

1 Debrea M. Terwilliger, Esq.
2 NEVADA STATE BAR NO. 10452
3 PUBLIC UTILITIES COMMISSION OF NEVADA
4 1150 East Williams Street
5 Carson City, NV 89701
6 Telephone: 775-684-6132

7
8 **BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

9 Investigation regarding the Energy Choice Initiative.

Docket No. 17-10001

10 **REGULATORY OPERATIONS STAFF'S COMMENTS AT CONCLUSION OF**
11 **WORKSHOP**

12
13 COMES NOW, the Regulatory Operations Staff ("Staff") of the Public Utilities Commission
14 of Nevada ("Commission") and pursuant to the Commission's Procedural Order Setting Workshop
15 Schedule ("Procedural Order") provides the following Comments at the Conclusion of the Workshop
16 ("Concluding Comments"). The Procedural Order states that comments could be filed until February
17 16, 2018, after the Workshop closed.

18 The Energy Choice Initiative ("Initiative"), if passed, will amend Article 1 of the Nevada
19 Constitution to, among other things, provide choice for Nevada consumers in selecting their retail
20 electricity provider. While the Initiative sets forth the basic requirements of choice, along with other
21 directives, the discussion at the Commission's Workshop clearly demonstrates that many of the
22 details as to how choice and other requirements in the Initiative are effectuated will be the
23 responsibility of the Nevada Legislature. The specifics as to how "meaningful choice" is defined and
24 the new rights of electric energy purchasers that will be bestowed via the Initiative must be decided
25 by the Legislature before July 1, 2023.

26 By amending Nevada's Constitution to open Nevada's electric retail market, Nevada will be
27 unique among all other states. No other state has undertaken a restructuring of its electricity markets
28 through a constitutional amendment. Rather, when restructuring was undertaken in other states,

1 policymakers started with a set of clear goals and were able to model their restructuring path based on
2 those goals. With the adoption of a constitutional amendment, Nevada's efforts to model
3 restructuring will be bookended by the rights, responsibilities and prohibitions set forth in the
4 Initiative. This makes Nevada's task that much more complex. Constitutional rights and prohibitions
5 are unwaivable; there will be no appropriate "work around" to the constitutional amendment.
6 Nevada, unlike other states, does not have a clean slate to intricately develop clear restructuring goals
7 and model the restructured market solely on those goals.

8 This is not say that if the Initiative passes, Nevada is not up to the task to restructure its
9 electricity market. But, the fact remains the same: every step undertaken with restructuring will have
10 to look to the Initiative as a touchpoint. Is any goal we are setting violating the new rights set forth in
11 the Initiative? Will the amendment to the Constitution be violated with any new requirement we are
12 considering?

13 **I. Understanding the Initiative is Crucial to Effective Implementation**

14 As noted above, many of the details as to how choice and other requirements in the Initiative
15 are effectuated will be the responsibility of the Nevada Legislature. But before even the Legislature
16 can undertake this monumental task, the Initiative requirements and prohibitions must be fully
17 understood. In fact, before Nevada can even start the process of setting goals and deciding how to
18 carry out its goals with law changes, we need to try to understand the mandates, as well as the limits
19 and bounds, of the Initiative. Unfortunately, as indicated by the discussion during the Commission's
20 Workshop, there is not always clarity as to what the drafters of the Initiative meant and how the
21 competing Initiative requirements can be implemented. To further this conversation and work at
22 resolving the questions regarding the meaning of the Initiative, Staff details some of its understanding
23 of the Initiative itself, the discussion surrounding the Initiative at the Commission's Workshop and
24 the key questions the Nevada Legislature will have to answer, even before law changes are
25 undertaken.

26 Section 2 of the Initiative sets forth the new rights for electric energy purchasers as defined in
27 the Initiative. Staff boils down the new rights in this section into five separate groups, as follows:
28

1. Every person, business, association of persons or businesses, state agency, political subdivision of the State or any other entity (hereinafter, “every person or entity”) has the ***right to choose*** its provider of electric utility service.
2. Nevada residents may select providers from a competitive retail electric market.
3. Every person or entity ***may produce electricity for themselves***.
4. Every person or entity ***may produce electricity in association with others***.
5. No person or entity ***may be forced to purchase*** electricity from one provider.

These directives seem fairly clear on their face, but several questions arise from these new rights for Nevada residents and businesses, including:

1. Since Nevada residents may now select providers from a competitive retail market, what kind of market should be established? Are there limitations on that competitive retail market?
2. May Nevada residents and entities be entirely disconnected from the grid? In other words, can local ordinances still mandate interconnection to the grid?
3. If a person or entity has a right to produce, is there any attenuating requirement for someone to buy any excess energy produced? If not, what, if anything, happens with the excess energy?
4. Will customers that are currently net metered who produce excess energy have the same rights as they do under Assembly Bill 405 (“AB 405”) regarding the purchase of their excess energy? What about other distributed energy resources? Will retail service providers be required to “pay” for demand response undertaken by their customers?
5. Is the transmission/distribution provider for Nevada required to accommodate groups of persons or entities that associate with each other to produce electrical energy? Even if the association of these persons will produce less than 1 megawatt (“MW”) of energy?¹ If the transmission and distribution utility is not required to accommodate aggregated energy under 1 MW, who buys the smaller tranches of energy, if anyone? What happens if an association of persons/businesses are not physically located adjacent to each other?
6. Will retail providers be required to purchase power from smaller qualifying facilities that are only interconnected to the distribution grid?

For many of these questions, there are no answers yet. For example, the Workshop participants agree that a robust competitive retail electricity market must be established. But several questions flow from this idea, including: (1) does a wholesale market have to be in place before the competitive retail market is opened; (2) what parameters will be established for a provider of last resort or a default service provider in the competitive retail market; and (3) is there room for price caps or other protections from volatility in a competitive retail market. While these specific

¹ The minimum requirement for Nevada Energy’s (“NVE”) Open Access Transmission Tariff (“OATT”) is 1 MW of energy. *See, e.g.*, Nevada Power Company, OATT, Part IV - 36 (“Each eligible retail customer or authorized agency must have a minimum of one (1) MW of load under each type of Transmission Service requested to accommodate scheduling requirements.”).

1 questions were raised at the Workshop, no clear answers are yet available because certain conditions
2 precedent must be determined by the Nevada Legislature before definitive answers can be
3 established. One condition precedent will be whether NVE will remain, whether voluntarily or
4 because it is required to do so, as a provider of electric generation. The answers for the above
5 questions are likely to change depending on whether NVE is a commodity provider of some sort in
6 the future or not.

7 Additionally, at the Workshop, a majority of the participants expressed the clear intent to
8 maintain the rights afforded to net metered customers through AB 405. However, Section 28.3 of AB
9 405 determines the credit to be received by the net metered customer for each kilowatt-hour of excess
10 electricity in terms of the rate that the customer would have paid to the utility at the time the excess
11 energy was created. Given that all of Nevada’s net metered customers are served by NVE, and NVE
12 may not be a “utility” selling a kilowatt of energy in the future, this statutory section will have to be
13 revisited if the Initiative passes to ensure that current customers maintain these same rights.
14 However, given that different retail service providers might offer different rates for each kilowatt-
15 hour of energy, will the credit that the net metered customers receive be dependent on the rate offered
16 by that retail service provider?² Or some other metric? Or will we seek to hold net metered
17 customers harmless to ensure they are credited the same amount by their retail service provider that
18 they would have received from NVE?

19 Section 3, which concerns implementation of the Initiative, may introduce even more
20 unanswered questions that the Legislature will need to answer. Section 3 seemingly will require the
21 Legislature to balance various directives, including to:

- 22 1. Establish an open, competitive retail energy market;
- 23 2. Ensure protections for safe, reliable and competitively priced electricity;
- 24 3. Reduce costs to customers;
- 25 4. Protect against service disconnections and unfair practices; and
- 26 5. Prohibit the grant of monopolies and exclusive franchises for generation.

27 ² As a side note, should retail service providers be required to purchase or “credit” energy from a net-metered system?
28 Theoretically, under the terms of the Initiative, net metered customers may be deemed “providers”, and the Initiative
states that no person or entity *may be forced to purchase* electricity from one provider.

1 In addition, Section 3 states that the Initiative does not invalidate Nevada’s public policies on
2 renewable energy, energy efficiency and environmental protection. Section 3 does not prioritize
3 these mandates or state that such requirements are in effect during interim, defined periods of time,
4 such as when the market is nascent.

5 Questions as to the interplay of these various requirements arose at the Commission’s
6 Workshop. For example, Staff asked how the ECI drafters or proponents believe Nevada should
7 balance the mandate for an open, competitive retail energy market with the requirement to reduce
8 costs to customers. In balancing these two potentially competing directives, can Nevada implement
9 price caps during periods of price volatility or when the market is nascent and still satisfy the
10 requirement for an open, competitive retail energy market? Additionally, how could regulators even
11 demonstrate reduced costs to customers in a competitive market to satisfy the Initiative? The ECI
12 proponents leave these issues to be addressed by the Nevada Legislature, perhaps with input from this
13 Commission. Transcript of Proceedings, Docket No. 17-10001 (“Tr.”) at 79-86, 721-22.³

14 The Chairman also sought guidance on ranking or prioritizing the Initiative mandates to better
15 understand the interplay of the various requirements. ECI proponents stated that while it was unclear
16 whether you could actually rank the priorities of the Initiative, their ranking based on conversations at
17 the time of drafting would be: first is choice, then renewables, and finally jobs. Tr. at 111-12. While
18 choice seems like a clear first priority, Staff is a bit confused by the other rankings offered by ECI
19 proponents. There is no specific mandate in the Initiative for renewables. Rather, the Initiative only
20 states that nothing in it can be construed to invalidate Nevada’s renewable energy or energy
21 efficiency policies. There also is no discussion of jobs in the Initiative, even if jobs or economic
22 development might be a result of the Initiative. In all, it seems as though the Legislature will be
23 tasked with determining how to prioritize or rank the various mandates of the Initiative.

24
25
26
27 ³ The Retail Energy Supply Association (“RESA”), an active participant in the docket, tried to answer Staff’s question
28 about balancing these differing directives by indicating the State needs “a whole different way to think about the
electricity market.” Tr. at 81. RESA, however, seemed to lose sight of the language of the Initiative, which will amend
Nevada’s Constitution, and that Nevada will not be starting with an entirely clean slate. In creating an open, competitive
retail electricity market, Nevada must comply with the Initiative requirements if it passes.

1 Additionally, on its face, it seems fairly clear that the Initiative directly prohibits the grant of
2 monopolies and exclusive franchises for the generation of electricity. Several questions also arise
3 from this prohibition, including:

- 4 1. Whether NVE will seek to divest its generation assets since it will no longer hold a
5 monopoly for generating electricity;
- 6 2. Whether the Nevada Legislature can prohibit NVE from divesting its generation assets if
7 NVE seeks to do so;
- 8 3. Whether the Nevada Legislature can mandate that NVE divest its generation assets if it
9 doesn't want to divest;
- 10 4. Whether the Nevada Legislature and the Commission can enforce Nevada Power's and
11 Sierra Pacific's certificate of public convenience and necessity even after these companies
12 no longer have a monopoly;⁴ and
- 13 5. What does the prohibition of the monopoly/exclusive franchise mean for cooperatives or
14 municipalities?

15 Participants at the Commission Workshop acknowledge that many of these decisions are in
16 the hands of the Legislature.⁵ Importantly, many of these questions are legal in nature and are not
17 clear cut. In other words, no matter what answer there is, the outcome is likely to be subject to legal
18 challenges. Ultimately, as the Chairman indicated at the Commission's Workshop, the Nevada
19 Supreme Court may have to decide what the Nevada Constitution, if amended by the Initiative,
20 requires and does not require.

21 **II. There Will Be Costs Associated with Initiative Implementation**

22 Implementation of the Initiative will come at a cost for Nevada customers, but the level of
23 those costs will depend on a number of different factors. Costs for the Initiative generally can be
24 grouped into five categories: (1) transition costs associated with the potential divestiture or
25 assignment of generation assets and/or contracts for generation by Nevada's current monopoly
26 providers, Nevada Power and Sierra Pacific (collectively, NVE); (2) costs for joining or creating a

27 ⁴ It should be noted that Nevada Power's and Sierra Pacific's Certificate of Public Convenience and Necessity ("CPCN")
28 with the Commission state that nothing in the CPCN should be construed at creating a franchise. *See* CPC 613 Sub 19 for
Nevada Power Company d/b/a NV Energy.

⁵⁵ *See, e.g.,* Tr. at 720 ("And so that is very much part of the reason why this was drafted as a Constitutional Amendment,
because ... the drafters were able to say, okay, so here the policy, and here's a couple of bounds, ... no monopoly on
electric generation, and meaningful choice ... And then in between those there is a lot of space, and intentionally a lot of
space, for the Legislature, as many iterations as necessary, as many as it takes, and a lot the Commission or other State
agencies, to make sure that happens cleanly and with customer protections in place.").

1 wholesale market; (3) costs for opening a retail market; (4) ongoing costs for maintaining an open,
2 competitive retail market; and (5) other incidental costs to Nevada customers that will be incurred as
3 a result of the Initiative.⁶

4 **A. Transition Costs**

5 The level of transition costs depends on whether NVE is forced to, or is permitted to, divest
6 its generation assets and long-term contracts.⁷ NVE has estimated that stranded costs post-divestiture
7 could total \$5-7 billion. The ECI proponents have not presented an alternative number, but argue that
8 NVE's estimate is a "false number" that "has no basis whatsoever in fact, and it does not represent
9 the costs the consumers would pay if we go to energy choice." Tr. at 1094. While claiming that the
10 NVE estimates are false, the ECI proponents also "readily admit" that "there is no cost analysis" that
11 it has submitted to determine an accurate amount. Tr. at 1095.

12 As stated at the Commission's Workshop, Staff has evaluated NVE's estimates. Based on the
13 best available data, Staff believes there is support for NVE's estimates on stranded costs if NVE is
14 forced to, or chooses to, divest its generation assets and long-term contracts. At the very least, Staff
15 believes NVE's estimates may be used as the "worst case" numbers that might result from divestiture
16 post-passage of the Initiative. But, in determining what might be an accurate estimate, we don't
17 know what we don't know. Unpredictable changes could drive up or down the value of NVE's
18 natural gas fleet, for example.

19 In total, the net book value of NVE's owned generation assets as of December 31, 2016, is
20 \$3.015 billion.⁸ NVE has not provided detailed estimates of its undepreciated net book value as of
21

22 ⁶ Tough decisions regarding allocation of the costs associated with the implementation of the Initiative between Nevada
23 customers, including, but not limited to, NVE's ratepayers, Nevada Revised Statutes ("NRS") Chapter 704B customers,
24 electric cooperative association utility members, and municipal utility ratepayers, will have to be undertaken by the
25 Nevada Legislature.

26 ⁷ Staff continues to have concerns with any Initiative implementation that would require NVE to keep its generation
27 assets but would open up the entire Nevada market to retail competition. Under such a scenario, it is likely that larger,
28 more sophisticated customers would exit NVE's system, leaving fewer and fewer customers (and particularly larger
customers) over which NVE could spread the cost of service. Presumably, requiring NVE to keep its generation assets
but permitting retail competition would work only if all customers that exit NVE's system continue to pay exit fees that
fairly represent the costs the system incurred on behalf of that customer before exit.

⁸ NV Energy's Power Supply Assets, presentation to Governor's Committee on Energy Choice, at 3, available at
<http://energy.nv.gov/uploadedFiles/energynvgov/content/Programs/TaskForces/2017/NVE%20Supply%20Assets%20Data%20Request%20From%20GCEC%20TWG%20Consumer%20Investor%20Impacts.pdf> ("NVE Power Supply Assets
Presentation").

1 July 1, 2023, but based on Staff's evaluation, we understand that the net book value of NVE's assets
2 will be \$1.91 billion by mid-2023, assuming no capital additions for repairs or other maintenance.⁹
3 The ECI proponents believe that the market value of NVE's generation assets as of 2023 will be
4 approximately \$1.9 billion. Tr. at 1092-93.¹⁰ In other words, the ECI proponents (unless they
5 misspoke), believe that the market value for NVE's assets will be exactly the same amount as the net
6 book value in mid-2023. Staff has not seen the analysis from the ECI proponents, but Staff does not
7 expect that NVE will get from the market exactly what is "owed" for its generating units.

8 The details of NVE's owned generation assets as of December 31, 2016 is broken down as
9 follows:

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26 ⁹ As detailed below, this is a pretty big assumption. To maintain the value of the plants and to ensure reliability, a not-so-
27 insignificant amount of capital investments are made each year to NVE's generators. These capital investments will
increase the undepreciated net book value of the generation asset.

28 ¹⁰ Separately, ECI proponents also have stated that "some preliminary analysis indicate[s] that there may be no stranded
assets whatsoever with respect to generation. That in fact, that may be a positive number, not a negative number." Tr. at
1095. This analysis has not been presented for evaluation by other stakeholders.

<u>Generating Unit</u>	<u>Owner</u>	<u>Net Book Value as of Dec. 31, 2016</u>	<u>MW Rating</u>
Harry Allen Generating Station	Nevada Power	\$638 million	628 MW
Silverhawk Generating Station ¹¹	Nevada Power	\$177.7 million	520 MW
Chuck Lenzie Generating Station	Nevada Power	\$438 million	1,102 MW
Las Vegas Generating Station	Nevada Power	\$126.4 million	272 MW
Sun Peak Generation Station	Nevada Power	\$15.7 million	210 MW
Edward W. Clark Generating Station	Nevada Power	\$409.2 million	1,103 MW
Walter M. Higgins Generating Station	Nevada Power	\$421 million	530 MW
Goodsprings Energy Recovery Station	Nevada Power	\$26.5 million	5 MW
Nellis Solar Array II	Nevada Power	\$45 million	15 MW
Navajo Generating Station	Nevada Power	\$57.1 million	255 MW
North Valmy Generating Station	Sierra Pacific	\$171.9 million	261 MW
Frank A. Tracy Generating Station	Sierra Pacific	\$443.3 million	753 MW
Clark Mountain Combustion Turbines	Sierra Pacific	\$16.2 million	132 MW
Fort Churchill Generating Station	Sierra Pacific	\$29.1 million	226 MW

As noted above, we know that the undepreciated net book values listed above will decrease as of 2023. Even with these reductions, however, recent data does not support assumptions that NVE will make money or even break even on most of its generating assets.

As this Commission is aware, Nevada Power sought to acquire the South Point Energy Center (“South Point”) at the initial capital cost of \$100 million, which includes a purchase price of \$75 million, \$3.6 million of integration costs and an estimated \$20.8 million of required investment

¹¹ Nevada Power purchased 25% of Silverhawk for \$77.1 million in 2017. This acquisition is not reflected in the \$177.7 million.

1 costs.¹² While Nevada Power did not ultimately gain approval to purchase South Point, this recent
2 data is indicative of what NVE's plants might be valued at in the open market.

3 South Point, which is a 500 MW unit, is of a similar vintage to many of NVE's natural gas
4 generating plants. As can be seen above, NVE owes significantly more than \$75 million on similarly
5 sized natural gas generating units, even assuming that the net book value will decrease by around
6 37% as of 2023. Moreover, NVE's newly constructed natural gas plants are air cooled, while the
7 South Point Energy Center is water cooled; water cooled plants may be worth more money to
8 merchant generators, as the plant's output is less affected by the higher ambient temperatures Nevada
9 (particularly Southern Nevada) experiences in the summer months.

10 More recent data from an Arizona transaction also doesn't support the ECI proponents'
11 valuations of NVE plants. Salt River Project ("SRP") recently purchased two 550 MW natural gas
12 generating units at the Gila River Power Station near Gila Bend for a reported \$330 million.¹³ The
13 acquisition of 1100 MW of natural gas generation for \$330 million does not indicate NVE can expect
14 positive returns for many of its gas generating plants, for which the undepreciated net book value
15 may still be over \$330 million in 2023 and generally are about half of the size of SRP's 1100 MW
16 acquisition.

17 And while it is the case that the net book value of NVE's generating units will decrease by
18 approximately 37% by mid-2023, each of the assets is likely to also experience some additional
19 capital investment. NVE makes capital investments to its generation assets to maintain their
20 reliability and/or efficiency. These capital investments will increase the undepreciated net book
21 value of the generation asset. While there is an argument to be made that NVE may want to cut down
22 on its capital investments (if it can) such that the undepreciated net book value is minimized for
23 divestiture, limiting investments might also erode the value of the plant for a future sale. As a means
24 of a benchmark for expected capital additions before 2023, we note that NVE expects to invest
25

26
27 ¹² Modified Order on Phase II and Phase III, Docket Nos. 16-07001, 16-07007 and 16-08027, at ¶ 85. Nevada Power
would have acquired the facility as of December 31, 2016.

28 ¹³ *SRP buys Gila Bend gas facility for \$330M*, WHITE MOUNTAIN INDEPENDENT, available at
http://www.wmicentral.com/news/latest_news/srp-buys-gila-bend-gas-facility-for-m/article_e5ff9e4a-6a29-587d-858a-43b075c14b55.html.

1 approximately \$63 million in capital maintenance for its generation assets in 2018.¹⁴ If NVE expends
2 \$63 million each year for capital maintenance, approximately \$350 million in additional capital will
3 be added to the \$1.9 billion of net book value expected in mid-2023.

4 In addition to generating assets, there are also NVE's long-term purchased power agreements
5 ("PPAs") to consider. As with the generating assets, whether or not these remaining obligations are
6 stranded costs or not is dependent on a number of factors, including if NVE is forced to, or is
7 permitted to, divest these long-term contracts.

8 As part of any divestiture (whether ordered or chosen), Staff believes abrogating these
9 contracts should not be a default option and should only be exercised in extreme circumstances.
10 First, abrogation of contracts sends a message that Nevada will not force its regulated entities to
11 honor contracts and may harm entities operating in this state from securing future long-term
12 contracts. In fact, future investment in Nevada-based renewable facilities could be irreparably
13 harmed. Second, abrogating the contracts would prevent Nevada customers from receiving the
14 benefit of the energy produced by the facilities. Finally, abrogation could result in years of litigation
15 with an uncertain result; Nevada customers may still end up paying for all remaining obligations
16 associated with the contracts without receiving any of the energy.

17 Assuming the performance by NVE's counter parties meets the requirements of each contract,
18 the best course of action would be for Nevada to both continue paying through the remaining term
19 and receiving the benefit of the energy mandated by the contracts. If divestiture is required or
20 permitted by NVE, the Nevada Legislature may want to consider some strategy whereby a state
21 agency is assigned NVE's long-term PPAs. The state agency could require that retail service
22 providers take and pay for a portion of the energy from these PPAs based on their load. Under such a
23 proposal, a blended rate of all PPAs may be appropriate.

24 Regardless of whether its divestiture or assignment of NVE's long-term contracts to another
25 entity for administration, significant dollars are at issue for Nevada customers. According to NVE,
26 the estimated remaining obligations on those contracts total \$6.737 billion as of December 31,
27

28 ¹⁴ See Direct Testimony of Dariusz Rekowski, Docket Nos. 17-11003 and 17-11004, at Q&A 6.

1 2022.¹⁵ ECI proponents state that not all of this \$6.737 billion will be “costs” to customers.
2 Specifically, ECI proponents argue that the \$864 million Colorado River Commission contract for
3 Hoover is below market, and as such, the benefits will continue to accrue to customers (even if the
4 customers that receive the benefits from the Hoover contract change). Tr. at 1093.

5 The ECI proponents also state that some of the solar contracts are under-performing, and thus
6 could go into default (Tr. at 1093), thereby eliminating the cost of these contracts for customers in the
7 future. Staff is unaware of any contracts that are underperforming in such a way that an argument
8 could be made that the contract is in default. Staff is aware that possibly one contract – the Tonopah
9 Crescent-Dunes Renewable PPA – may have under-performed during the calendar year 2017,
10 according to the terms of the PPA.¹⁶ However, it is unclear whether the under-performance actually
11 means that the contract could be declared in default and abrogated as a result of the under-
12 performance. Additionally, Tonopah Solar Energy LLC, the developer of the Tonopah Crescent-
13 Dunes project, entered into a Loan Guarantee Agreement on September 23, 2011, and received a
14 \$737 million loan guarantee from the U.S. Department of Energy (“DOE”). The Loan Guarantee
15 Agreement with the DOE may afford the DOE rights to cure any defaults. As such, it may not be as
16 easy as the ECI proponents claim to terminate this PPA. The Tonopah Crescent-Dunes contract is
17 valued at approximately \$1.4 billion over its estimated remaining life.

18 Finally, Staff has been told (although it has not been verified) that Switch Station 1 and 2
19 could be taken over by Switch upon Initiative implementation, which means the \$420 million
20 attributable to these contracts would not be a cost assigned to future Nevada customers. Examining
21 these facts in accordance with the ECI proponents’ claims, NVE’s total \$6.737 billion may be
22 reduced to approximately \$4.1 billion.

23
24 ¹⁵ NVE Power Supply Assets Presentation at 21.

25 ¹⁶ The Tonopah-Crescent Dunes Facility did not have any contractual energy delivery performance issues during calendar
26 year 2016. In Docket No. 17-03001, Application of Nevada Power Company d/b/a NV Energy for approval of fuel and
27 purchased power expenses and to reset the Temporary Renewable Energy Development charge, reset all components of
28 the Renewable Energy Program Rates, reset the Base Energy Efficiency Program Rates, reset the Base Energy Efficiency
Implementation Rates, reset the Amortization Energy Efficiency Program Rate, reset the Amortization Energy Efficiency
Implementation Rate, and refund the total amount of Base Energy Efficiency Implementation Rate revenue received in
2016, including carrying charges, Staff propounded a data request inquiring which renewable energy PPAs had
contractual performance issues in calendar year 2016. In its response, NPC did not identify the Tonopah-Crescent Dunes
renewable energy PPA as having a contractual performance issue during calendar year 2016.

1 Taking the \$4.2 billion in costs for NVE's PPAs and assuming that NVE will not entirely
2 break even on its generating units, we are still in the ballpark of a \$5 billion amount in terms of
3 stranded assets or costs that will be assigned to Nevada customers after the Initiative is implemented.
4 No doubt, Staff agrees that more robust cost data needs to be placed in the record. Without
5 evaluating any alternative cost data from the ECI proponents, Staff cannot agree at this time that the
6 \$5 to \$7 billion figure is a "false number".

7
8 ***B. Costs for Joining or Creating a Wholesale Market***

9 Through the Commission's Workshop process, a more detailed assessment of the cost to join
10 or create a wholesale market in Nevada was developed. Stakeholders explored the initial and
11 ongoing costs associated with joining the California Independent System Operator ("CAISO").
12 Stakeholders also discussed the initial costs associated with establishing a Nevada-only wholesale
13 market.

14 CAISO estimates that its initial implementation costs for incorporating Nevada into its
15 wholesale market would be around \$500,000. Tr. at 883. CAISO acknowledges that there would be
16 additional implementation costs for NVE or the participating transmission owner (if that entity is not
17 NVE) beyond the \$500,000. This additional amount is not known at this time. Tr. at 893-94.

18 CAISO also estimates grid management charges of \$21 to \$27 million annually. The grid
19 management charge would be applied to the load-serving entities and the owners of generation in
20 Nevada. This \$21 to \$27 million figure, however, is an estimate representative of only NVE's load.
21 There is another 10 to 15 percent of load in Nevada served by entities other than NVE. To the extent
22 the municipalities and cooperatives join CAISO, the grid management charge for all of Nevada
23 would increase to account for this additional load. Tr. at 889-90.¹⁷

24 NVE representatives approximate that it would take \$100 million in new investment for NVE
25 to set up its own wholesale market. Tr. at 926. Those cost estimates do not include the ongoing,
26 annual costs that the State would incur to run the wholesale market.

27 ¹⁷ In addition to CAISO, Peak Reliability ("Peak") also appeared at the Commission's Workshop. Peak Reliability, who
28 is the reliability coordinator for the Western interconnect, and PJM Connex are exploring reliability services and markets
in the West. Given that Peak and PJM Connex are in the early stages of discussing their partnership, no cost data was
available in terms of estimates for Nevada to join any market that Peak and PJM Connex may create.

1 Given the significant costs anticipated for Nevada to open its own wholesale market and the
2 already existing synergies between Nevada and the CAISO with NVE’s participation in the Energy
3 Imbalance Market (“EIM”), Staff believes it is important to fully examine the option of joining
4 CAISO. CAISO representatives expect that a study examining various scenarios and sensitivities
5 would cost around \$250,000 or more.¹⁸ Tr. at 891. A prudent next step would be to move forward
6 with a detailed, specific study that examines the pros and cons of joining CAISO.

7
8 **C. *Cost to Open a Retail Market and the Ongoing Costs Associated with Retail
 Competition***

9 There will be costs associated with opening Nevada’s retail market. Workshop participants
10 discussed the costs that can be expected with the opening of a competitive retail market in Nevada.
11 Based on that discussion and additional research, Staff believes the State can expect the following
12 costs associated opening up the retail market:

13 ***Website for Shopping.*** The state will likely incur costs for a website that provides customers
14 the opportunity to comparison shop between alternative retail suppliers. It is not entirely clear how
15 much such a website may cost, but the amount of cost will likely depend upon functionality.
16 Websites that offer customers more direct comparison tools between alternative service plans will be
17 more costly than websites that simply show the available service offerings from various providers in
18 a customer’s zip code.

19 Getting an accurate website for customer shopping could be expensive. Texas’ Power to
20 Choose website, often considered the gold standard for state-run websites for retail choice shopping,
21 has experienced increased complaints over the years. Customers (and competitive websites that have
22 popped up) argue that the Power to Choose website¹⁹ is being gamed by providers, and thus, does not
23 provide an accurate picture of the rates customers will experience if they sign up.²⁰ In some cases,
24 the alternative providers show a favorable rate on the website, but the fine print reveals additional
25

26 ¹⁸ In addition to this study, Nevada will have to work with California to achieve an acceptable governance for CAISO.
27 Nevada will want to ensure that it has some voice in the CAISO Board of Governors.

28 ¹⁹ See PowertoChoose.org.

²⁰ *Power to Choose – or To Pay More? State of Texas Website Faulted by Consumers*, STATEIMPACT, NPR, available at
<https://stateimpact.npr.org/texas/2015/08/03/power-to-choose-or-to-pay-more-state-of-texas-website-faulted-by-consumers/> (Aug. 3, 2015).

1 charges.²¹ In other cases, the website communicates a low rate at one specific usage level, but since
2 customer usage can vary, the rates are marked up significantly if the customer uses less or more than
3 the expected amount of usage.²² Resolving or avoiding the problems that other state-created websites
4 have incurred is likely to add costs in terms of software development time.

5 **Consumer Outreach/Education.** There will be costs for education programs that provide
6 customers with comprehensive information about restructuring in Nevada. The goal of such a
7 program would be to fully educate customers about what choice means and how they might benefit
8 from exercising choice options. Based on information Staff received from Texas commission
9 personnel, Texas had a budget of \$24 million to educate customers in the first two years of their retail
10 choice market opening. The ongoing annual budget in Texas for customer outreach is \$750,000 per
11 year. Pennsylvania spent \$15.5 million for customer education and outreach. Given the size of
12 Nevada and based on what other states have spent, Staff expects Nevada to spend at least \$10 million
13 on initial customer education. Tr. at 593.

14 **Customer Service Representatives.** Nevada is likely to incur costs for additional customer
15 service representatives to address customer understanding/complaints related to retail competition,
16 retail service providers and service plan offerings. In particular, many states have seen increases in
17 customer complaints about bills, particularly after price caps are eliminated and customers see their
18 bills spike.²³

19 Pennsylvania's hotline handled approximately 57,000 calls after energy choice was
20 implemented. At its peak in 2003 and 2009, the Texas commission received a high of 17,250 and
21 15,956 complaints, respectively, regarding deregulation of its retail market.²⁴ Maine, which is a
22 much smaller state, handled over 6,000 consumer calls on energy choice. Nevada already handles
23 over 6,500 complaints per year with five customer service representatives. If the number of customer
24

25 ²¹ *Id.*

26 ²² See, e.g., 5 Biggest Myths of PowertoChoose.org, Electricity Plans, available at <https://electricityplans.com/5-biggest-myths-power-to-choose/> (June 14, 2017).

27 ²³ See, e.g., Terence O'Hara and Amit R. Paley, *Electricity Deregulation: High Cost, Unmet Promises*, WASHINGTON
28 POST (Mar. 12, 2006).

²⁴ See Texas Coalition for Affordable Power, PUC Complaint Data, available at <https://tcaptx.com/reports/snapshot-report-2017-puc-complaint-data> (2017).

1 complaints doubles (or even triples) in Nevada, increasing the number of customer service
2 representatives will impose additional costs.²⁵

3 It also is unclear for how long Nevada may need to keep a larger group of customer service
4 representatives on staff for the purpose of handling the increased customer complaints. Texas is just
5 starting to see a significant downturn in the number of customer complaints experienced since retail
6 competition went into place in 2002.²⁶ All in all, it took 16 years for a significant downturn in
7 customer complaints to occur in Texas, meaning that Nevada could see over a decade of increased
8 costs associated with additional customer service representatives.

9 ***Maintaining Public Policy Programs.*** Nevada may experience some increased costs for
10 maintaining its public policy programs. For example, if the Nevada Legislature determines the
11 appropriate public policy is to hold net metering customers harmless, additional funds may be
12 required to ensure that the credit each net metered customer receives is the same credit it would have
13 received pursuant to Section 28.3 of AB 405.

14 Another area where increased costs could be seen to maintain current policy programs is with
15 renewables and/or energy efficiency programs. As already discussed, Section 3 states that the
16 Initiative does not invalidate Nevada's public policies on renewable energy, energy efficiency and
17 environmental protection. The Legislature and/or the Nevada courts could interpret this section to
18 require the status quo for existing renewable and energy efficiency programs. While it is unclear
19 whether subsidies will be required to maintain the status quo for these programs, it is possible that
20 increased costs may be incurred to effectuate the meaning of the Initiative for such public policy
21 programs.

22 Depending on the goals established by the Nevada Legislature, it is possible that low income
23 funding will be increased as a result of restructuring. Currently, the Commission assists in
24

25 ²⁵ There is an argument that the Commission may be able to shift employees from other functions not needed after retail
26 competition is in force to a customer service role. However, Staff is not aware that any other state commission that has
27 implemented retail choice has significantly been able to minimize staff. In other words, it is unclear whether the
28 Commission will actually be able to re-allocate resources or whether employees will have to be added to service the
additional customer complaints.

²⁶ *Complaints to Texas PUC about electricity providers drops to deregulation-era low*, THE DALLAS MORNING NEWS,
available at <https://www.dallasnews.com/business/energy/2017/10/17/texans-unhappiness-electric-providersdrops-deregulation-era-low> (Oct. 2017).

1 administering the Universal Energy Charge (“UEC”) in accordance with Chapter 702 of the NRS and
2 Nevada Administrative Code. At least one state, specifically Pennsylvania, has reported significant
3 increased spending on its low income programs since the inception of restructuring.²⁷ In
4 Pennsylvania, the increases in spending were seen for both the Customer Assistance Program
5 (“CAP”) and the Low Income Usage Reduction Program (“LIURP”). The CAP concerns debt
6 forgiveness and payment assistance programs, while LIURP is an energy usage reduction and
7 education program whereby qualifying low-income households can receive free energy audits and
8 installation of energy saving measures, such as insulation and sealing. With restructuring, electric
9 distribution companies (“EDCs”) in Pennsylvania were charged with, at a minimum, continuing the
10 protections, policies and services that existed prior to restructuring for low-income customers.²⁸
11 Comparing 1996 actual spending (before restructuring) to 2014 actual spending, CAPs increased by
12 percentages as high as 3777% for one Pennsylvania EDC.²⁹ Using the same comparisons, LIURP
13 programs increased by as much as 998% for a Pennsylvania EDC.³⁰ Presumably, the significant
14 increases seen for low income programs were the direct result of the legislative requirement that the
15 status quo had to be maintained for low income customers post restructuring.

16 Restructuring poses unique concerns for low income customers. If the competitive retail
17 service providers mandate certain credits scores and/or deposits, low income customers may be
18 unable to obtain service from these competitive providers. As such, low income customers may end
19 up being forced to keep service with the provider of last resort or default provider, which could
20 ultimately have higher rates than their competitors.³¹ Retail competition may also expose low income

21 ²⁷ Christina Simeone and John Hanger, *A Case Study of Electric Competition Results in Pennsylvania*, KLEINMAN
22 CENTER FOR ENERGY POLICY, UNIVERSITY OF PENNSYLVANIA, at 41-42, available at
23 https://kleinmanenergy.upenn.edu/sites/default/files/A%20Case%20Study%20of%20Electric%20Competition%20Results%20in%20Pennsylvania_0.pdf (Oct. 28, 2016) (“Pennsylvania Case Study”).

24 ²⁸ *Id.* at 41 (*citing* Electricity Generation Customer Choice and Competition Act, Section 2802 (10)).

25 ²⁹ *Id.* at 42. CAPs increased by the following percentages for various EDCs: Duquesne (2789%), Met-Ed (3777%),
Penelec (3164%), PPL (3501%) and West Penn Power (1290%).

26 ³⁰ *Id.* Comparing 1996 actual spending to 2014 actual spending on LIURPs, spending increased by the following
percentages: Duquesne (142%), Met-Ed (397%), Penelec (540%), PECO (102%), Penn Power (998%), PPL (220%), and
27 West Penn Power (345%). The study referenced that increased in LIURP programs might not be isolated to restructuring,
as EDCs may have entered stakeholder settlements in other commission proceedings to increase such funding and/or
changes in program eligibility may have occurred.

28 ³¹ See *State of the energy market, 2017 Report*, OFGEM, at 64, available at
https://www.ofgem.gov.uk/system/files/docs/2017/10/state_of_the_market_report_2017_web_1.pdf (2017) (ofgem
regulates Great Britain’s gas and electricity markets) (“OFGEM REPORT”). This report noted that the following consumer

1 customers to increased volatility in their rates, as rates in restructured markets (assuming no price
2 caps) are more likely to go up and down depending on wholesale market prices. The Nevada
3 Legislature will have to determine whether and to what extent it wants to protect low income
4 customers during restructuring.

5 ***D. Other Incidental Costs to Nevada Customers***

6 Another cost that should be taken into account for Initiative implementation is the unintended
7 consequences that divestiture could have on Sierra Pacific's gas customers. The Initiative is not
8 meant to affect natural gas service, but if NVE divests its generation for electric customers, there will
9 be a cost to hold the gas customers harmless. Tr. at 676. Right now, gas customers share the costs of
10 gas transportation with Northern Nevada electric customers. Sierra Pacific's gas system peaks in
11 winter, but its electric system peaks in summer, so gas transportation contracts are able to be shared
12 between the two utilities. The gas company will need to maintain these contracts for its customers,
13 but if only the gas customers are paying the tab, they could see a \$20 to \$25 million increase in firm
14 gas transportation costs. Tr. at 677. If Nevada intends to hold the gas customers harmless, who are
15 not intended to be affected by the Initiative, it will need to decide how to distribute this additional
16 \$20 to \$25 million.

17
18 **III. A Restructured Market Will Create Winners and Losers**

19 Restructuring Nevada's electricity market will create winners and losers. Who those winners
20 and losers might be will depend on a variety of factors, ranging from implementation dynamics to
21 commodity market pricing. Staff has examined various studies and reports, many from states in
22 restructured markets, to try to understand who the winners and losers might be. If Nevada can
23 understand the likely results of restructuring and what makes various groups of customers the
24 winners or losers, the Legislature may be able to make policy choices that offer protections for
25 certain customer classes.

26
27
28

groups are more likely than others to be unable to access the cheapest tariffs: low income, young, renters, those living in
low-income urban areas and rural communities.

1 Based on our review, the summary conclusion is that often larger customers, specifically
2 industrial and commercial customers, benefit in restructured markets.³² The providers of generation
3 services also benefit in restructured markets. The benefits to residential customers, and particularly
4 low income or less sophisticated customers, are more “elusive”.³³

5 Larger and more sophisticated customers have benefited from restructuring, in part, because
6 of their higher participation rates in selecting alternative retail providers (providers other than default
7 service providers). As such, these customers are more directly exposed to the wholesale electricity
8 market, and the wholesale market has largely seen price declines since 2008.³⁴ This is contrasted
9 with the smaller customers in retail choice states who often stay with the incumbent utility or another
10 default service provider.³⁵ These customers are thus more insulated from the wholesale markets,
11 including from any benefits associated with those markets.

12 But the customers aren’t always to blame for their lack of participation. The Brattle Group
13 indicates that often industrial and commercial customers have more innovative choices and service
14
15
16
17
18
19
20

21 ³² See *Retail Choice in Electricity: What Have We Learned in 20 Years*, CHISTENSEN ASSOCIATES ENERGY CONSULTING,
22 prepared for Electric Markets Research Foundation, at 15, available at
23 <https://sites.hks.harvard.edu/hepg/Papers/2016/Retail%20Choice%20in%20Electricity%20for%20EMRF%20Final.pdf>
(Feb. 11, 2016) (“EMRF STUDY”) (“Regardless of whether retail choice makes prices more efficient, it is likely to change
24 the relative prices paid by different consumer groups. ... [R]etail choice ... may also change the relative bargaining power
25 of different consumer groups. Under regulation, utilities’ retail electricity prices have traditionally reflected not only their
26 average costs of service but also the relative political power of different groups of electricity consumers. Under retail
27 choice, prices will be influenced by the relative economic power of different consumer groups, with relatively mobile
28 customers or relatively large customers able to negotiate price discounts that are not available to less mobile or smaller
customers.”). See also OFGEM REPORT at 39 (“Larger businesses have a distinct advantage in being able to negotiate
better deals than smaller businesses given higher bargaining power.”).

26 ³³ The Brattle Group, *Electricity Market Restructuring: Where Are We Now?*, NCSL ENERGY POLICY FORUM, at 10.

27 ³⁴ EMRF STUDY at 43 (Feb. 11, 2016). Wholesale markets tend to be the source of cost reductions and thus the industrial
28 customers can benefit from the creation of wholesale markets in which they can participate more directly. For example,
PJM notes that its wholesale market (July 26, 2017 written statement before Subcommittee on Energy, U.S. House
Committee on Energy and Commerce) has resulted in “nearly \$2 billion of annual savings to customers.”

³⁵ *Id.* at 44.

1 options from competitive, retail service providers.³⁶ A relatively smaller number of competitive retail
2 suppliers offer residential service or offer fewer alternatives to residential customers.³⁷

3 To understand better the why and how of the differences in restructuring for larger versus
4 smaller groups of customers, Staff looked to specific state reports for guidance. In Illinois, ComEd's
5 residential customers benefited from retail choice in the first three years.³⁸ However, since 2015,
6 ComEd's residential customers experienced no savings under retail choice; rather, since 2015, the
7 average alternative retail electricity supplier rate was higher on a cent/kilowatt-hour ("kWh") basis
8 than ComEd's price to compare, by as much as 1.45 cents/kWh.³⁹ For the six-year period from 2012
9 through 2017, retail choice cost ComEd's residential customers a total of \$20.3 million.⁴⁰
10 Unfortunately, the Illinois Commerce Commission report did not analyze why residential customers
11 were no longer experiencing savings as a result of retail choice.

12 A case study on Pennsylvania's competitive electricity market also indicates fewer benefits
13 for residential customers:

14 After examining statewide average annual figures, it is clear that retail restructuring has
15 provided an opportunity for cost savings benefits to the commercial and industrial customer
16 classes through retail shopping. However, the same conclusion can't be drawn from these
17 data for the residential sector.⁴¹

18 ³⁶ Such flexibility may be attractive to large industrial and commercial customers and assist the State's efforts to create
19 more jobs and a more diversified economy. See U.S. Department of Energy, *Quadrennial Energy Review, Transforming*
20 *the Nation's Electricity System: The Second Installment of the QER*, available at
21 [https://energy.gov/sites/prod/files/2017/02/f34/Quadrennial%20Energy%20Review--
22 Second%20Installment%20%28Full%20Report%29.pdf](https://energy.gov/sites/prod/files/2017/02/f34/Quadrennial%20Energy%20Review--Second%20Installment%20%28Full%20Report%29.pdf) ("The outcome of retail electric choice has been mixed. Retail
23 choice has introduced dynamic pricing programs and new services, and it has encouraged the growth of renewable
24 energy. However, electricity prices in areas with retail choice have been more variable and possibly even higher than in
25 areas without it.").

26 ³⁷ For example, in Illinois, while there were 106 different types of residential offers in ComEd's service territory, only 14
27 offered variable pricing. Moreover, only a small number offered longer terms (six offered 13-23 month terms; three
28 offered terms longer than 24 months; and 21 offer a 24-month term). Finally, only 28 of the 106 offers included green or
renewable pricing. Office of Retail Market Development, Illinois Commerce Commission, 2017 Annual Report, at 41
available at <https://www.icc.illinois.gov/reports/report.aspx?rt=22> (June 2017).

³⁸ *Id.* (showing that residential customers had annual savings from retail choice when compared to ComEd's price to
compare and inclusive of the purchased electricity adjustment of \$24.2 million in 2012, \$257.5 million in 2013 and \$38.7
million in 2014).

³⁹ *Id.* (showing that residential customers experienced higher prices as a result of retail choice when compared to
ComEd's price to compare and inclusive of the purchased electricity adjustment; annual savings in 2015 was -\$73.4
million; -\$115.2 million 2016; and -\$152.1 million in 2017).

⁴⁰ *Id.* The 2017 report did a similar analysis for Ameren, but only for June 2016 to May 2017. Residential customers had
no savings in that period from retail service offerings as compared to Ameren's price to compare inclusive of the
purchased electricity adjustment. *Id.* at 37.

⁴¹ Pennsylvania Case Study at 31.

1 To determine why residential customers were not benefiting to the same degree as commercial and
2 industrial customers, further analysis was performed. The study found that distribution service is a
3 significant and increasing cost driver for the residential class. Data indicated that for all but one
4 electric distribution company in Pennsylvania, 2016 default generation and transmission prices
5 provided the potential for savings to residential customers compared to 1996 inflation adjusted
6 generation and transmission prices.⁴² As such, the data indicate that residential customers' total bill
7 increases were being driven by increases in distribution costs. Restructuring in Pennsylvania, much
8 like the Initiative here in Nevada, was not meant to impact distribution rates.⁴³

9 Even the restructuring paper issued by Retail Energy Supply Association ("RESA")
10 proponent Dr. Phillip R. O'Connor demonstrates that restructuring results in fewer benefits to
11 residential customers as compared to industrial and commercial customers. Looking at Figures 7
12 through 9 on pages 16-17, the gap between price changes for monopoly states versus customer choice
13 jurisdictions is much wider for industrial and commercial customers as compared to residential
14 customers.⁴⁴ There is a nearly 25 percentage point difference between the price changes for
15 commercial and industrial customers when comparing monopoly states to competitive jurisdictions,
16 but just over a 15 percentage point difference for residential customers. Moreover, on a nominal
17 basis, Dr. O'Connor's study shows that residential customers in competitive states experienced a
18 0.84% increased price change on a weighted average.⁴⁵ And, while Dr. O'Connor's study shows that
19 on average, customers in monopoly states, including residential customers, are experiencing price
20 increases from 2008 to 2016, the individual state data used to calculate those price increases clearly
21 demonstrate that Nevada's data is not contributing to the price increases for monopoly states.
22 Nevada is one of the few monopoly states, along with Louisiana and Florida, which show price
23 percentage decreases for residential, commercial and industrial customers between 2008 and 2016.⁴⁶

24 In total, the weight of the evidence indicates that the winners in restructuring are much more
25 likely to be industrial and commercial customers. While residential customers may or may not be

26 ⁴² *Id.* at 36.

27 ⁴³ *Id.*

28 ⁴⁴ Dr. Philip R. O'Connor, *Restructuring Recharged*, RETAIL ENERGY SUPPLY ASSOCIATION, at 16-17 (Apr. 2017).

⁴⁵ *Id.* at 18.

⁴⁶ *Id.* at 18-20.

1 “losers” in restructuring, they are unlikely to benefit to the same degree as the larger customers.
2 Given the foregoing, if the Initiative passes, the Legislature may want to consider policy programs
3 that could help residential customers see greater benefits from restructuring. For instance, if
4 distribution rates in harder-to-serve areas are increasing prices for residential customers, the Nevada
5 Legislature can decide if it wants to implement an around-the-market program to counter this result.

6 Competition in electric markets has other benefits beyond price changes or the rates paid by
7 customers. Specifically, competition appears to have produced efficiency gains in several areas of
8 the generation and transmission sector.⁴⁷ Specifically, the Carnegie Mellon Electricity Industry
9 Center found that employment in electricity generation dropped by 29% in states that underwent
10 restructuring, compared to a 19% overall decrease in the entire utility sector’s employment.⁴⁸ The
11 biggest gains come from increased utilization rates of low-cost generation sources.⁴⁹ In total, it
12 appears restructuring has lowered the cost of producing electricity in those areas where restructuring
13 has occurred.⁵⁰

14 As to whether that efficiency gains and their inevitable cost savings for producers flow down
15 to consumer prices is far less clear. The Carnegie Mellon Electricity Industry examined the
16 differences between reported average prices and average costs for investor-owned utilities that have
17 undergone restructuring compared to those that have been traditionally regulated.⁵¹ The result of this
18 examination is that price-cost margins are significantly higher in regions of the United States that
19 have adopted some form of restructuring, which leads to the conclusion that most of the gains of
20 restructuring have gone to producers and not consumers; restructuring is beneficial to generators, but
21 those benefits have not necessarily reached consumers.⁵²

22 ⁴⁷ Severin Borenstein and James Bushnell, *The U.S. Electricity Industry after 20 Years of Restructuring*, ENERGY
23 INSTITUTE AT HAAS, at 3, available at <https://ei.haas.berkeley.edu/research/papers/WP252.pdf> (May 2015) (“There is
24 clear evidence that competition has improved efficiency at power plants and improved the coordination of operations
25 across a formerly balkanized power grid. But the impact of gas price movements and new technologies have had a far
26 larger impact.”); see also *Electricity Prices and Costs Under Regulation and Restructuring*, ALFRED P. SLOAN
27 FOUNDATION, CARNEGIE MELLON ELECTRICITY INDUSTRY CENTER WORKING PAPER, CEIC-08-03, at 24-25, available at
28 http://web.mit.edu/is08/pdf/Blumsack_Lave_Apt%20Sloan%20paper.pdf (2008) (“CARNEGIE MELLON WORKING
PAPER”).

⁴⁸ CARNEGIE MELLON WORKING PAPER at 6.

⁴⁹ *Id.*

⁵⁰ *Id.* at 7.

⁵¹ *Id.* at 24-25.

⁵² *Id.* (acknowledging that there could be some market distortions from rate caps and freezes).

1 **IV. A Wholesale Market Should Be Opened Before Full Competition is Instituted in**
2 **Nevada**

3 The Initiative does not mandate the creation of, or a requirement that, Nevada join a
4 wholesale market. A representative from RESA argues that Nevada does not have to create or join a
5 wholesale market before implementing full retail competition.

6 Staff cannot agree with RESA on this point. If the Initiative is passed, a competitive, retail
7 electricity market is likely to be opened. Every other state in the United States that has attempted to
8 implement retail competition has done so only after joining or forming a wholesale market. Joining
9 wholesale markets allows state regulators to unbundle vertically integrated monopolies because
10 wholesale markets provide transparently priced generation and transmission, obviating the need for
11 new retail competitors to purchase power from the incumbent utility.

12 It also is important to note that retail competition and electric market restructuring
13 implementation timelines have varied widely in the past. On average, states have taken nearly six (6)
14 years to fully implement electric market competition (from initial legislation to full market-based
15 pricing at a retail level). Often, states that already participated in wholesale markets of some kind,
16 such as New Jersey, implemented full retail competition in only a few years while states that had to
17 build and join both wholesale and retail markets tended to take longer to implement restructuring,
18 *e.g.*, the decade-long Illinois implementation. **Exhibit A** includes a table that demonstrates when
19 partial or complete retail competition was started and when each state joined a wholesale market.
20 The table also shows how long from start to finish it took states to open or restructure their retail
21 electricity markets.

22 Second, since the Initiative is silent as to whether NVE is required to divest its generation
23 assets, we don't know if there will be a market operator in Nevada. As detailed in Staff's initial
24 comments at page 6, NVE currently serves as the market operator and balancing authority in Nevada.
25 If NVE divests its generation assets and only owns transmission and distribution assets, there is a
26 question as whether it can or will be the market operator or balancing authority. If NVE doesn't have
27 this role and Nevada has not created or joined a wholesale market, there is no clear balancing
28 authority.

1 Finally, several studies and industry experts clearly believe that the success of retail markets
2 is dependent upon a robust, wholesale market. In other words, true retail choice that is competitive
3 requires there to be competition in generation services, which is best accomplished through a
4 wholesale market.⁵³

5 6 **V. Staff's Suggested Approach to Initiative Implementation**

7 As stated in the Workshop, if the Initiative passes, Staff advocates for a top-down approach.
8 One of the initial steps of this top-down approach would be to set up a wholesale market. In fact, as
9 Staff outlined on the record, this would be Staff's approach to Initiative implementation:

- 10 1. Understand the Initiative and set goals based on understanding
- 11 2. Set up wholesale market, which includes:
 - 12 a. Studies first
 - 13 b. Choice of market
 - 14 c. Establish the market
 - 15 d. Look to Nevada's public policies that it wishes to maintain as touchstones in
16 creating the market
- 17 3. Resource adequacy – how should Nevada ensure resource adequacy?
18 — Again, public policies are a touchstone
- 19 4. Retail Market
 - 20 a. Who will be allowed to play? Establish qualifications for entry.
 - 21 b. Requirements for providers of last resort or default providers versus
22 requirements for retail service provider
 - 23 — Financial
 - 24 — Managerial
 - 25 — Other
 - 26 c. Rules that are needed to facilitate the operation of retail market? In other
27 words, what are the rules of the game?
 - 28 — Public policies are touchstones
 - Customer data governance
 - Rules that govern transactions – who meters, how do customers switch?
 - Limits to information between alternative providers/default service
provider
 - Consumer outreach
 - d. What existing statutes/rules continue to apply in new market?
 - e. Who has authority?

53 EMRF STUDY at 20. *Assessment of Retail and Wholesale Market Competition in the Illinois Electric Industry in 2001*, Illinois Commerce Commission, at iii (Apr. 2002) (“The ultimate success of electric restructuring depends to a great extent on the competitiveness of the wholesale market. The competitiveness of the wholesale market will also greatly influence the electricity prices for both unbundled and bundled customers.”).

- Who oversees the market/enforces rules of game?
- What manner?
- What level of involvement?
- f. How are changes made to rules of the game? New regulations or a quicker/more nimble way to make changes?
- g. What are Nevada's goals – what are we aiming for?
 - How much customer switching, for example?
 - How can we be nimble if not meeting goals?
- h. Reporting requirements to achievement assessment
- i. Remedies/consequences – markets only work if threat of something if they don't work; legal or regulatory consequence for failure
- j. Costs of implementation of retail market
- k. Potential divestiture and how are stranded costs, if any, recovered?
- l. Setting transmission and distribution costs going forward?
- m. Distribution services – what authority, pricing, social policies are enforced through distribution provider

Regarding what statutes and rules might need to be changed if the Initiative passes, Staff has conducted a preliminary review of the statutes that might need to be changed (or at least reviewed) to implement the Initiative. As Staff argued at the Workshop, many statutes will have to be repealed or modified. Passage of the Initiative, at the very least, will mandate that stakeholders at least examine nearly every statute in Chapters 703 and 704 of the NRS to determine if changes are required. Staff has attached **Exhibit B**, which is a summary of its preliminary review of several chapters of the NRS.

RESPECTFULLY SUBMITTED this 16th day of February, 2018.

PUBLIC UTILITIES COMMISSION OF NEVADA
REGULATORY OPERATIONS STAFF



Debra M. Terwilliger, Esq.
Assistant Staff Counsel

Exhibit A

Exhibit A

Survey of Other States' Restructuring Timelines

State	Legislation	Retail Competition Starts	Joined Wholesale Market	Market	Time to Complete (Years)
California	1999	2009 restarted retail competition test	1998	CAISO	11
Texas	1999	2002	1996	ERCOT	3
Connecticut	1998	2000	1997	ISONE	6
Maine	1997	2000	1997	ISONE	5
Massachusetts	1997	2000-2005	1997	ISONE	8
New Hampshire	1996	2001	1997	ISONE	5
Rhode Island	1996	1997	1997	ISONE	4
Vermont	abandoned	wholesale only	1997	ISONE	NA
Indiana	NA	wholesale only	2001	MISO	NA
Kentucky	NA	wholesale only	2001	MISO	NA
West Virginia	NA	wholesale only	2001	MISO	NA
Wisconsin	NA	wholesale only	2001	MISO	NA
Michigan	2000	partial 10% load retail choice	2001	MISO	3
Arkansas	repealed retail restructuring in 2003	wholesale only	2004-2014	MISO & SPP	NA
New York	1996	1998-2003	1997-1999	NYISO	7
Ohio	1999	2001	1998-2001	PJM	7
New Jersey	1999	1999	1997-2000	PJM	3
Delaware	1999	1999	1997	PJM	2
Maryland	1999	2000	1997	PJM	6
Pennsylvania	1997	1999-2001	1997	PJM	4
Virginia	abandoned	trial only	1997	PJM	NA
DC	1999	2001	1997	PJM	4
Illinois	1997	2006	1998-2004	PJM & MISO	10
			average time (years)		5.5

Exhibit B

Exhibit B – Review of Potential Statutory Changes¹

- Chapter 701B
 - To the extent that this statute should still be applicable upon conversion to restructuring (provisions set to expire in 2025); provisions that apply to utility or utilities perhaps should apply to all retail service providers.²
 - To the extent that 701B requires utility to run or administer programs (701B.380), may have to consider Commission administering program for all retail service providers or administration by some other entity.
 - Cost recovery for retail service providers – will we permit cost recovery through a special charge on customer bills?

- Chapter 702
 - Consider who should now collect the Universal Energy Charge (“UEC”) – all retail service providers or transmission and distribution (“T&D”) utility?
 - Currently exempts rural coops and general improvement districts from participating (and their members also cannot get UEC assistance) – should that be changed given Initiative’s application to all retail customers in Nevada?
 - Should customers be limited on getting UEC assistance if they have chosen retail service provider with higher rates than provider of last resort?
 - Should coordinate with Division of Welfare and Housing Divisions to ensure nothing that is changed increases their administrative costs (the percentage of the fund that can be used for their administrative costs are set by statute).
 - Depending on who collects UEC – expand audit power in 702.170 to T&D utilities or retail service providers.
 - 702.090(3) – reconsider who are exempt retail customers (now includes retail customer of provider of new electric resources)

- Chapter 703
 - 703.010(4) – delete definition of “provider of new electric resources
 - 703.025(1)(c) – regulation of utilities should include regulation of retail service providers and T&D utilities
 - 703.145 – consider modifying entities that may be required to pay for investigations/audits
 - 703.150 – consider expanding the general duties of the Commission to include requirements of the Initiative
 - 703.151(5) – Modify to apply to all retail service providers and T&D provider.

¹ Staff has conducted an initial review of some of the application chapters of the Nevada Revised Statutes to determine what might need to be changed upon passage of the Energy Choice Initiative. This document is not meant to be comprehensive and does not include every potential statutory change that Staff may advocate for in the future.

² In this document, references to “retail service providers” should be construed broadly to include the retail service provider that is designated as the provider of last resort or default service provider.

- 703.152 – currently concerns engagement in FERC proceedings for transmission/cost of energy cases; consider making it clear that if join/create wholesale market, Commission may intervene at FERC for any case concerning the wholesale market we join or create; also clarify Commission can intervene and participate in federal cases concerning whatever market we join or create.
- 703.153 and 154 – concerns inspections to ensure compliance with federal statutes and regulations regarding safety of storage facilities and interstate pipelines and regulation to ensure safe O&M of storage facilities and interstate pipelines – consider new provisions or expand on these provisions to permit inspection or regulations of generators run by non-utilities (IPPs), if permitted and/or not preempted by FERC.
- 703.175 – currently authorizes Commission to disconnect telephone number pursuant to certain other agency direction; consider expanding to permit Commission to disconnect telephone number for retail service provider that is acting in bad faith or is using unlawful marketing techniques
- 703.190(2) – concerns records of Commission open to public inspection; delete provider of new electric resources; expand for retail service providers and T&D provider.
- 703.191 – concerns duty of public utilities to furnish certain information and provide annual reports; expand to apply to retail service providers and T&D provider; delete provider of new electric resources
- 703.195(1) – concerns examination of record of property of public utility; consider expansion to retail service providers and T&D provider; delete provider of new electric resources
- 703.196(1) – concerns disclosure and confidentiality of records; delete provider of new electric resources; expand to retail service providers and T&D provider.
- 703.197 – consider new or different fees specifically applicable to retail service providers and/or T&D provider for document filings that might be unique to them.
- 703.205 – concerns publication of pamphlets; consider expansion of this provision to require the publishing on the Commission website of information specifically applicable to the provision of retail service (such as comparative rates for retail service providers)
- 703.310 – concerns complaints against public utilities and alternative sellers; expand to retail service providers and T&D utility; consider if new or unique process should be implemented for complaints against retail service providers to expedite certain types of complaints (such as unlawful marketing practices)
- 703.320 – consider expansion of types of proceedings to which the Commission cannot dispense with a hearing; in addition to reference and defining public utility, expand to retail service providers
- 703.375 – concerns refunds of excessive rates by public utilities; expand to retail service providers and T&D providers

- 703.377 – concerns revocation of a CPCN; expand to include jurisdiction over retail service providers and T&D utility; make it clear that a CPCN may not be revoked for provider of last resort unless another provider of last resort is able to provide service.
- 703.380 – concerns administrative fines; clarify applicable to retail service providers and T&D provider; delete references to providers of new electric resources
- Clarify here or in Chapter 704 that the current providers of electric resources must become retail service providers
- Chapter 704
 - 704.001 – purpose and policy of Legislature in enacting Chapter; modify to change Commission’s purpose to include oversight of retail market; consider whether some references to public utilities should be expanded to T&D utility (sub 4).
 - In definitions section – define retail service provider; define provider of last resource (in context of electric provider of last resort).
 - 704.021 – concerns persons that are not public utilities; exclude retail service providers from public utility.
 - Sub (10) may need to be modified or deleted (concerns limited exemption from public utility status for persons generating electricity for other persons)
 - 704.033
 - (1) – include retail service providers and T&D utility as entity from whom Commission may level and collect an annual assessment.
 - (5)(c) – consider whether this exemption applies to T&D public utilities
 - 704.035 – report on revenue for assessment; expand to retail service providers; include T&D utilities
 - 704.040 – Consider whether “just and reasonable” standard in sub (1) should be same or different for retail service providers
 - 704.050 – special contract rates – consider whether this applies for electric providers if we have a wholesale market. (Probably should still apply to gas utilities.)
 - 704.065 – should the definition of “rate” only apply to public utility rates? What about retail service provider rates?
 - 704.066 – should definition of schedule be expanded to “schedule” for retail service provider rates?
 - 704.069 – concerns when Commission must conduct a consumer session
 - Should public utility definition be expanded to T&D public utility?
 - Should consumer sessions be required for provider of last resort application?
 - 704.070 – public utility schedules on file with Commission; consider expansion to schedules of retail service providers

- 704.085 – concerns mandatory adoption of TOU rate; consider deletion or clarification that if customer chooses retail service provider that only offers TOU rates, there is no violation of this statutory provision
- 704.095 – simplified procedure for changing rates; some simplified procedure should apply to retail service providers
- 704.100
 - Given that deferred energy is not expected to apply to T&D utility, consider whether to delete. Presumably, whether we delete or not is dependent upon how calculate rates for provider of last resort.
- 704.110
 - Consider deletion of references to deferred energy accounting adjustment application
 - Consider removing references to fuel and purchased power applications (along with references to section 10)
 - Consider removing references to ERCR
 - Consider deleting reference to “or an electric utility” in subs 15 and 16, as well as references to sub 10.
- 704.120 – Commission may substitute just and reasonable rates; consider how this section should be modified to apply to retail service providers/provider of last resort rates and if Commission can substitute rates for them.
- 704.175 – add retail service providers to those that must meet safety standards.
- 704.183 – concerns the examination of the condition and management of any public utility; it might be appropriate to use this for retail service providers.
- 704.1835 – concerns adoption of regulation that require a public utility to postpone its termination of utility service to a residential if the customer failed to pay for service. Should also apply this to retail service providers.
- 704.187 – concerns deferred accounting for certain electric utilities.
 - Deletion may depend how Commission calculates/derives provider of last resort service
- 704.195 – concerns a public utility recording telephone calls for emergencies or service outages. Consider updating to include texting and reference retail service providers/T&D utility.
- 704.197, 704.201, 704.202, 704.206 – certain records of public utility made available upon request or subpoena. Include reference to retail service providers/T&D utility.
- 704.223 – concerns the purchase of electricity for certain businesses with new electric load; consider deleting.
- 704.225 – provides for lower rates for irrigation service; need to consider whether this program will be maintained or go away. This is an important public policy program for certain constituencies.
- 704.230, 704.235, 704.240 – related to tribal water issues, etc. Unclear if this should apply to provider of last resort or T&D utility.

- 704.250 – concerns repair and construction of poles, wires, etc. Clarify that applies to T&D utility.
- 704.310, 320 – concerns sale/purchase of surplus power; consider whether Commission approval of such sales will be necessary upon implementation of Initiative.
- 704.329 – mergers.
 - Consider whether sub 3(b) should be deleted in entirety given that it concerns disposal of generation assets.
 - Statute should be modified to govern T&D utility.
 - Perhaps should consider some Commission approvals related to merger of providers of last resort or retail service providers?
- 704.330 – public utility to obtain CPCN; consider whether retail service providers will be required to get CPCN or something equivalent (like license)
- 704.390 – Will notification to Commission be required if retail service provider intends to discontinue service? Subsection 3 should be removed as it relates to an electric utility.
- 704.655 – Amend Subsections 1 and 2 to require retail service providers to pay interest on customer deposits as well.
- 704.701-731 – Delete sections as they relate to public utilities converting existing facilities from gas or oil fired to include coal firing.
- 704.7311-7322 – Delete sections as they relate to electric utility complying with ERCR.
- 704.733-7341 – Modify definition of electric utility to include person, corp., other entity, or retail service provider. Remove references to the filing of an IRP relating to generating facilities.
- 704.738 – Delete this section as the program of optional pricing relates to electric utilities.
- 704.741-751 – concerns IRPs
 - Amend to require IRP filings related to T&D by T&D utility
 - This is where we should consider new resource adequacy statutes
 - Depending on how State approaches – could incorporate “California Energy Commission like” agency into this section to provide forecast and mix of resources for supply
- 704.7561-7595 – Delete these sections or modify with direction regarding generation asset divestiture.
- 704.763 – Delete or modify required disclosures based on whether it is desired to require retail service providers to make such disclosures.
- 704.766-775 – Amend these net-metering related sections to account for the introduction of retail service providers. Must determine if suppliers or supplier will be obligated to meet the requirements of these sections.
- 704.7801-7828 – Delete sections related to providers of a new electric resource. Include delineation between retail providers and T&D providers. Consider

deleting/modifying sections that relate to the electric utility purchasing electricity from developers that use TRED.

- 704.7871-7882 – Delete these sections as they will no longer be effective upon expiration of terms which occurs at end of 2017.
 - 704.905-960 – Modify sections to include the applicability of service to customers by a competitive retail service provider. May have to modify language to require distribution provider, as opposed to vertically integrated utility, to conduct inspection of lines, etc.
- Chapter 704B
 - All providers of new electric resources will have to become retail service providers, presumably and section likely can be deleted in its entirety.

Other considerations:

- Consider new statutes related to resource adequacy
- RPS – consider changes as to whom this applies
- Consider changes to DSM mandate that applies only to large electric utilities
- Must establish regulatory authority over alternative providers (retail service providers)

PROOF OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by electronic mail to the recipient's current electronic mail address and mailing a copy thereof, properly addressed to:

Craig C. Goodman, Esq.
NATIONAL ENERGY MARKETERS ASSOC
cgoodman@energymarketers.com
srantala@energymarketers.com

Vice Admiral Lee F. Gunn
CAN's Military Advisory Board
3003 Washington Blvd.
Arlington, VA 22201

Michael Saunders, Esq.
BCP
bcpserv@ag.nv.gov

Richard F. Paez, Mgr. Reg Affairs
INFINITE ENERGY
RFPaez@InfiniteEnergy.com

Alvin S. Pak, Esq.
Apak@AlPakLaw.com
Greg.Bass@CalpineSolutions.com

Stan Barnes, President
Arizonas for Electric Choice & Competition
3033 N. Central Avenue, Ste 900
Phoenix, AZ 85012

Natara G. Feller, Esq.
Drift Marketplace, Inc.
natarafeller@feller.law

Kevin Robison, Mgr
Mt. Wheeler Power
PO Box 151000
Ely, NV 89315

Deanne M. O'Dell
Retail Energy Supply Assoc
dodell@eckertseamans.com

Alvin S. Pak, Esq.
Apak@AlPakLaw.com

Fred Voltz
Zebee_177@yahoo.com

Tom Perrigo, AICP
City of Las Vegas
495 S. Main Street
Las Vegas, NV 89101
tperrigo@lasvegasnevada.gov

Barry Gold
AARP
bgold@aarp.org

S. Bradley Van Cleve, Esq.
Davison Van Cleve, PC
bvc@dvclaw.com
maa@dvclaw.com

Michael Greene, Esq.
NV Energy
mgreene@nvenergy.com

Vicki Sandler, Director
AZISA
14402 S. Canyon Drive
Phoenix, AZ 85048

Hunter Stern
IBEW Local 1245
3520 Boulder Highway
Las Vegas, NV 89121

Tom Polikalas
SWEEP
tpoliklas@swenergy.org

Anne Kelly, Sr. Director
Ceres
goldroberts@ceres.org

Grace Clark, Paralegal
CA ISO
250 Outcropping Way
Folsom, CA 85630
jpinjuv@caiso.com

Lucas Foletta, Esq.
lfoletta@mcdonaldcarano.com

1 Angel DeFazio
info@pucwatchdogs.com

2 Greg Patterson
Greg@azcpa.org

3 Jennifer Taylor
AEE
4 jen@boyacklaw.com

5 Katherine Hoffman, Esq.
ECI
6 khoffman@fclaw.com

7 Brendan Bussmann
bbussmann@afechoice.com

8 Keith Den Hollander
CCA
9 keith@cc.org

10 Richard Infinite Energy
Rfpaez@infiniteenergy.com

Dylan Sullivan
Natural Resources Defense Council
lbhagavatula@nrdc.org
dsullivan@nrdc.org

Pam Kiely
pkiely@edf.org


Robert Johnston, Esq.
WRA
Robert.johnston@westernresources.org
Nancy.kelly@westernresources.org
Jennifer.gardner@westernresources.org

Greg Bass
Calpine Energy Solutions LLC
Greg.bass@calpinesolutions.com

Matt Griffin
ECI
matt@g3nv.com

Vicki Baldwin, Esq.
vbaldwin@parsonsbehle.com

11
12
13
14
15 DATED at Las Vegas, Nevada, on the 16th day of February, 2018.

16 
17 An employee of the Public Utilities
18 Commission of Nevada
19
20
21
22
23
24
25
26
27
28