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SENATE COMMERCE AND LABOR

AB 32

TESTIMONY OF RUSS FIELDS,
PRESIDENT, NEVADA MINING ASSOCIATION

MAY 2, 2003

AB 32 is intended to assure that mill tax and other governmental taxes, fees and assessments that are ordinarily collected through public utilities are not lost because customers switch to other providers of natural gas or electricity.

To enforce collection of these various taxes and fees, the bill would require alternative sellers of natural gas, like public utilities, to make annual reports to the Public Utilities Commission of Nevada regarding their sales and to make their books and records available for inspection.

With respect to purchasers of electricity from providers of new electric resources, however, the first reprint of the bill as voted out of the Assembly would require the customers themselves to make such annual reports and be subject to Utility Commission inspection of their books and records, and even to be subject to fines from the Commission.

We see no reason why purchasers of electricity from alternative sources should be treated so differently and more intrusively than purchasers of natural gas, or indeed, from purchasers of electricity from traditional utilities. My members are very concerned about the integrity of their competitive operations if they, among all energy consumers in the state, must be subject to Public Utility Commission jurisdiction.

That is not to say, however, that my members, whether they switch to a provider of new electric resources or not, should not pay their share of the taxes, fees and assessments that are assessed by the government for the public good. We believe we should. And we intend to do so.

We have proposed some modest amendments to the bill that will result in consumers of electricity from providers of new resources being treated more like all other energy consumers, while assuring – indeed enhancing the assurance – that that they will continue to contribute their fair share of the applicable taxes, fees and assessments.

Our proposed amendments have been distributed to the Committee. You will see that in Section 1 we have added the definition for “provider of new electric resources” as used in NRS 704B.130. Then in Sections 2 through 6 of the bill,

which are the sections that require reports and disclosures to the Commission, we have suggested deleting the applicability of those sections to eligible customers themselves, and instead making them applicable to the providers of new electric resources, as they are to public utilities, to alternative sellers of natural gas, and to providers of discretionary natural gas service. That levels the playing field for consumers of electricity.

In those sections you will see that in a few places we have also clarified the subject matter of the reports and records that must be made or be made available to the "applicable business transacted in this state." We do not believe that we have changed the intent or meaning of the bill by doing so, but we want to give comfort to providers of new electric resources that they are not subject to disclosure and reporting of activities that have nothing to do with their activities in this state or that relate to the volume of sales on which the taxes, fees and assessments are based.

Indeed, NRS 704B.300 makes clear that providers of new electric resources are not public utilities and are not subject to the jurisdiction of the Commission "except as otherwise provided by this chapter or by specific statute." Consistent with this clear legislative intent that providers of new electric resources not be generally subject to commission jurisdiction, our proposed language is intended to clarify the limited scope of the Commission's inquiry concerning their affairs.

I should note that while all other energy customers in this state pay their mill taxes and other relevant taxes fees and assessments through their utility or alternative seller, we have not proposed changing the provisions of Sections 15 and 16 of the bill that would require customers of providers of new electric resources from paying those taxes, fees and assessments directly. This is so for two reasons:

First, we wanted to emphasize that our resistance to opening up our books and records to the Commission does not extend to paying the appropriate taxes.

And second, since the consequence of not getting the taxes into the appropriate governmental entities hands is the loss of the customer's right to buy from the provider, it made sense to us that we pay the taxes directly ourselves.

I note that this gives the Commission and other affected governmental entities an additional tool to make sure that no one is avoiding their responsibility: for customers of providers of new electric resources, unlike any other energy consumers, the Commission will know both what the customer actually paid, and

what the books of the seller say the customer *should* have paid. This is a check that is not available for any other segment of the consuming public.