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This Addendum was prepared by Commissioner Ann C. Pongracz to supplement the Draft Report in Docket No. 17-10001.

I. Introduction: The PUCN's ECI Report (including this Addendum) properly responds to the questions posed by the Governor's Committee on Energy Choice

The Public Utilities Commission of Nevada ("Commission" or "PUCN") conducted an investigation regarding the Energy Choice Initiative ("ECI") and prepared a Report that responds to Lieutenant Governor Mark Hutchison's letter dated September 27, 2017 ("the CEC Letter"), sent on behalf of the Governor's Committee on Energy Choice (the "Committee"). Consistent with the PUCN's broad statutory responsibility to supervise and regulate the operation and maintenance of public utilities, the Report memorializes the results of the PUCN's investigation in Docket 17-10001 into the following issues related to the potential implementation of the ECI, if it passes in November 2018: (1) the timeline for implementation of the requirements of the ECI; (2) identification of any program or statutory revisions that may be required to fully synchronize Nevada laws and regulations with a competitive energy market; (3) potential wholesale market options for Nevada; (4) analysis of "existing competitive retail markets" in other states, including "relative pros/cons", "best practices and structures" and "options for Provider of Last Resort services"; and (5) the costs and benefits associated with the ECI.

The Report reflects the information provided by participants during the PUCN investigation, which included ten days of publicly-noticed and transcribed workshops, attended by 256 individuals, and consideration of 4,632 pages of documents submitted by 48 distinct entities.¹ The Report provides the Commission's preliminary analysis of this information given the relatively short amount of time available for responding to the CEC Letter. The process employed by the PUCN in this matter was consistent with the process that the PUCN generally uses for all of its investigations that do not involve a contested case or specific request for relief from an applicant or petitioner. Consistent with the CEC's request for the PUCN to "open an Investigatory Docket," the PUCN held open workshops and allowed several rounds of written comments to ensure robust participation and the opportunity for all interested persons to present information and/or address information presented by others.

In conducting its investigation and developing analysis and findings regarding the ECI, the PUCN was bound by its duties and responsibilities as set forth in the statutory provisions outlined at pages 37-39 of this Report. The PUCN must, by law, carry out these responsibilities in all of its actions, including its actions conducted in response to the CEC Letter, unless the Legislature exempts the agency's actions from these requirements. The Commission has a continuing legal obligation to ensure that its regulation of electric service: (1) protects, furthers and serves the public interest; (2) provides effective protection for customers who depend upon electric service; (3) provides for stability in rates and for the availability and reliability of electric service; (4) encourages the development and use of renewable energy resources; and (5) requires providers of electric service to engage in prudent business management, effective long-term

¹ All of these documents are available in the public files of the Commission, PUCN Docket No. 17-10001, available at <http://pucweb1.state.nv.us/puc2/Dktinfo.aspx?Util=All>.

planning, responsible decision making, sound fiscal strategies and efficient operations. (NRS 703.151).

There is no exemption from the PUCN's statutory duties for the work performed by the PUCN in developing its Report in response to the Committee's request. The review of the costs and benefits of implementation of ECI is exactly the type of work which the PUCN does routinely to carry out such statutory duties, and it is well within the PUCN's purview as authorized by the Legislature. While the Committee did not specifically request that the PUCN address costs and benefits associated with the ECI, the PUCN's failure to do so would have conflicted with its broad statutory responsibility, conferred upon it by the Legislature, to "supervise and regulate the operation and maintenance of public utilities and other persons named and defined in chapters 704, 704A, and 708 of the NRS pursuant to the provisions of those chapters."² The necessity of reviewing costs and benefits was acknowledged by a majority of the members of the Governor's Committee, who voted to request the PUCN investigation with knowledge that any such investigation would include an examination of these important factors that inform implementation of the ECI.³

It would be impossible to respond accurately to some of the inquiries contained in the CEC Letter without providing at least a preliminary evaluation of the associated costs and benefits. For example, the qualitative and quantitative analyses that the Committee seeks regarding potential wholesale market options reasonably available to Nevada requires an identification of the costs and benefits associated with the available options: without such an analysis, it would be impossible to determine which options are "reasonable" and which options may be cost-prohibitive and therefore "unreasonable." Another example is the Committee's request for a qualitative analysis of existing competitive retail markets that includes relative pros and cons, and identification of best practices and structures for Nevada, and options for POLR service: the PUCN would simply not have been able to conduct a competent investigation into these inquiries without first addressing the potentiality of costs associated with likely-stranded investments, and the costs and benefits associated with the implementation of competitive markets and the corresponding deregulation of retail energy rates.

The body of the PUCN's Report represents a "first look" at the issues presented by the CEC Letter. This Addendum to the Report adds a number of questions that should be explored further and provides recommendations regarding issues to be considered as Nevada contemplates increasing competition in the State's electric industry.

² NRS 703.150.

³ At the September 13, 2017, meeting of the CEC, prior to the Committee voting to request that the PUCN conduct the investigation, PUCN Chairman Joseph Reynolds made it clear that any PUCN investigation into the ECI would include examination of costs. "Mr. Reynolds stated that if he is opening an investigatory docket then the PUCN will be looking at the costs to the consumers as it is a number one question and the PUCN cannot do half of their job by not looking at the costs and only giving half of the data. He stated that regardless of whether the committee asked for costs or not, the PUCN will review [] costs and if the committee does not want the PUCN to look at that then the committee should not proceed with the request of opening an investigatory docket." (CEC Meeting Minutes, September 13, 2017) Moreover, Committee members Brooks, Figueroa, Gold, and Silver each specifically stated a desire for the PUCN to examine costs. Notably, committee members Abboud, Hansen, Hutchison, and Kramer, each of whom opposed an examination of costs, voted against requesting that the PUCN conduct the investigation.

II. Response to the CEC Letter's questions regarding changes to Nevada laws needed to address a transition to competitive electric markets and timeline for implementation of requirements of the ECI

This portion of the Addendum provides specific recommendations in response to two of the Committee's inquiries: (1) "Identification of any program or statutory revisions that may be required to fully synchronize Nevada laws and regulations with a competitive energy market"; and (2) the timeline for implementation of the requirements of the ECI. While implementation of competition will require completion of many types of tasks, this section of the Addendum addresses only a proposed timeline for enactment of statutory and regulatory changes needed to provide a legal framework for the ECI. This proposal can certainly be enhanced with input from other participants. In addition, there is still much work to be done to understand and accomplish the operational, engineering, accounting, and other tasks involved in a transition to competition.

The electric industry does have certain unique characteristics, as stated in the Report at page 8. However, the electric industry also shares certain underlying economic characteristics with other industries that exhibited natural monopoly characteristics before technological changes eroded their natural monopolies and confronted these utilities, their customers, state legislatures and regulators with a host of unfamiliar challenges. Nevada's history with the introduction of competition to these other industries, including transportation and telecommunications, can provide policy makers and implementers with useful guidance in understanding the timeline that should be followed in the event ECI becomes law.

The most recent example of technological changes driving competition and fostering comprehensive changes to an industry originally dominated by monopolistic, rate-base, rate-of-return regulated utilities is the telecommunications industry. During the 1990s and early 2000s, the Legislature enacted a number of changes to NRS Chapters 703 and 704 (and approved corresponding changes to portions of the NAC) to facilitate competitive entry and to relax the economic and competitive restrictions set by the replaced utility regulatory framework. Recognizing the need to ensure consumer protection and to align with federal regulation, the Legislature expanded certain regulatory functions to protect consumers and ensured revisions to Nevada law were complementary to the then-newly-enacted laws made by federal regulators. These considerations are even more important for electric customers than they were for telecommunications customers because electric services have an even more crucial impact on their health and welfare.

A. The Legislature Can Draw from Its Prior Experience to Develop an Approach for Making the Legislative Changes Needed to Implement the ECI.

If the ECI is approved, the timelines set forth therein will require highly expedited actions by both the Legislature and the PUCN to carry out its requirements. Given this need for expeditious implementation, it may be helpful to follow a process similar to the one that the Legislature followed for telecommunications, in a manner that takes into account the unique aspects of the electric industry and the unique timelines included in section 3(a) of the ECI, which requires the

Nevada Legislature to “provide by law for provisions consistent with this Act to establish an open, competitive retail electric energy market, to ensure that protections are established that entitle customers to safe, reliable, and competitively priced electricity, including, but not limited to, provisions that reduce costs to customers, protect against service disconnections and unfair practices, and prohibit the grant of monopolies and exclusive franchises for the generation of electricity...” by July 1, 2023. It would also be helpful to determine which legislative actions would be best addressed by the Legislature in 2019, 2021 and 2023.

The process undertaken by the Legislature to facilitate competitive entry in the telecommunications industry during the 1990s and early 2000s, which could be emulated to effectuate the introduction of competition required by ECI, includes:

- Step One: Authorization of competitive entry (by statute and regulation, in contrast to the authorization by constitutional amendment that would result from approval of the ECI) and enactment of revisions to existing legal provisions authorizing monopoly behaviors that would be prohibited by the ECI.
- Step Two: Creation of a form of PUCN jurisdiction over the new competitors intended to protect consumers by requiring the competitors to be licensed by the Commission and to comply with reporting requirements and performance assessments; and authorizing the Commission to hear complaints from customers, while not requiring competitors to become subject to the same forms of regulation traditionally applied to the utilities with monopoly characteristics. These concepts are discussed more fully in the Report at page 103.
- Step Three: Enactment of new rules governing the interface between the incumbent utilities and new competitive providers to ensure that the new competitive providers have access to systems⁴ required to deliver services to retail customers without requiring the competitive providers to engage in uneconomic investment of their own.⁵
- Step Four: Development of performance measurement systems to monitor the quality of the interface to utility systems provided to competitors and incentives and penalties to encourage the incumbent utilities’ compliance with these new rules.
- Step Five: Development of a new regulatory framework exempting incumbent utilities from many of the traditional restrictions imposed by rate-base, rate-of-return regulation once the utility demonstrates the existence of sufficient competition in the marketplace to discipline utility behavior in the absence of regulation.

⁴ For example, the Report discusses the possibility that competitive energy providers and their customers may benefit from utilizing billing and metering services already utilized by NV Energy. (Draft Report at 101, 102) This occurred with telecommunications competition as well, and involved competitor utilization of other utilities’ facilities and systems as well. This did not always run smoothly, which gave rise to a need for performance measurements, incentives, and penalties.

⁵ In the restructuring of the telecommunications industry, these rules gave new competitors the tools they needed to ensure that they could obtain this access at reasonable prices, terms, and conditions.

Notably, it took over ten years for the Legislature to enact all of the required changes to Chapters 703 and 704 of the NRS and NAC to effectuate this process of introducing competition to the regulatory framework governing the telecommunications industry.

B. Priorities for the 2019 Legislature (Steps 1, 2, and 3)

1. Authorization of Competitive Entry

If the ECI is passed, then the authorization of competitive entry contemplated by Step One will have been accomplished, presumably by a vote or votes of the 2019 Legislature following approval by Nevada citizens in the November 2018 election. Legislative changes will still be needed to allow for the introduction of competitive energy providers' services into markets in which the incumbent utilities have had an exclusive franchise. For example, the Legislature could choose to revise NRS 704.330(6), which currently prohibits duplication of service in the franchise area of a certificated electric utility, a provision which does appear to be in conflict with the language of the ECI.

2. Regulation of Competitive Energy Providers

Regarding the formulation of the PUCN jurisdiction contemplated in Step 2, the Legislature should accomplish this task by the end of the 2019 legislative session. This process would include the creation of requirements that competitive electric providers be licensed by the PUCN and be subject to Commission complaint jurisdiction to protect consumers in their dealings with competitive electric providers.

Moreover, in addition to the competitive-provider licensing and consumer protection measures discussed on pages 103-106 of the Report, the unique characteristics of the electric industry require the enactment of legislation to ensure that competitive electric providers supply "safe" and "reliable" services, as required by section 3(a) of the ECI quoted above. Addressing these specific constitutional mandates requires, at a minimum, the creation of reserves requirements (or utilization of other applicable reserves requirements) that ensure all electric service providers have secured the energy and capacity needed to deliver power to their customers without disrupting the electric grid, as well as a requirement that competitive electric providers submit for PUCN review the contracts they plan to rely upon for energy and capacity.

3. Creation of the Structures Needed to Operate the Wholesale Market Utilized by Competitors to Provide Services to their Customers:

- a. Direct the PUCN to commence outreach to CAISO, SPP, PEAK/PJM and any other available source of market and reliability resources;
- b. Determine how the cost of start-up and operation costs of wholesale market operators will be recovered. For example, will these costs be recovered through NV Energy rates, through rates of a future distribution utility, through rates of competitive energy providers, or through a different mechanism? If it is decided that the costs of utilizing a wholesale market operator should be

recovered through the rates charged by competitive energy providers, the State of Nevada will need to design a mechanism ensuring that such collection occurs.

- c. Create Nevada's framework for selecting a wholesale market provider, taking into account the criteria set forth in section III below, and any others included by the Legislature, including designation of an entity to conduct this selection process.
4. Enactment of Legislation Changing Roles and Responsibilities in Light of the ECI:
- a. Determine which Nevada entity will be responsible for negotiating contracts and performing other work related to protecting Nevada's interests in the wholesale markets governance process. One option is for the Legislature to designate the entity tasked with making wholesale provider selection decisions.
 - b. Determine whether and how NV Energy will be allowed to recover costs related to ECI implementation, including costs of generation, long-term power purchase agreements, and regulatory assets,⁶ and determination of which entity will decide such issues. Current Nevada law includes a number of provisions protecting utilities' opportunity to recover such costs through customer rates, which will need to be reconsidered;⁷
 - c. Determine the process through which electric utilities in rural areas would recover costs of changes to their operations resulting from ECI. For example, should rural electric utilities be authorized to assess fees to departing customers similar to the NRS 704B impact fee process?
 - d. Analyze the impact of the ECI on Nevada cities' and counties' collection of utility franchise fees in the post-ECI environment and on budget assumptions;
 - e. Determine the information that the 2021 and 2023 Legislatures will wish to have regarding the impact of the ECI, and designate entities to report on these issues;
 - f. Determine whether legislation is needed for selecting a POLR, the terms under which the POLR will operate, and how the POLR will be compensated;

⁶ The Report estimates that, under existing law, these costs would be approximately 4.074 billion dollars (*See Report at 64-66*).

⁷ The Report estimates that the costs of regulatory assets, anticipated loss on the sales of generation assets, and out-of-the-money portions of the outstanding power purchase agreement obligations would result in a need to recover from Nevada customers approximately 4.074 billion dollars (*See Report at 64-66*). Consistent with the experiences in already-deregulated jurisdictions, the Report selected a ten-year cost recovery period for illustrative purposes. (*See e.g., Restructuring Recharged, The Superior Performance of Competitive Electricity Markets 2008-2016, at 13. Phillip R. O'Connor, Ph. D. (April 2017) (Appendix 249)* Other options include recovery of these costs over a period longer than ten years; unbundling of generation and customer services, creation of a separate subsidiary to hold generation assets and long-term resource contracts, or transferring some of these resources to a public entity which could administer them until sales would be more lucrative. In providing this guidance, the Legislature could inform the PUCN about the process that should be applied to evaluate NV Energy's divestiture proposal.

- g. Amend the PUCN’s authority and processes to accommodate implementation of the ECI, which, at a minimum, will need to address resource planning and related provisions that ensure the availability of electric resources to serve Nevada’s consumers.
5. Creation of new Definitions for key terms contained in the ECI, including those regarding:
- a. Markets: “electricity markets”, “electric energy market”, and “retail electric energy market”
 - b. Customer rights: “right to choose the provider of its electric utility service”, “meaningful choices”
 - c. Competition: “monopolies”, “competitive”, “open” [electricity markets], “promote competition”
 - d. Changes in Nevada’s regulatory framework for electric services: “deregulation”

Approval of carefully-worded definitions of each of these terms from the ECI would improve Nevada’s opportunity to implement the ECI on a timely basis if it receives final approval. For example, such definitions could clarify the differences between “competition,” which is explicitly mandated by the ECI, and “deregulation,” which is not, but generally follows after the implementation of competition.⁸

Developing legal definitions of the terms listed above would also support preparation of the high-quality economic, engineering, and financial analyses that will be needed to provide the foundation for the Legislature’s development and consideration of legislation to support the transition to competition that will be required if the ECI is passed.

C. Priorities for the 2021 Legislature (Steps 3 and 4)

By 2021, all of the participants in the Nevada retail electric service market will have had greater experience with the challenges of the beginning of the transition to competition. These experiences are likely to give rise to a greater understanding of the need for legislation regarding the rights and responsibilities of utilities and competitive energy providers working together to provide electric services to Nevadans, such as the interface requirements and performance measurements, incentives, and penalties contemplated by Steps Three and Four in Subsection A above. To prepare for the 2021 legislative session, the 2019 Legislature could also direct the PUCN, or another qualified entity, to convene meetings of industry participants, consumers, regulators, and others⁹ early in 2020 for the purpose of developing a report to be presented to the Legislative Committee on Energy regarding specific statutory changes needed to address these challenges.

⁸ The Legislature has, in the past, relied upon the tools available in the existing legal and regulatory framework to facilitate the development of competition benefitting consumers before making a “flash cut” to deregulation.

⁹ The Report suggests including the Governor’s Office of Economic Development, as well as the Governor’s Office of Energy and the BCP, and others in a “core working group” that could perform these functions. (Draft Report, at 107).

In addition, the 2021 Legislature is likely to be confronted with a need to consider regional market options, including short- and long-term reliability, and operating and planning reserves and other resource adequacy issues. Therefore, the 2019 Legislature may determine that it would be sound practice to direct the PUCN to complete an initial outreach to potential providers of wholesale market services by June of 2020 and provide a report to the Legislative Committee on Energy by September of 2020, with updates provided every six months thereafter.

D. Priorities for the 2023 Legislature (Steps 3, 4 and perhaps 5)

If the ECI's July 1, 2023, deadline is in effect, the 2023 Legislature may well be the "Energy Choice" legislative session, with a wide range of topics to be addressed. The 2023 session will be the Legislature's last chance to enact laws that will serve as the foundation of Nevada's competitive retail market before ECI goes into effect. This session may also become a "reality check" on the progress of the temporal and other goals established in the 2019 and 2021 legislative sessions. For instance, in the course of Nevada's previous attempt to deregulate the retail electric market, Assembly Bill 366 (1997) established a competitive market launch date on or before December 31, 1999. However, in 1999, the Legislature passed Senate Bill 438 and pushed that deadline to March 1, 2000, while simultaneously giving the Governor the authority to delay the market launch even further. In addition to delaying the competitive market launch date, SB 438 also fine-tuned many aspects of the deregulation process.

On the other hand, should the Legislature choose to implement the full spectrum of laws and launch the competitive retail market before 2023, the 2023 session can become an exercise in fixing anything that went wrong since the launch of the competitive electric service market.

The one item that may not need to be addressed so soon is deregulation, the extent of which should be tied to the strength of competition in Nevada. The Legislature should consider whether to create criteria under which different aspects of utility deregulation would be in the public interest and a process for conducting such evaluations over time.

One other aspect of incumbent utility deregulation is the utility's progression in the role of a "wires-only" company. The final sentence of section 3(a) of the ECI states: "The Legislature need not provide for the deregulation of transmission or distribution of electricity in order to establish a competitive market consistent with this Act." Even though the deregulation of transmission and distribution of electricity is not a goal of the ECI, the Legislature will need to provide guidance on how the "wires-only" company will be regulated in the post-ECI world, taking into account the role of the Federal Energy Regulatory Commission in regulating transmission service and pricing.

III. Response to the CEC Letter's question regarding qualitative and quantitative analysis regarding wholesale market options

Nevada should conduct a broad and detailed review of wholesale market options to ensure that the State makes market and reliability services available to competitors, while also protecting Nevadans from exposure to unreasonable risks or excessive costs.

The Report suggests two wholesale market options for Nevada: (1) join an existing wholesale market overseen by an established and known organization (e.g. CAISO, SPP, and Peak Reliability PJ-C-Connex); or (2) develop a Nevada-only wholesale market organization.

To assist in further evaluating these and other potential options during the wholesale market provider selection process, the Committee and the Legislature should develop specific criteria to assist in evaluating Nevada's wholesale market options. The Commission stands ready to participate in this analysis if directed to do so by the Legislature.

As a benchmark, it is recommended that the Committee and the Legislature further investigate wholesale market options reasonably available to Nevada to ensure that the State obtains all necessary services for Nevadans while also protecting Nevadans from unreasonable cost increases and excessive risk by evaluating each option with the following considerations:

A. Governance:

1. Does the provider currently have the legal authority to provide wholesale market services to electric service providers in Nevada? If not, when will it have this authority?
2. What process will the provider require to include Nevada in its membership?
3. Would joining the provider's membership group result in Nevada customers bearing higher costs related to compliance with environmental regulations or other state-specific regulations than if Nevada energy providers participated in a different wholesale market?
4. Would changes be needed to the provider's internal governance structures to ensure that the interests of a relatively small state such as Nevada are not overwhelmed in the provider's decision-making process by the interests of much larger members? If yes, what processes would be utilized to negotiate and document such changes, and how long would this process take?

B. Costs of market services using an existing (out-of-state) wholesale market, a Nevada-only provider, or a two-step transition:

1. What are the costs of becoming a member of an out-of-state provider's wholesale market, utilizing services provided, and exiting the provider?
2. Does each type of provider of market services offer a range of wholesale market service bundles, ranging from a least-cost set of services, required to provide the minimum set of wholesale market services needed for competitive energy providers to begin to provide services under ECI, through the premium-cost set of services that would replicate the full range of services available from providers

that already operate a wholesale market? If yes, what is the best way for Nevada to understand and compare providers' services?

3. What systems changes and other capital investments would be needed to participate in a provider's wholesale market, utilize a Nevada-only option¹⁰, or utilize a two-step transition?
- C. Resource Adequacy and Reliability:
1. Which provider offers resources and services that best fit (or complement) Nevada's load and resource profile?
 2. What benefits can Nevada experience from participating in the provider's wholesale market, including not only the benefits of participating in a large purchasing pool, but also benefits of increasing efficiency and access to a wider range of resource types and time zones, and other benefits?
- D. Evaluation of a Two Step Option:

In addition to evaluating the two options identified in the Report with these foregoing considerations, the Committee and the Legislature should investigate additional avenues for obtaining wholesale market options given concerns over Nevada's ability to timely join an existing wholesale market overseen by an established and known organization, and develop a Nevada-only wholesale market organization, by the July 1, 2023, ECI-imposed deadline, even under best-case scenarios. For example, Nevada could choose to utilize a two-step transitional process in which the Legislature, in an initial, interim step, could require NV Energy to perform the system and market operator functions, subject to the approval of the Federal Energy Regulatory Commission.¹¹ Then, in the subsequent step, the Legislature could require the transition to a wholesale market provider, which could mean two things: (1) Nevada could become a member of an out-of-state wholesale market organization that would potentially allow Nevada to avail itself of resources included within the organization's footprint; or (2) Nevada could contract with a different provider offering wholesale market services, which would essentially separate NV Energy as the transmission system operator from the provider of wholesale market services. This two-step transition process would not only allow Nevada to initially utilize a lower-cost provider of a limited set of wholesale market services before transitioning to a higher-cost provider offering a broader range of wholesale market services, but it could also solve the issue of timely implementation of the ECI that the other two options discussed in the Report may not be able to resolve.

¹⁰ It would not be appropriate for Nevada to pursue a Nevada-only option if doing so would be prohibitively expensive. The Report finds that it could cost up to 100 million dollars in new investment to implement a Nevada-only initial solution. (Report at 80) However, it is not yet clear what that level of investment that would represent. This finding on page 80, together with the summary on page 79, suggests that the 100 million dollars may be an estimate of the additional costs if Nevada "selects a new entity other than NV Energy to operate the new market." (Report at 7.) Therefore, the costs associated with the Nevada-only option require additional analysis.

¹¹ *Mountain West Independent System Administrator*, 90 FERC ¶ 61,067 (January 27, 2000), was accepted by the FERC as a reasonable interim step to oversee scheduling of transmission service and to assume certain other functions in furtherance of a retail access program.

It may well be that it will be determined at some point in the future that CAISO is the best partner for Nevada's energy future. Nevada's generally positive experience with CAISO's EIM is a good sign. However, as the Report acknowledges, it appears that CAISO does not yet have the ability under California law to take on the responsibility of serving as an independent system operator for Nevada (Report at 78). The fact that it is not currently known when CAISO will receive the necessary authority to do so, and implement internal governance changes necessary to protect Nevada's interests, indicates that Nevada should not tie its wholesale market future to a provider who may not be able to appropriately serve it. Therefore, in assessing CAISO as a reasonable, wholesale market services provider, the Committee and the Nevada Legislature should further investigate whether Nevada's implementation of the ECI could be held at bay by California's Legislature. California Assembly Bill AB 813, which would have expanded CAISO's authority to operate as a regional entity, failed in 2017 and is now under further consideration in the current session of the California Legislature (AB 813). On the other hand, it must also be recognized that the Commission has not yet received information regarding whether either of the two other out-of-state provider options, SPP and PEAK/PJM, would have similar limitations in providing services in Nevada.

Finally, the Report recommends that the Nevada Legislature provide guidance to all Nevada State entities regarding its intentions for selection of a wholesale market provider (Report at 107) and recommends the establishment of a "core working group" of stakeholders, including state legislators, the PUCN, the Governor's Office of Energy, the Governor's Office of Economic Development, the Governor's Office of Finance, the BCP, NV Energy, and other stakeholders to develop "parameters" for transitioning to a competitive retail market. (Report at 107) The Report further recommends that the Legislature fund a study for wholesale market options and appropriate 250,000 dollars. (Report at 83, 84, and 107). Both of these mechanisms would provide excellent forums for addressing the issues set forth above, but in addition, the Legislature should also consider tasking the PUCN and/or other qualified experts at Nevada Universities and other public interest institutions with the responsibility for addressing some of these issues on a targeted basis.

IV. Response to the CEC Letter's questions regarding "Relative Pros/Cons," "Best Practices and Structures," and "Options for Provider of Last Resort Services"

A. The Pros and Cons associated with ECI Implementation

There is no escaping the realization that widespread changes resulting from the implementation of the ECI will affect the results of cost/benefit analyses of the impact on Nevada customers. It is difficult to know, at this point in time, exactly how customers will be impacted. However, any analysis of the anticipated costs and benefits of industry change, including a change from franchise monopoly to competition, must address the anticipated effects of such change on customers' rates.

Electricity service and prices are a function of geography. Natural resource availability, transportation corridors (including gas pipelines and electric transmission lines), and climate all

affect the ultimate price end-users pay for electricity.¹² Because of that, the most valuable comparisons are those among neighboring states with similar public policies. For instance, it would make little sense to compare electricity prices in isolated paradise islands of Hawaii against electric prices experienced during harsh Illinois winters. On the other hand, an observation that electric prices in the deregulated state of Illinois are slightly higher than in the regulated state of Indiana but are lower than in Wisconsin is of value. Similarly, an observation that electric prices in natural-gas-rich Texas, which is often touted as a success story for deregulation, are considerably higher than in the neighboring regulated states of Oklahoma and Louisiana may also be valuable.¹³

In forecasting the likely prices Nevada will experience should it launch a competitive retail electric market, Nevada does not have the benefit of studying electric rates in a state with similar geography that has experienced retail competition. Competitive retail jurisdictions are clustered in the North East – New England, the Mid-Atlantic States, and the Great Lakes area, with Texas being the sole exception. No state in the western United States has comprehensive retail market competition.

The Report provides limited analysis of the benefits associated with the passage of the ECI because there is a complete absence of such data on the record. No participant, including the proponents of the ECI, submitted any jobs creation or other benefits data, including any study or a jobs creation report, during the course of the three-month-long proceedings before the Commission. Instead, the proponents of the ECI limited their input on the subject matter with generalized and unsupported statements of unidentified future job growth.¹⁴ It is also important to note that the Natural Resource Defense Council specifically warned that clean energy will not simply emerge out of retail competition.¹⁵

B. The Costs of ECI

The costs analysis summarized on pages 64-67 of the Report provides valuable guidance of the potential scope of costs that would be triggered by the passage of ECI. Admittedly, the costs analysis presented is by no means a precise science. One of the key factors limiting the PUCN's ability to determine with certainty whether electric prices will increase following the passage of the ECI is the lack of data that would indicate post-ECI competitive market pricing in Nevada.¹⁶

Recognizing that limitations exist, it is nevertheless vital to establish a market-based benchmark energy price that can be used to compare the current regulated electric rates Nevadans are paying against anticipated future market-based rates. The United States Energy Information Administration compiles data that shows the average market-based energy-only rate in all deregulated jurisdictions. The energy-only rate is a raw energy supply rate that excludes

¹² Public policies (including pro-renewable and anti-coal/anti-nuclear policies), regulatory oversight, and operational efficiencies of the local utilities are also among the many factors that influence prices paid by ultimate consumers.

¹³ 2016 data released on Jan. 25, 2018. <https://www.eia.gov/electricity/state/>.

¹⁴ Appendix 1494, 2567.

¹⁵ 12/08/17 NRDC Initial Comments at 3 (Appendix 1159)

¹⁶ As stated in the Report, no participant offered any assurances that the ECI will deliver lower electric prices for residential consumers. (Report at 25)

transmission, distribution, and public policy charges (which, in Nevada, fund programs promoting energy efficiency, energy storage, electric vehicle infrastructure, renewable energy development, and low-income assistance). Because it is the average competitive supplier rate and because it ignores the rate components not subject to competition,¹⁷ this rate is the best measure we can use to forecast the likely competitive supplier pricing in Nevada.

The latest average energy-only competitive supplier rate reported by the EIA is 8.37 cents per kWh.¹⁸ The competitive energy-only rate is higher than the residential energy-only rates currently charged in Nevada. SPPC charges its residential customers 5.61 cents per kWh for the energy supply. NPC charges its residential customers 7.2 cents per kWh. These charges do not take into account the latest rate reduction in the 2017 NPC general rate case and the tax rate rider reductions that became effective April 1, 2018. Thus, the energy-only rates NV Energy charges are already 33 percent lower in northern Nevada and 14 percent lower in southern Nevada than competitive suppliers were able to achieve in deregulated jurisdictions.

In the course of the ECI proceedings, no participant provided data demonstrating that competitive suppliers operating in already-deregulated jurisdictions will be able to deliver energy at lower prices to Nevada than they are charging in deregulated jurisdictions. And while the PUCN acknowledges that Nevada has one of the best solar resources in the country and an abundant geothermal resource, the PUCN must also note that the solar resource is not unique to Nevada, whereas the natural gas resource so readily available in the deregulated states of Texas, Pennsylvania, and Ohio is not present in commercially-viable quantities in Nevada. Furthermore, the PUCN must acknowledge the low population density of the state and limited transmission capability in the northern part of the state as factors likely to increase competitive market prices.

Thus, the PUCN has no basis to find that competitive suppliers will be able to deliver energy at prices that will match the existing energy rates charged by SPPC and NPC. For Nevada residential consumers to break even in the aftermath of deregulation, the new energy market rate must not only match the existing energy rates charged by SPPC and NPC, but must be so much lower than the existing energy rates as to offset all the new incremental costs that the market restructuring brings.¹⁹ As the Report explains, all of the categories of costs enumerated on pages 39-66 of the Report will be added on top of whatever consumer electric prices the market will deliver if Nevada introduces retail electric competition.

C. Options for a POLR

¹⁷ Pursuant to the plain language of the ECI, the distribution and transmission of electricity in Nevada can remain a monopoly.

¹⁸ EIA Table 2.4. Average Price of Electricity to Ultimate Customers.
https://www.eia.gov/electricity/annual/html/epa_02_04.html

¹⁹ In addition to the incremental costs summarized on pages 64-65 of the Report, the passage of ECI will also likely trigger stranded cost recovery. Under the full NV Energy generation divestiture scenario, a preliminary estimate to the stranded costs amounts to \$4.074 billion by 2023. These costs are estimated to consist of an estimated \$3.033 billion in out-of-the-money value of renewable power purchase agreements; \$702.5 million in losses recognized from the sale of NV Energy's generation assets (which includes \$350 million in anticipated new capital expenditures between the passage of the ECI and 2023); \$326.9 million in remaining regulatory assets; and \$12 million in remaining obligations associated with non-renewable power purchase agreements.

The discussion of default service provider and Provider of Last Resort (“POLR”) options beginning at page 85 of the Retail Market section of the Report summarizes information and recommendations provided by participants regarding the widely varying approaches different states have taken to ensure that there is an entity that will provide electric service to customers who do not receive service from a competitive electric provider. The Report also identifies legal obstacles that may prevent the adoption of some of the solutions that have worked in other states.

Most of the analysis provided over the course of this investigation appears to rest upon an assumption that NV Energy would not be the POLR for Nevada. Specifically, the Report provides a reference to a statement made by NV Energy in which it announces “its intent to exit the electric commodity exchange function and remain a wires-only company should the Energy Choice Initiative pass,” and the Report concludes that, “[u]nder that scenario, Nevada will not have the option of NV Energy service as either a default provider or a POLR.” (Report at 85)

However, the PUCN, in reaching its key findings regarding this issue, does not make the assumption that the Legislature will find NV Energy’s intentions as being in the best interest of the State of Nevada. While NV Energy is free to announce its intentions, NV Energy is nonetheless required under existing law to obtain the approval of the Commission prior to discontinuing, modifying, or restricting its service.²⁰ Therefore, absent a change to current law by the Legislature, NV Energy is not allowed to implement a unilateral decision to stop serving current customers without Commission approval, and the ECI does not contradict this provision.

Lastly, the Report points out that “low-income and rural Nevadans in hard-to-serve geographic areas or with limited credit/financial resources will likely be more negatively affected than other customers because they will be less profitable to serve and will need a POLR the most.” (Report at 93) For this very reason, the Committee and the Legislature should determine whether any changes are needed to current law to allow for selection of a POLR and appropriate regulations to ensure that all Nevadans continue to have access to electric service at reasonable prices, terms, and conditions. The Committee and the Legislature should include in their determinations an option of requiring NV Energy to serve as the default service provider for at least the first several years of the transition to a competitive electric market in this State, as well as a compensation mechanism to be utilized by NV Energy or any other entity selected to serve as Nevada’s default service provider or POLR.²¹

Today, in the energy sector, Nevada is on the threshold of at least a limited form of retail electric competition, regardless of whether the ECI goes into effect. In fact, Nevada has already experienced limited forms of competition for commercial customers, with high-load customers statutorily permitted to request departure from NV Energy’s bundled electric service through the

²⁰ See NRS 704.390.

²¹ The Nevada Legislature considered a similar provision in AB 366 of the 1996 legislative session. Section 45 of AB 366 authorized the Commission to designate Nevada Power Company and Sierra Pacific Power Company to provide electric service to customers who are unable, or who fail to, obtain electric service from a competitive provider. This section also authorized the Commission to prescribe alternative methods for servicing such customers.

NRS 704B process.²² Nevada's generation assets are also not owned by a single entity, with geothermal, large-scale solar, and distributed generation assets under third-party non-utility ownership.

V. CONCLUSION

Change is often difficult. Comprehensive change to a major industry that is precipitated by enactment of a single law such as the ECI is even more so. And, attempting to calculate the costs and benefits of change before it occurs requires very careful attention indeed. Returning to lessons learned from the telecommunications industry one last time, the issuance of Judge Harold H. Greene's decision approving a consent decree that broke up the Bell system in 1983 led to decades of work to implement the new industry paradigm.²³

The CEC's meetings and the PUCN's investigation are a good start toward protecting the interests of the people of Nevada by initiating discussion of the impacts of the ECI, including identification of potential costs and benefits, in an effort to mitigate negative effects and enhance positive effects should the measure pass. The ideas set forth in this Addendum are intended to support prudent implementation of the ECI by providing detailed recommendations regarding the steps that can be taken by the CEC, the Legislature, the PUCN, consumer advocates, competitive energy providers, utilities, and others to strengthen our State's ability to manage upcoming changes in the best way possible.

²² See e.g., PUCN Docket Nos. 15-05006, 15-05017, 16-09023, 16-11034, 16-11035 and 17-05014.

²³ Modified Final Judgment or Modification of Final Judgment, portion appended to the AT&T divestiture decision in *United States v. AT&T*, 522 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.*, *Maryland v. United States*, 460 U.S. 1001(1983).