

Rule No. 17

METER TESTS AND ADJUSTMENT OF BILLS FOR METER ERROR

A. Tests

1. Prior to Installation

Every meter shall have been tested prior to the time of its original installation.

2. Standard of Accuracy

When a test of a watthour meter exceeds one percent at either light load or heavy load at unity power factor, or exceeds two percent at heavy load at approximately 0.5 power factor lag, the percentage registration of the meter shall be adjusted to within these limits of error, as closely as practicable to the condition of zero error. Where instrument transformers are used in conjunction with the meter, these limits apply to the meter equipment as a whole, except as provided in 6.1.7.2. All meters that are tested shall be left without creep.

3. On Customer Request

- a. A Customer may on notice of not less than one week require the Utility to test the meter used to measure his requirements.
- b. Should a Customer demand such a test, he may be required to advance not less than \$5.00 to partially cover the cost of the test. This advance will be returned if the meter is found to register fast as determined by A-2 above.
- c. A Customer or his representative shall have the right to witness the test as conducted by the Utility.
- d. A report showing the results of a test performed on request will be furnished to the Customer within a reasonable time after completion of the test.

Continued

<p>Issued:</p> <p>Effective:</p> <p>Advice No.: 10</p>	<p>Issued By:</p> <p>Conrad L. Ryan President</p>	<p>UTILITY OF NEVADA</p> <p>ACCUMULATED FOR</p> <p>115</p> <p>EFFECTIVE</p> <p>MAY 30 1980</p>
--	---	--



Nevada Power Company  
P.O. Box 230  
Las Vegas, Nevada 89151  
Tariff No. 1-B  
cancels  
Tariff No. 1-A (withdrawn)

Original \_\_\_\_\_ P.S.C.N. Sheet No. 101  
Cancelling \_\_\_\_\_ P.S.C.N. Sheet No. \_\_\_\_\_

Rule No. 17  
METER TESTS AND ADJUSTMENT OF BILLS FOR METER ERROR  
(Continued)

B. Adjustment of Bills for Meter Error

1. Fast Meters

When, upon test, any meter is found to be registering fast, as determined by A-2 above, the Utility will refund to the Customer the amount of the overcharge based on corrected meter readings for a period not to exceed the preceding six months.

✓ 2. Slow Meters

When, upon test, a meter is found to be registering slow, as determined by A-2 above, the Utility may bill the Customer for the amount of the undercharge based on corrected meter readings for a period not to exceed the preceding three months.

✓ 3. Nonregistering Meters

When, upon test, any meter is found to be nonregistering, the Utility may bill the Customer for electricity-consumed but not registered for a period not to exceed three months, except as provided in paragraph 17-C.

Bills for this purpose will be based on the Customer's prior requirements, if reliable, taken in connection with subsequent requirements correctly metered, and the general characteristics of the Customer's operations.

C. General

When it is found that the error in a meter is due to causes, the date of which can be reliably established, the overcharge or the undercharge will be computed back to, but not beyond, that date and no part of the minimum charge will be refunded.

<p>Issued:</p> <p>Effective:</p>	<p>Issued By:</p> <p>Conrad L. Ryan President</p>	<p>116</p>
<p>Advice No.: 10</p>	<p>EFFECTIVE MAY 30 1980</p>	

Rule No. 6

DISCONTINUANCE, RESTORATION AND REFUSAL OF SERVICE

A. Customer's Request for Discontinuance of Service

1. Unless otherwise covered in these regulations or by special contract between Customer and Utility, a Customer may have service discontinued by giving not less than five days advance notice thereof to the Utility. Charges for service may be required to be paid until the requested date of discontinuance or such later date as will provide not less than the required five days advance notice.
2. When such advance notice is not given to the Utility, the Customer may be required to pay for service until five days after the Utility has knowledge that the Customer has vacated the premises or otherwise has discontinued electric service.
3. Whenever a Customer discontinues the electric service received from the Utility before the end of the contract period of his Service Agreement, the Utility may bill him for the minimum charges due for the remainder of such contract period, exclusive of the RS schedule.

B. Discontinuance of Service by Utility

1. For nonpayment of bill

A Customer's service may be discontinued for nonpayment of a bill for service furnished if the bill is not paid within 20 days after presentation, provided the Utility has given the Customer at least five days prior written notice of such intention.

2. For noncompliance with rules

The Utility may discontinue service to any Customer for violation of these Rules after it has given the Customer at least five days written notice of such intention.

Issued:  Effective:  Advice No.: 10	Issued By:  Conrad L. Ryan President	PUBLIC SERVICE COMMISSION OF NEVADA ACCOUNTS FOR FILED 117 EFFECTIVE MAY 30 1980
---	---	---

Rule No. 6

DISCONTINUANCE, RESTORATION AND REFUSAL OF SERVICE

(Continued)

3. A Customer's electric service at the new location may be discontinued for nonpayment of a bill for electric service at a previous location if the bill is not paid within 20 days after presentation, provided the Utility has given the Customer at least five days prior written notice of such intention. If the Utility has issued a notice of discontinuance of service to the Customer at the previous location, then service to the new location by be discontinued by the Utility upon twenty-four hours notice to the Customer.

4. If a Customer is receiving electric service at more than one location, service at any or all locations may be discontinued if bills for service at any one or more of these locations are not paid within 20 days after presentation, provided the Utility has given the Customer at least five days prior written notice of such intention. However, domestic service will not be discontinued because of nonpayment of bills for other classes of service.

C. For Unsafe Apparatus or Where Service is Detrimental or Damaging to the Utility or Its Customers

If any unsafe or hazardous condition is found to exist on the Customer's premises, or if the use of electricity thereon by apparatus, appliances, equipment or otherwise is found to be detrimental or damaging to the Utility or its Customers, the service may be shut off without notice. The Utility will notify the Customer immediately of the reasons for the discontinuance and the corrective action to be taken by the Customer before service can be restored.

The Utility does not assume the duty of inspecting the consumer's lines, appliances or apparatus or any part thereof and assumes no liability thereof.

D. Service Detrimental to Other Customers

The Utility will not establish service to utilizing equipment, the operation of which will be detrimental to the service of its other customers, and will discontinue electric service to any Customer who shall continue to operate such equipment after having been directed by the Utility to cease so doing.

Issued:

Issued By:

Effective:

Conrad L. Ryan  
President

Advice No.: 10

DIVISION OF PUBLIC UTILITIES

OF NEVADA

AGREED FOR

FILED 118

EFFECTIVE

MAY 30 1980

Rule No. 6

DISCONTINUANCE, RESTORATION AND REFUSAL OF SERVICE

(Continued)

E. Fraud

✓ The Utility shall have the right to refuse or to discontinue electric service if the acts of the Customer or the conditions upon his premises are such as to indicate intention to defraud the Utility. When the Utility has discovered that a Customer has obtained service by fraudulent means, or has used the electric service for unauthorized purposes, the service to that Customer may be discontinued without notice. The Utility will not restore service to such Customer until that Customer has complied with all filed Rules and reasonable requirements of the Utility and the Utility has been reimbursed for the full amount of the service rendered and the actual cost to the Utility incurred by reason of the fraudulent use.

F. Failure to Meet Credit Requirements

If for an applicant's convenience, the Utility should establish electric service for him before he has established his credit, and he fails to do this within five days thereafter, the Utility may discontinue his service.

G. Restoration of Service

- 1. To be made during regular working hours.

The Utility will endeavor to make reconnections during regular working hours on the day of the request, if conditions permit, otherwise reconnections will be made on the regular working day following the day the request is made.

- 2. To be made during a period other than regular working hours.

When a customer has requested that the reconnection be made during a period other than regular working hours, the Utility will reasonably endeavor to so make the reconnection if practicable under the circumstances but will be under no obligation to do so, unless, in the opinion of the Utility, an emergency exists.

Issued:

Effective:

Advice No.: 10

Issued By:

Conrad L. Ryan  
President

PUBLIC UTILITY COMMISSION  
PUBLIC UTILITY COMMISSION  
OF NEVADA

ACCEPTED FOR  
FILING

EFFECTIVE

MAY 30 1980

119

Rule No. 6

DISCONTINUANCE, RESTORATION AND REFUSAL OF SERVICE

(Continued)

3. Reconnection Charge

Where service has been discontinued for violation of these Rules or for nonpayment of bills, the Utility will charge \$7.50 for reconnection of service during regular working hours, plus an additional charge of \$3.00 if the customer requests that the reconnection be made during a period other than regular working hours.

H. Refusal to Serve

1. Conditions for Refusal

The Utility may refuse to serve an applicant for service under any of the following conditions:

- a. If the applicant fails to comply with any of the Rules as filed with the Public Service Commission.
- b. If the intended use of the service is of such a nature that it will be detrimental or injurious to existing Customers.
- c. If, in the judgment of the Utility, the applicant's installation for utilizing the service is unsafe or hazardous, or of such nature that satisfactory service cannot be rendered.
- d. Where service has been discontinued for fraudulent use, in which case Rule 6. 2. will apply.
- e. If the applicant is delinquent in the payment of bills for the same classification of service.

2. Notification to Customer

When an applicant is refused service or his service has been discontinued under the provisions of this Rule, the Utility will notify the applicant promptly of the reason for the refusal to serve and of the right of applicant to appeal the Utility's decision to the Public Service Commission.

Issued:	Issued By:	PUBLIC SERVICE COMMISSION OF NEVADA
Effective:	Conrad L. Ryan President	ACCOUNT FOR FILING 120
Advice No.: 10		EFFECTIVE MAY 20 1980