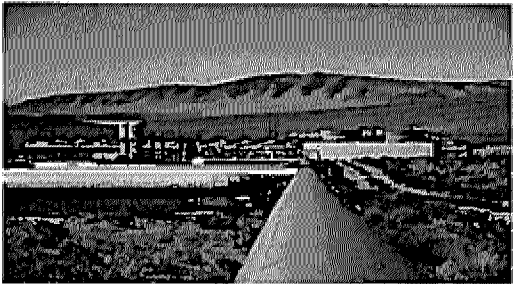
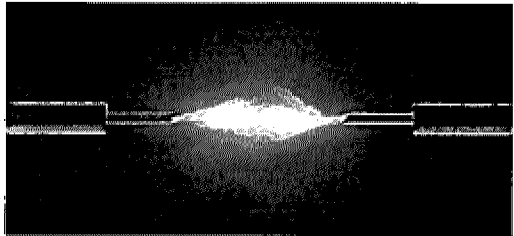


# PUBLIC UTILITIES COMMISSION OF NEVADA

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## ENERGY CHOICE INITIATIVE FINAL REPORT

INVESTIGATORY DOCKET No. 17-10001



APRIL 2018

## FOREWORD

The idea of choice and open markets is as quintessentially American as apple pie, baseball, and jazz music. It is in our DNA to gravitate towards it. But ensuring a non-stop supply of electricity to every home, business, and governmental entity in Nevada every second of every day of the year, regardless of the weather or economy, makes it unique from other goods or services. Electricity is a basic necessity of modern life. Like air. Like water. Like food. It is so fundamental that most of us rarely pause to think about it: we just want our lights to turn on and our monthly bills to stay low. Today, Nevada enjoys on average some of the lowest electricity rates in the country, and Nevada is leading in job growth and the development of solar and renewable energy technologies.

The Energy Choice Initiative seeks to amend the Nevada State Constitution and fundamentally alter the historical framework by which Nevadans obtain and pay for their electricity by removing the ability of the Nevada State Legislature, and subsequently the Public Utilities Commission of Nevada (PUCN), to control a key component of electricity rates. The Energy Choice Initiative was approved by approximately 72 percent of Nevada voters in 2016,<sup>1</sup> and will appear again before voters in 2018.

The PUCN is an independent regulatory entity created by Nevada law, and it operates separately from all other state agencies—its only clients are the residents of Nevada. Thousands of pages of comments, information, and analysis, as well as 10 days of transcribed public dialogue and proceedings, regarding issues raised by Energy Choice Initiative have been reviewed by the PUCN through the course of this investigation. These records are included in Volumes 1 through 11 of the Appendix accompanying this Report.

Trying to predict the future with 100 percent accuracy is not possible. This Report does not purport to do so. Energy prices can be volatile and fluctuate—they do not stay the same for a variety of reasons, including costs of fossil fuel, weather, global conflict, and politics. Many variables exist in the analysis in this Report, and the findings could certainly change if new information became available. With this stated, much involving electricity is reasonably predictable based upon identifiable trends, objective analysis, and experience.

The findings and analysis in this Report do not advocate or take any position supporting or opposing the Energy Choice Initiative. This Report is only intended as an objective resource to help educate all Nevadans, so that informed decisions are made regarding Nevada's energy future.

Sincere regards,



JOE REYNOLDS, Chairman  
Public Utilities Commission of Nevada

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<sup>1</sup> Nevada Secretary of State, *Nevada General Election 2016—Ballot Questions*, <http://silverstateelection.com/ballot-questions/>.

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## KEY FINDINGS

- Nevadans currently enjoy some of the lowest average electricity rates in the country, and Nevada is a leader in solar and renewable energy development, as well as job and business growth.
- The Energy Choice Initiative is reasonably likely to increase the average monthly electric bills of Nevadans, at least the in the short term, *i.e.*, the first 10 years. These cost increases will potentially diminish over the years as Nevada's new open-market paradigm becomes established, Nevada's economy and population grows, and the transition costs are paid off.
- Large commercial customers will likely see more immediate benefits from the Energy Choice Initiative due to the elimination of an alleged residential subsidy and reduced impact fees relating to NRS Chapter 704B.
- Ambiguous language within the Energy Choice Initiative makes it difficult to discern its full legal meaning and scope, and purported objectives of the measure appear to be in conflict with each other.
- No state has ever deregulated its energy market or made energy policy by amending its state constitution, which make the implications of the Energy Choice Initiative relatively permanent and unique to Nevada.
- Plain language of the Energy Choice Initiative removes the authority of the PUCN and, subsequently, the Nevada State Legislature to control the generation component of a bundled electricity rate. This will cause new exposure for Nevada ratepayers to market volatility and profit-driven ratemaking practices. It may also bring theoretical benefits of open market competition to Nevada.
- The Energy Choice Initiative will likely require in excess of 100 million dollars in new startup costs and, thereafter, over 45 million dollars in new annual operation and maintenance costs.
- NV Energy will likely be forced to divest its generating assets and assign its long-term power purchase contracts to new owners. Nevada ratepayers will remain liable for any financial losses incurred by NV Energy from these stranded costs, which could foreseeably exceed several billion dollars. While these stranded costs will not be new to Nevada ratepayers, they will offset any possible benefits from an open and competitive market created by the Energy Choice Initiative.
- At least 400 union electrical employees are likely to lose their jobs, and hundreds more may be negatively affected by the Energy Choice Initiative. The Energy Choice Initiative will also likely create new jobs for Nevadans, but what those jobs will be remains speculative and unestablished.
- Net Energy Metering (NEM)/rooftop solar laws and policies recently enacted through Assembly Bill 405, as well as other energy programs, will likely be negatively affected by the Energy Choice Initiative.
- The California Independent System Operator (CAISO) appears the most viable option for Nevada to participate in an organized wholesale market. Yet, this option has challenges, due to the need for bi-state legislation and changes to CAISO's governance structure to ensure Nevada's interests are represented.
- It remains an open question as to who will serve as a provider of last resort (POLR) for NV Energy's former Nevada customers in a retail market. This remains an area of concern given Nevada's diverse geography and population demographics.
- The Energy Choice Initiative can be implemented by July 1, 2023. But it will require an immediate and unprecedented commitment by Nevadans of financial, legislative, and legal resources.

## INTRODUCTION

Informed and responsible decisions about electricity, and energy in general, cannot be made in a vacuum. Accordingly, it is prudent to place the results of the PUCN's investigation into the Energy Choice Initiative in Docket No. 17-10001 into their proper context by setting forth a broad overview of electricity regulation development, the history and work of the PUCN, statistics about electricity in Nevada today, as well as other relevant considerations, before addressing the specific questions raised in these proceedings.

### Divergent Views about Government Regulation

Corporations exist to make money, not to protect the welfare of the public. Indeed, Adam Smith, a leader of modern capitalism theory, warned that the interests of a corporation "is always in some respects different from, and even opposite to, that of the public." See Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, 219-220 (1776). Without regulatory oversight, history has shown that left to their own devices certain corporations and marketplaces have created economic and environmental chaos and destruction. Children work in factories. Rivers catch on fire. Doctors operate without licenses. Senior citizens get cheated out of life savings. Investors are told lies. Home mortgages become upside down. Regulatory oversight arose out of necessity to serve as a governmental check on corporate greed and profits, *i.e.*, negative externalities, to protect public health and safety.

Yet, corporations have also driven some of our best efficiencies and inventions, and they employ a lot of people. History has also shown that regulation can go too far at times. John Stuart Mill, a leader in *laissez faire* economics theory, believed that "the business of life is better performed when those who have an immediate interest in it are left to take their own course, uncontrolled either by the mandate of law or by the meddling of any public functionary. The persons, or some of the persons, who do the work, are likely to be better judges than the government, of the means of attaining the particular end at which they aim." See John Stuart Mill, *Principles of Political Economy, with some of their Applications to Social Philosophy*, 952 (1848). Regulatory agencies can be run by government bureaucrats and 'paper pushers' who are more interested in outdated rules than real-world common sense and getting things done. Potentially life-saving drugs are withheld from the ill. Children are forced to get a permit before opening a lemonade stand. A construction project requires a dozen or more permits before it can break ground. Red tape delays a loan. Poorly-drafted (or interpreted) regulations can also perpetuate policies antithetical to economic growth, innovative ideas, and new technologies, which also better society and our way of life.

Balancing these competing interests and philosophies is a responsibility of the PUCN as mandated by Nevada law.<sup>2</sup> Irrespective of where one may fall in this philosophical debate, what is important to note is that regulation of electricity is unique from regulation of most any other produced goods and services.

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<sup>2</sup> The PUCN has dual responsibilities. It is responsible for ensuring that any charges imposed on Nevada utility customers are "just and reasonable," see NRS 704.001(4); NRS 704.120(1), which is a statutorily-imposed standard consistent with the PUCN's responsibility to "[p]rotect, further and serve the public interest." See NRS 703.151(1). Yet, the PUCN is also legally required to balance the public interest with the interest of shareholders of public utilities to ensure that public utilities have "the opportunity to earn a fair return on their investments . . ." NRS 704.001(4). The touchstone of any PUCN proceeding is to achieve fairness and reasonableness in addressing the concerns of both the public and the utility. See *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). Indeed, the United States Supreme Court has stated: "There must be a fair return upon the reasonable value of the property at the time it is being used for the public." *Bluefield Waterworks & Imp. Co v. Public Service Commission of West Virginia*, 262 U.S. 679, 690-91 (1923). However, the Supreme Court has explained that "[t]he ascertainment of that value is not controlled by artificial rules. It is not a matter of formulas, but there must be reasonable judgment having its basis in a proper consideration of all relevant facts." *Id.*



## Electricity is Different

Electricity is a commodity, and providing it to customers is a service. It is unique in several important respects. Former NASA Astronaut Neil Armstrong, while speaking to the National Academy of Engineering, recognized the electricity grid as the top engineering achievement: “[T]he top achievement, electrification, powers almost every pursuit and enterprise in modern society. It has literally lighted the world and impacted countless areas of daily life, including food production and processing, air conditioning and heating, refrigeration, entertainment, transportation, communication, health care, and computers.”<sup>3</sup> Armstrong, for reference, noted that our nation’s journey to the Moon was ranked twelfth.<sup>4</sup> It is complex.

First and foremost, electricity has become a necessity in modern life. Like air. Like water. Like food. Electricity is essential to not only turning on our home and business lights; but also for operating such things as refrigerators, computers, cell phones, air conditioners, heaters, life-saving medical equipment, and even vehicles. Unlike, for example, cable television; nobody dies and the economy does not falter if the television does not work. As a leader in modern utility regulation theory, James Bonbright, recognized, electric public utilities provide a service that is “essential” and “vital” to “present livelihood and future social growth.”<sup>5</sup> Second, while electricity is a necessity for modern life, it must be created and/or generated. Unlike air or water, to be useful electricity must be intentionally produced. Third, unlike commodities such as food or even gasoline, large-scale storage of electricity is certainly limited.<sup>6</sup> Meaning, once generated, most of it must be transmitted and used. As the United States Supreme Court has recognized: “[A]ny electricity that enters the grid immediately becomes part of a vast pool of energy that is *constantly moving* in interstate commerce.”<sup>7</sup> Fourth, electricity can be physically dangerous, and requires highly specialized skills and training to properly handle. Nobody dies from the shock of touching most mass-produced commodities. That is not true with electricity. Fifth, the generation, transmission, and distribution of electricity requires enormous amounts of long-term capital investment in infrastructure and planning. Often, this planning looks decades into the future and takes hundreds of millions, if not billions, of upfront investment dollars. Design and construction of generation facilities and transmission lines that span hundreds of miles cannot be done quickly or overnight. Sixth, once electricity infrastructure is built, it is fixed in its geographic location. Seventh, electricity requires on-site service technicians and engineers who can travel and repair damaged lines, breakers, or connect service day or night and in any weather condition 24 hours a day, 365¼ days of the year. Eighth, electricity can be a volatile financial commodity that has price fluctuations based upon uncontrollable natural factors, political decisions in Washington D.C., or world events such as weather, trade tariffs, or the costs of fossil fuels. Ninth, electricity must be constantly available to meet society’s growing demand at any given time. Meaning, the electric grid must not only be able to meet today’s peak usage and demand, but tomorrow’s as well. Finally, the innovations and technology surrounding electricity generation and usage are evolving at an astounding rate, whereby what may be considered cutting-edge technology just a few years ago may soon become outdated.

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<sup>3</sup> See <http://www.greatachievements.org>.

<sup>4</sup> *Id.*

<sup>5</sup> Bonbright, James C.; Daniels, Albert L.; Kamerschen, David R., *Principles of Public Utility Rates*, 8-9 (1988).

<sup>6</sup> *Id.* at 9 and U.S. Energy Information Administration, *Today in Energy, Design and Application of Utility-Scale Battery Storage*, <https://www.eia.gov/> (Appendix 3761-3762).

<sup>7</sup> *New York v. Federal Energy Regulatory Commission*, 535 U.S. 1, 7 (2002) (emphasis added).

## The Regulatory Compact and Monopoly Paradigm

Because electricity is a different type of resource, how our society has traditionally regulated it is unique as well. It has been generally viewed that electricity regulation actually favors a monopoly structure. Indeed, as the United States Supreme Court has observed, the monopoly paradigm for electricity arose because, due to “its inherent technical characteristics,” an electric public utility could not “be operated with efficiency and economy unless it enjoys a monopoly of its market.”<sup>8</sup> Often, competing electric utilities in an open and competitive electricity market place have over time run each other into bankruptcy.<sup>9</sup> This was not beneficial to the public and would lead to a natural monopoly by an electric utility without the safeguards of regulatory oversight.

“Regulation represents third-party intervention by a government agency as an arbitrator between the company and the customers it serves.”<sup>10</sup> In other words, it is government involvement between corporations doing business and people. In the traditional monopoly paradigm, the electric utility gives up many of the rights and protections that a traditional private business retains, such as the ability to fix its own prices and rates and the ability to enter into business arrangements without prior government approval. In exchange, the electric utility does not have to compete for service territory and is guaranteed an opportunity to earn a reasonable rate of return on its investments.<sup>11</sup> “The nature of governmental regulation of private utilities is such that a utility may frequently be required by the state regulatory scheme to obtain approval for practices a business regulated in less detail would be free to institute without any approval from a regulatory body.”<sup>12</sup>

The United States Supreme Court has recognized: “[T]o offset monopoly power and ensure affordable, stable public access to a utility’s goods or services, legislatures enacted rate schedules to fix the prices a utility could charge. As this job became more complicated, legislatures established specialized administrative agencies . . . to set and regulate rates.”<sup>13</sup>

### Role of Regulators to Protect the Public Interest

Regulation arose in the United States to protect the public interest.<sup>14</sup> “The traditional public interest view of regulation is to protect consumers against high or discriminating prices or unreliable service.”<sup>15</sup> It is believed that without proper regulation, no sufficient penalties for corporate misbehavior exist, and social and political power would be concentrated in the hands of private corporations.<sup>16</sup> Regulation also exists to insulate ratepayers from market volatility and electricity price spikes. The United States Supreme Court observed: “In periods of high electricity demand, prices can reach extremely high levels as the least efficient generators

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<sup>8</sup> Bonbright at 18-19.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 6.

<sup>11</sup> *Id.* at 9 n.5.

<sup>12</sup> *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 357 (1974).

<sup>13</sup> *Verizon Communications Inc v. Federal Communications Commission*, 535 U.S. 467, 477 (2002) (internal citation omitted).

<sup>14</sup> Bonbright at 28.

<sup>15</sup> *Id.* at 33.

<sup>16</sup> *Id.* at 40.

have their supply bids accepted in the wholesale market auctions. Not only do rates rise dramatically during these peak periods, but the increased flow of electricity threatens to overload the grid and cause substantial service problems.”<sup>17</sup> One of the primary responsibilities of an electric utility regulatory paradigm is to protect the consumer and ratepayer from these harms.

## Origins of Federal and State Public Utility Regulation

In the early twentieth century, state and local agencies oversaw nearly all generation, transmission, and distribution of electricity.<sup>18</sup> Recognizing the limitations placed upon states by the Commerce Clause of the United States Constitution to regulate the flow of goods and services within interstate commerce, the United States Congress passed the Federal Power Act in 1935.<sup>19</sup>

The Federal Power Act authorized the Federal Energy Regulatory Commission (FERC) to regulate the wholesale exchange of electricity in interstate commerce, including both wholesale electricity rates and any rule or practice affecting such rates. But it left the States free to regulate any other sale, *i.e.*, any retail sale, of electricity.<sup>20</sup> The Act provides that “[a]ll rates and charges made, demanded, or received by any public utility for or in connection with” interstate transmissions or wholesale transactions—as well as “all rules and regulations affecting or pertaining to such rates or charges”—must be “just and reasonable.”<sup>21</sup> However, by limiting FERC’s regulatory reach, the Act maintains a zone of exclusive state jurisdiction regarding retail sales of electricity directly to end-use customers.<sup>22</sup>

### **ABOUT THE PUBLIC UTILITIES COMMISSION OF NEVADA (PUCN)**

Over 110 years ago, the PUCN was established by Nevada law as the Railroad Commission of Nevada.<sup>23</sup> As explained in a 1908 report by the newly-formed Commission to then Nevada Governor John Sparks, the Commission was created to protect Nevadans from discriminatory treatment and unfair business practices at the hands of the railroad and mining barons, who controlled the lifelines of transportation and commerce in the West.<sup>24</sup> The Report recognized that “[n]o State in the union has suffered more [from unfair rates by railroad operators], relatively, from unjust discrimination at the hands of interstate carriers, and with respect to interstate traffic within its borders, than has the State of Nevada.”<sup>25</sup> A few years later, the Public Service Commission of Nevada was created in 1911. The reason for the creation of the Commission was later articulated by the Nevada Supreme Court:

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<sup>17</sup> *FERC v. Electric Power Supply Association*, \_\_\_ U.S. \_\_\_, \_\_\_, 136 S.Ct. 760, 762 (2016).

<sup>18</sup> *Id.* \_\_\_ U.S. at \_\_\_, 136 S.Ct. at 767.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* \_\_\_ U.S. at \_\_\_, 136 S.Ct. at 762.

<sup>21</sup> *Id.* \_\_\_ U.S. at \_\_\_, 136 S.Ct. at 767.

<sup>22</sup> *Electric Power Supply Association*, \_\_\_ U.S. at \_\_\_, 136 S.Ct. at 767-768.

<sup>23</sup> *See Union Pacific Railroad Co. v. Adams*, 77 Nev. 282, 289-290, 362 P.2d 450, 453-454 (1961).

<sup>24</sup> *First Annual Report of the Railroad Commission of Nevada*, at 4 (Gazette Publishing Company, April 10, 1908).

<sup>25</sup> *Id.* at 15.

[The Commission] is the direct outgrowth of an urgent and persistent public demand for prompt, intelligent, and effective public control of public utilities. It is founded on necessity and convenience. *Competition did not prove effective* in preventing monopoly by public utility companies, and its consequent burden on the public in the different classes of public service rendered by them. It is recognized, also, that the rate-making power and the power to regulate and control these enterprises, vested by the Constitution in the Legislature, could not be conveniently exercised by that body to meet the changing conditions, which make the rates a public utility may lawfully charge for its service vary in value from time to time. These exigencies were met by the Legislature in the formation of the governmental agency designated, in the act creating it, as a Public Service Commission. The law presumes that the members of the commission shall be men trained in those lines of business in which public utilities are engaged, and who can fairly and intelligently adjust the complex questions that constantly arise. Necessarily to make the act effective to answer the purposes of its enactment, the commission has been clothed with broad discretionary powers; and to further accomplish these purposes the orders of the commission as to rates and charges have been made prima facie lawful from the date of the order until changed or modified by the commission, or until found to be unreasonable . . . .<sup>26</sup>

(Emphasis added). The Railroad Commission of Nevada was merged into the Public Service Commission of Nevada in 1919 and remained under that name for nearly 70 more years. In 1997, the name of the Public Service Commission of Nevada was changed to the Public Utilities Commission of Nevada.

## Organization

The PUCN is a unique executive-branch agency of the State with quasi-judicial and quasi-legislative responsibilities. It is headed by a Chairman and two Commissioners who are appointed by the Governor. About 100 people work at the PUCN, many of whom are licensed and certified engineers, accountants, lawyers, and economists. An Executive Director is appointed by the PUCN to assist in running the day-to-day operations and oversee agency finances. Unlike most other agencies, the PUCN has its own General Counsel, which is entirely independent of the Office of the Nevada Attorney General. The authority of the PUCN to exercise legal jurisdiction over electricity rates is vested to it through the Nevada State Legislature and can be traced to foundations in the Nevada State Constitution.<sup>27</sup> The PUCN is governed by the laws enacted by the Nevada State Legislature and Governor, namely, Chapters 703 and 704 of the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC). It is subject to the Administrative Procedures Act set forth in NRS Chapter 233B, the Public Records Act set forth in NRS Chapter 239, and the Open Meeting Law set forth in NRS Chapter 241. The PUCN's main office is located in Carson City with a smaller office in Las Vegas.

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<sup>26</sup> *Steamboat Canal Co. v. Garson*, 43 Nev. 298, \_\_\_, 185 P. 801, 807 (1919).

<sup>27</sup> *Steamboat Canal*, 43 Nev. at \_\_\_, 185 P. at 806; see *Degiovanni v. Public Service Commission of Nevada*, 45 Nev. 74, \_\_\_, 187 P. 582, 583 (1921) (“The authorities of this and other jurisdictions are uniform in holding that the power to regulate and establish rates which a [utility] may lawfully charge for its service, is a legislative power.”).

## Responsibilities

Every cent of the monthly utility bills received by most Nevada residents and businesses is scrutinized by the PUCN to ensure it is fair and reasonable: the average cost of electricity paid by Nevadans is among the lowest in the nation.<sup>28</sup> The PUCN oversees the full or limited regulation of over 400 entities engaged in providing electric, natural gas, telecommunications, water, wastewater, and rail services to the nearly three million residents of Nevada, as well as Nevada businesses. By far the largest and best known of these entities is NV Energy, which consists of Nevada Power Company and Sierra Pacific Power Company. These entities engage in billions of dollars of annual transactions and have billions of dollars in assets under the PUCN's jurisdiction.

The PUCN's basic regulatory duties are set forth in Nevada law and include: (1) providing for the fair and impartial regulation of public utilities; (2) providing for the safe, economic, efficient, prudent and reliable operation and service of public utilities; and (3) balancing the interests of customers and shareholders of public utilities by providing public utilities with the opportunity to earn a fair return on their investments while providing customers with just and reasonable rates.<sup>29</sup> To serve these objectives, the PUCN's mission statement provides for the following: "The Public Utilities Commission of Nevada serves to protect the public interest, ensure fair and reasonable utility rates, and regulate the delivery of utility services to benefit the economy, the environment, and all Nevadans." But the overriding goal of the PUCN is plain and simple: serve the public interest.

## Nature of Proceedings

Proceedings before the PUCN can be generally grouped into three categories. The first of these are publicly-noticed agenda meetings with all three members of the PUCN in attendance. These meetings occur approximately every two-to-three weeks throughout the year and are video-conferenced between Carson City and Las Vegas, as well as live-streamed over the internet. Subject to the Open Meeting Law, the PUCN listens to public comment, deliberates as a full body on issues, and votes. Certain decisions are subject to judicial review.<sup>30</sup> The second of these proceedings are hearings in contested cases, which often involve adversarial positions, evidence, witnesses, fact-finding and legal conclusions—and, of course, they often involve lawyers too. The Office of the Nevada Attorney General's Bureau of Consumer Protection and the Regulatory Operations Staff of the PUCN participate in these proceedings as independent advocates. One member of the PUCN is designated by the Chairman to preside over the case, and he or she is prohibited from discussing it *ex parte* with PUCN Regulatory Operations Staff or anyone else.<sup>31</sup> The order of these proceedings is set forth in regulation, and the Nevada Rules of Civil Procedure apply when the regulations are silent. A third category of proceeding involves workshops and investigatory dockets. These often lead to drafting regulations or the issuance of reports. Unlike contested cases, these proceedings are not adversarial and involve discussions about policy and the best ways to implement it. Key to the PUCN's mission is public involvement. Each of the above-listed proceedings has procedures to provide the public with notice of what the PUCN is doing and several opportunities to comment.<sup>32</sup>

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<sup>28</sup> Nevada is ranked as the 7th best state in the nation on average for the lowest cost per-kilowatt-hour for electricity. U.S. Energy Information Administration, *State Electricity Profiles 2016*, <https://www.eia.gov/> (Appendix 3763-3764).

<sup>29</sup> NRS 704.001.

<sup>30</sup> See NRS Chapter 233B.

<sup>31</sup> NRS 703.301(2); NAC 703.481.

<sup>32</sup> See, e.g., NRS 703.310; NRS 703.320; NRS 703.373; NRS 703.380; NAC 703.491; NAC 703.492.

## Legal Authority

Our electric system in Nevada is complex and has been developed for over a century,<sup>33</sup> with rates being set by the PUCN for over 100 years.<sup>34</sup> The Nevada Supreme Court has recognized: “the Nevada [State] Legislature has created a comprehensive statutory scheme for the regulation of public utilities” in Nevada.<sup>35</sup> The PUCN is at the core of this system. Because the PUCN is a creature of statute, it has no inherent power and can only exercise its powers and jurisdiction pursuant to the authority granted to it through statutory provisions. “[W]here power is clearly conferred or fairly implied, and is consistent with the purposes for which the [PUCN] was established by law, the existence of the power should be resolved in favor of the commissioners so as to enable them to perform their proper functions of government.”<sup>36</sup>

The Nevada State Legislature has expressly granted the PUCN authority to “supervise and regulate the operation and maintenance of public utilities” in accordance with the provisions of NRS Chapter 704. NRS Chapter 704 sets forth the general statutory framework for the regulation of public utilities and the setting of rates that public utilities may charge their customers. In enacting NRS Chapter 704, and NRS 704.001 in particular, the Nevada State Legislature declared the following purpose and policy:

1. To confer upon the Commission the power, and to make it the duty of the Commission, to regulate public utilities to the extent of its jurisdiction;
2. To provide for fair and impartial regulation of public utilities;
3. To provide for the safe, economic, efficient, prudent and reliable operation and service of public utilities; and
4. To balance the interests of customers and shareholders of public utilities by providing public utilities with the opportunity to earn a fair return on their investments while providing customers with just and reasonable rates.

The PUCN has authority to regulate utility rates and the Nevada Supreme Court has described that power as being “plenary.” Meaning, it is “broadly construed.”<sup>37</sup> The only limit on the PUCN’s authority to regulate utility rates is the legislative directive that rates charged for services provided by a public utility must be “just and reasonable.” Indeed, it is unlawful for a public utility in Nevada to charge rates that are not reasonable. The PUCN also has authority to regulate the service standards and practices of public utilities. Rates and regulations prescribed by the PUCN are presumptively lawful and reasonable until modified by the PUCN or by a court on judicial review.<sup>38</sup>

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<sup>33</sup> See *Nevada Power Company v. Eighth Judicial District Court (Bonneville Square Associates)*, 120 Nev. 948, 962, 102 P.3d 578, 588 (2004) (“[T]echnical issue[s] lie[] within the specialized knowledge of the PUC and its trained staff.”).

<sup>34</sup> See, generally, *Degiovanni*, 45 Nev. at \_\_\_, 187 P. at 582.

<sup>35</sup> *Nevada Power Company*, 120 Nev. at 955-956, 102 P.3d at 583-584.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 956-957, 102 P.3d at 584-585.

<sup>38</sup> NRS 704.130.

