

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Investigation into Issues of Public Importance)
Regarding the Pending Energy Choice)
Initiative and the Possible Restructuring of) Docket No. 17-10001
Nevada's Energy Industry.)
_____)

**MOTION FOR LEAVE TO SUBMIT REPLY COMMENTS OF NEVADANS FOR
AFFORDABLE CLEAN ENERGY CHOICES**

I. INTRODUCTION

Nevadans for Affordable Clean Energy Choices (hereinafter "ECI") respectfully moves, pursuant to NAC 703.550, for leave to submit Reply Comments ("Comments"), attached hereto. ECI requests that the Public Utilities Commission of Nevada ("Commission") allow ECI to file these Comments because the Commission's Energy Choice Initiative Final Draft Report ("Report") contains numerous inaccuracies, is outside of the Commission's authority, is patently intended to influence the decisions of voters in violation of NRS 281A.520, and would likely mire the Commission in ethics disputes if adopted.

II. ARGUMENT

As fully set forth in the attached comments, approving the Report is outside the Commission's powers, as established by NRS Chapters 703 and 704. The Commission's authority to issue this report is further restricted by NRS 281A.520, which prohibits public officials from using public resources to support or oppose a ballot question, such as the Initiative.

The Governor's Committee on Energy Choice ("CEC") requested that the Commission investigate four specific questions related to Nevada Ballot Question Three, the Energy Choice Initiative ("Initiative"). However, the CEC did not authorize the Commission to issue the Report, as it primarily advocates against the Initiative, contains patent inaccuracies, and spends little or no space considering the four specific questions it was authorized to comment on.

ECI requests leave to file these Comments to address the significant legal and factual deficiencies of the Report. ECI believes that the Commission should be aware of these shortcomings before it considers the Report, lest it unintentionally lend its support to a document

that fails to meet the standards set by the CEC, misleads Nevadans, violates Nevada's ethics laws, and is outside the scope of the Commission's authority.

III. CONCLUSION

For the reasons briefly discussed above, ECI respectfully moves for leave to submit the attached Comments. Doing so would be consistent with the public interest and would ensure that the Commission is fully aware of the Report's shortcomings before considering approval on April 30, 2018.

DATED this 27th day of April, 2018.

By: /s/ Tamara Beatty Peterson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing **MOTION FOR LEAVE TO SUBMIT REPLY COMMENTS OF NEVADANS FOR AFFORDABLE CLEAN ENERGY CHOICES** upon each of the parties on the attached service list via electronic mail.

DATED this 27th day of April, 2018

/s Erin L. Parcels
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Investigation into Issues of Public Importance)
Regarding the Pending Energy Choice)
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**REPLY COMMENTS OF NEVADANS FOR AFFORDABLE
CLEAN ENERGY CHOICES**

Nevadans for Affordable Clean Energy Choices (hereinafter "ECI") respectfully submits these Reply Comments ("Comments") for the Public Utilities Commission of Nevada's ("Commission") consideration in advance of its April 30, 2018, meeting to consider approval of the Commission's Final Draft Report dated April 18, 2018 ("Report"), regarding the Energy Choice Initiative ("Initiative"). While this docket's procedural schedule does not expressly allow for reply comments, ECI respectfully requests that the Commission consider its Comments for the reasons set forth below.

ECI recommends that the Commission reject the Report at the April 30 meeting. The Commission should then closely examine the Report to determine which portions, if any, of the Report are directly responsive to the four issues it was requested to study, and then compile and, if necessary, draft new sections for a new Report. Once a new Report is prepared and circulated for public comment, the Commission should set another public meeting to determine whether the new Report should be adopted by the Commission. These actions are necessary for, at least, three reasons. First, approving this Report in its current form is outside the Commission's authority under NRS Chapter 703 and the assignment given to it by the Governor's Committee on Energy Choice ("CEC"). Second, approving the Report could expose the Commission to the risk of an ethics complaint, as the Report repeatedly crosses the line set by NRS 281A.520. Third, the Report is not helpful, much of it is wrong, and it is not responsive to the CEC's request. Given the issues

at stake in the Initiative, the Commission owes the People of Nevada fair and relevant responses to the topics it was charged by the CEC to evaluate.

I. INTRODUCTION

Over recent years, Americans have become increasingly divided over many issues, such as healthcare, gun control, politics, and other hot-button topics. Yet, over 72% of voting Nevadans remarkably came together in 2016 to pass the Initiative in the shared belief that eliminating the electricity monopoly NV Energy holds in Nevada, opening electricity markets and competition, and giving Nevadans meaningful choices amongst electricity providers will benefit Nevadans. With a resounding voice, the People of Nevada proclaimed that they no longer want their energy choices to be dictated by NV Energy and, to a certain extent, the Commission. As required in a democracy, the sole duty of Nevada's legislative, regulatory and executive branches was to then explore possible ways to implement the people's will.

Consistent with the mandate, Governor Brian Sandoval created the CEC to "identify the legal, policy, and procedural issues that need to be resolved, and to offer suggestions and proposals for legislative, regulatory, and executive actions that need to be taken for the effective and efficient implementation of the Initiative."¹ The CEC, in turn, requested that the Commission open an Investigatory Docket to study four issues related to the Initiative.² Significantly, the financial costs of the Initiative, particularly the financial impact the Initiative would have on NV Energy, was *not* one of the four issues delegated to the Commission.

Rather than author a Report containing ideas and solutions to carry out the people's will, we are left with a 109-page doomsday Report that, by its own astounding admission, is intended to "educate all Nevadans," and primarily focused on the alleged financial impact the Initiative may

¹ See http://gov.nv.gov/News-and-Media/Executive-Orders/2017_ADA/2017-03-Order-Establishing-the-Governor_s-Committee-on-Energy-Choice/.

² See http://energy.nv.gov/uploadedFiles/energynvgov/content/Programs/TaskForces/2017/CEC%20-%209-13-2017_DRAFT_Minutes.pdf

have on NV Energy. The flaws in the Report are numerous, obvious, and set forth more fully in Section II, below. However, most problematic is the Report's patently untrue claim that it does "not advocate or take any position supporting or opposing" the Initiative. The Report is the antithesis of "fair and impartial."³

In violation of the CEC's directives and the law, the Report purports to find fault after fault with the Initiative. Even a brief perusal of the Report reveals that it is short on facts, but long on opinions. Reading between the lines of the Report, the author believes that the People of Nevada got it wrong in 2016. To avoid getting it wrong again, the Report effectively advocates for Nevadans to reject the Initiative in 2018, even going so far out of the realm of energy regulation to proffering quasi-judicial opinions on constitutional interpretation. The Report continues to subtly mock the People of Nevada for daring to implement their will through a constitutional amendment.⁴ Of course, the Report fails to mention that the People of Nevada were forced to pursue a constitutional amendment because Nevada's elected officials failed to take appropriate actions to eliminate or even minimize the stranglehold NV Energy has on the energy market in Nevada.

Distilled to its essence, the key message conveyed in the Report is this: without lawful authority, a government agency is attempting to convince the Nevada electorate how they should vote on a pending ballot question. Shockingly, the Report even goes as far as to claim that while open markets may seem as American as "apple pie" and "jazz music," that belief should not predominate a voter's opinion of the measure.⁵ It also claims that the Initiative is not a "grass roots" effort despite the overwhelming public support of the Initiative, that corporations do not "protect

³ See e.g., NRS 704.001(2) (declaring that the Commission is to "provide for fair and impartial regulation of public utilities.")

⁴ See Report at p. 26.

⁵ *Id.* at p. 1.

the public welfare,"⁶ that the Initiative contains "conflicts" and "ambiguities,"⁷ and that litigation over the Initiative is "likely" so voters should not support the measure.⁸ Incredibly, the Report seemingly endorses litigation by NV Energy against Nevada if the Initiative is passed in 2018.⁹ ECI's research could find no similar circumstance of such bold, intentional, and knowing government interference in the initiative process.¹⁰

It would be unprecedented and unlawful for the rest of the Commission to interject itself into this political question on the side of NV Energy by adopting the Report. But if it chooses to go down this errant path, the Commission should at least be forthright about it. The Commission should tell the People of Nevada that their collective voice does not matter, that the People do not get to choose how and from whom they receive electrical service, and that, because the government allowed NV Energy to grow too large, too powerful, and too rich for too long, NV Energy's monopoly cannot be undone. Unless the Commission is prepared to come clean with Nevadans and acknowledge that it has abandoned any claim to objectivity, it should reject the Report.

II. ARGUMENT

A. Approval of the Report violates the spirit of Nevada's initiative process.

The Report is an attack on Nevadans' Constitutional right to make their own laws through the initiative process, free from interference by elected or appointed officials.¹¹ It's important to understand the nature of the people's right, and how the Report offends that constitutional right. In the early part of the twentieth century, Nevada was among some twenty states that embraced the

⁶ *Id.* at p. 7.

⁷ Strangely, the Report claims that the Initiative's right to an "open and competitive market" is inconsistent with the Initiative's requirement for reasonable public safeguards, that these two requirements are in conflict because an open market, according to the Report, can have no regulation or safeguards. We would respectfully request the author review Justice Holmes opinion in *Schneck v. United States*, 249 U.S. 47 (1919), or alternatively, try to falsely yell fire in a crowded theater. Most rights have limits.

⁸ *See* Report at p. 31.

⁹ *Id.* at 51 ("Anything less will likely result in justifiable litigation against Nevada.").

¹⁰ *See* In re Chris Garvey, Nev. Comm. on Ethics Opinion 14-01C (2014).

¹¹ Nev. Const. Art. 19, § 2.

idea of direct democracy. At the time, the Progressive Movement was sweeping the nation, particularly the mid-western and western states. This was a reaction to the popular sentiment that state legislatures were under the control of large banks, railroads, mining companies, and other "special interests."¹² The initiative and referendum were enacted to clarify that the people reserve to themselves the power to directly make law, and to provide a procedure for doing so, free of the influence from government officials. This provides a check and balance should the legislature become unresponsive to the needs of the citizens.¹³ *Id.*

More recently, the Legislature has recognized that governmental interference also threatens the integrity of the initiative process and enacted NRS 281A.520 to prohibit *any* governmental agency or officer from spending money to persuade voters to support or oppose a petition. If the government has become unresponsive to the people, and the people exercise their sovereign right to change the law, the government is therefore prohibited from influencing or imposing their perspective upon the petition process. Unfortunately, the Report ignores this historical precedent.

Nevadans' historical interest in checking the power of "special interests" through the initiative process has a renewed resonance today. The Initiative was passed in 2016 by over 72 percent of voting Nevadans in 2016. Under Article 19 of the Nevada Constitution, it will appear on the 2018 ballot. If approved, it will become part of Nevada law. Today, the "special interest" that Nevadans seek to check is a 100-year-old monopoly that charges excessive rates, rakes in outrageous profits, and fails to deliver the clean energy that Nevada wants. As holder of this monopoly power, NV Energy understandably opposes the Initiative.

Just as Nevadans feared over 100 years ago, state government has failed to do anything about the power of those "special interests." There is no doubt that the Report violates the spirit of Nevada's initiative process. It runs directly contrary to the idea that sovereignty rests in the

¹² See Don W. Driggs, *The Constitution of the State of Nevada: A Commentary*, at 29 (1961); Legislative Counsel Bureau, *The Initiative and Referendum in Nevada*, p. 2 (BP 88-3, 1988).

¹³ *Id.*

people, not in government officials, and that the people's right to make their own laws must not be disturbed. Approving the Report would be out of keeping with Nevada's democratic tradition. It would also violate state law.

B. Approval of the Report is outside the Commission's powers.

The Commission's powers are broad, but they do not include the authority to approve what "reads like an in-kind contribution" to NV Energy's \$30 million effort to defeat the Initiative.¹⁴ Issuing the Report is not within the Commission's power to "supervise and regulate" public utilities.¹⁵ Additionally, issuing the Report – that "in-kind contribution" – would likely constitute a violation of NRS 281A.520, prohibiting expenditures in favor or opposition of an initiative.

I. *The Commission's statutes do not provide authority to approve the Report.*

As the Report acknowledges, the Commission is a "creature of statute," with "no inherent power, rather, its powers and jurisdiction are determined by statute."¹⁶ The Legislature has granted the Commission the power to "supervise and regulate the operation and maintenance of public utilities and other persons named and defined in chapters 704, 704A and 708 of NRS pursuant to the provisions of those chapters."¹⁷ As the Report notes, the Nevada Supreme Court has stated that the Commission's purpose is to provide "prompt, intelligent, and effective public control of public utilities..."¹⁸ While those powers are broad, "any doubt about the existence of [the PUC's] power or authority must be resolved against finding such power or authority."¹⁹ Where the

¹⁴ Thomas Mitchell, *PUC tilts at power choice initiative*, Elko Daily Free Press (April 25, 2018) available at https://elkodaily.com/opinion/columnists/thomas-mitchell-puc-tilts-at-power-choice-initiative/article_7eceab80-5302-5812-b901-2a6c5d687d81.html.

¹⁵ NRS 703.150.

¹⁶ See Report at p. 11; *Nevada Power Co. v. Eighth Judicial Dist. Court of Nevada ex rel. Cty. of Clark*, 120 Nev. 948, 955–56, 102 P.3d 578, 583–84 (2004).

¹⁷ NRS 703.150. NRS 703.151 and 703.152, also commonly cited by the Commission as sources of authority, are not relevant in this proceeding. The former discusses the Commission's duty to adopt regulations, the latter discusses its right to appear in proceedings before the Federal Energy Regulatory Commission or any court.

¹⁸ See Report at p. 11, citing *Steamboat Canal Co. v. Garson*, 43 Nev. 298 (1919).

¹⁹ *Nevada Power*, 120 Nev. at 956, 102 P.3d at 584 (internal citations omitted).

Commission seeks to expand its powers by implication, it may only do so if consistent with "agency objectives and powers expressly given by the legislature."²⁰ And further, the Commission's authority is limited by other provisions of Nevada law, for instance, those prohibiting the use of public resources to support or oppose a ballot measure or candidate.²¹

ECI does not dispute the Commission's authority to approve *a* Report along the lines requested by the CEC. However, the Commission lacks the authority to approve *the* Report. Under *Nevada Power Co. v. Eighth Judicial Dist. Court of Nevada ex rel. Cty. of Clark*, there is no statute that gives the Commission the authority to educate Nevada voters. In fact, the Legislature has expressly given that power to the Nevada Secretary of State under NRS 293.252 and 253. This Report does not even pretend to be about the supervision or regulation of public utilities. Instead, it interprets the text of a Constitutional Amendment that has not yet been adopted,²² reaches conclusions regarding its legality, and opines on the merits of approving of the Initiative. The Report should be rejected by the Commission.

Indeed, there is but one statutory grant given to the government regarding initiatives, and that is found in NRS 293.252 and 293.253. Those statutes require the Secretary of State to form two committees to create the arguments for and against a petition, which will appear in the voter's sample ballots.²³ It also requires an impartial condensation of the arguments to be drafted that will

²⁰ *Id.*

²¹ *See* Section II(B)(3), *infra*.

²² Indeed, pre-election interpretations of pending ballot measures is something even the Nevada judiciary will not entertain. *See Personhood Nevada v. Bristol*, 126 Nev. 599, 602 (2010) ("This court's duty is not to render advisory opinions but, rather, to resolve actual controversies by an enforceable judgment.").

²³ *See* NRS 293.252(1) (stating that "[f]or each constitutional amendment or statewide measure proposed by initiative or referendum to be placed on the ballot by the Secretary of State, the Secretary of State shall, pursuant to subsection 4, appoint two committees. Except as otherwise provided in subsection 2, one committee must be composed of three persons who favor approval by the voters of the initiative or referendum and the other committee must be composed of three persons who oppose approval by the voters of the initiative or referendum.").

appear on the ballot.²⁴ Nowhere in the statutes is there any grant of authority to the Commission, or any other regulatory body, to take a position for or against an initiative. As such, the Report is an unlawful attempt to usurp the Secretary of State and the two committees' role in this process, and can be rejected on that basis alone.

2. *The CEC did not authorize the Report.*

Not only does the Commission lack the statutory authority to adopt the Report, the CEC did not ask, much less permit, the Commission to prepare most of the Report. As noted in the Introduction, the CEC formally requested that the Commission "open an Investigatory Docket to study the four issues related to the" Initiative "as authorized by a vote of the committee members."²⁵ These four topics include the study of (1) a timeline for the implementation of the requirements of the Initiative, (2) the identification of any program or statutory revisions that may be required to fully synchronize Nevada laws and regulations, (3) a qualitative and quantitative analysis on the potential Wholesale Market options, and (4) a qualitative analysis of existing competitive retail markets.

When the CEC debated the issues that should be given to the Commission to study, the issue of costs was raised.²⁶ There was a difference of opinion amongst the CEC members. The Chairman, Lieutenant Governor Mark Hutchinson, stated his belief that costs should not be studied by the Commission; rather, "the costs and benefits should be looked at by the [CEC] or working groups."²⁷ Chairman Reynolds disagreed, and stated that if the CEC did not want the Commission to look at the costs and financial benefits of the Initiative, the CEC "should not

²⁴ See NRS 293.252(5)(d) (stating that committees shall prepare "an argument either advocating or opposing approval by the voters of the initiative or referendum"); NRS 293.253(1).

²⁵ See Letter dated September 27, 2017, to Chairman Reynolds from the CEC Chairman, Lieutenant Governor Mark Hutchinson.

²⁶ See http://energy.nv.gov/uploadedFiles/energynvgov/content/Programs/TaskForces/2017/CEC%20-%209-13-2017_DRAFT_Minutes.pdf

²⁷ *Id.*

proceed with the request of opening an investigatory docket."²⁸ Ultimately, the majority of the CEC voted consistent with Lieutenant Governor Hutchinson's opinion to send four items, which did not address costs and financial benefits, to the Commission.²⁹

In defiance of the CEC's vote and directives, nearly half of the Report focuses on the alleged costs of the Initiative. When one unpacks the Report's findings, it is clear that the bulk of these costs are attributable to NV Energy. NV Energy has declared that if the Initiative is passed, it will no longer sell electricity or provide related services to consumers and will pass along its costs, such as alleged stranded costs, to Nevadans. Unsurprisingly, the Report comes on the heels of NV Energy's sudden shift from neutrality to strong opposition to the Initiative and vow to contribute \$30 Million to defeat the Initiative in 2018.

In addition to devoting the bulk of its findings to addressing an issue not properly before the Commission, the Report also spends little time discussing the actual issues the Commission was requested to study. For example, out of the 109-pages, the Report devotes a mere 40 lines of text to addressing a timeline to implement the Initiative.³⁰ Even then, the Report does not offer any timeline, but speaks in vague terms and unhelpfully claims Nevada should be prepared to "hit the ground running."³¹ This is yet another reason why the Committee should reject the Report.

3. The Commission may violate Nevada ethics law if it approves the Report.

There are other statutes that limit the Commission's authority to approve the Report. NRS 281A.520 provides such a limit when it prohibits expenditure of public funds to support or oppose a ballot question, such as the Initiative. Specifically, Nevada law prohibits any public officer or employee, such as the Commissioners, from "request[ing] or otherwise caus[ing] a governmental entity to incur an expense or make an expenditure to support or oppose... a ballot question."³²

²⁸ *Id.*

²⁹ *Id.*

³⁰ *See* Report at pp. 107-108.

³¹ *Id.*

³² NRS 281A.520(1).

This standard prohibits the government from spending money "directly or indirectly, for or against a ballot question."³³

Here, the Report proclaims that it is intended to "help educate all Nevadans, so that informed decisions are made regarding Nevada's energy future."³⁴ Respectfully, "educat[ing] all Nevadans" was not the task assigned to the Commission. Instead, the task assigned to the Commission and the CEC was to "offer suggestions and proposals for legislative, regulatory, and executive actions..."³⁵ The Reports fails in this task and instead improperly attempts to influence Nevadans' vote on the Initiative in 2018.

The Report is replete with examples of obvious attempts to sway Nevadans' vote against the Initiative in 2018. For example, one of the "Key Findings" of the Report is that "[a]mbiguous language within the Energy Choice Initiative makes it difficult to discern its full legal meaning and scope, and the purported objectives of the measure appear to be in conflict with each other."³⁶ The Report also describes the Initiative as "financed by corporate sponsors. While it had obvious voter support, it does not have hallmarks of a 'grass roots' movement by any means."³⁷ By way of another obvious example of the Report's attempt to dissuade Nevadans from voting again for the Initiative, the Report opines that "[a]t least 400 union electrical employees are likely to lose their jobs....The Energy Choice Initiative will also likely create new jobs for Nevadans, but what those jobs will be remains speculative and unestablished."³⁸ ECI could go on and on.

³³ See *Glover v. Concerned Citizens for Fuji Park & Fairgrounds*, 118 Nev. 488, 492, 50 P.3d 546, 548 (2002), as corrected (Sept. 6, 2002).

³⁴ See Report at p. 1.

³⁵ See http://gov.nv.gov/News-and-Media/Executive-Orders/2017_ADA/2017-03-Order-Establishing-the-Governor_s-Committee-on-Energy-Choice/.

³⁶ See Report at p. 6.

³⁷ *Id.* at p. 18.

³⁸ *Id.* at p. 6.

There can be no serious debate that the Report improperly advocates for opposition to the Initiative. Applying the plain language³⁹ of NRS 281A.520, any expense incurred to prepare most, if not all, of the Report represents a violation of the Commission's ethical responsibilities. The only way for the remaining Commissioners to distance themselves from the improper Report is to reject the Report.

C. **The Commission should not approve the Report because it makes factual and legal errors, reaches unsupportable conclusions, and addresses issues beyond the CEC's intended scope.**

In addition to the Report's legal infirmities, it suffers from a serious lack of disciplined factual analysis. The Report gets facts wrong, makes blatant legal errors, presents opinion as fact, and ignores the stated intent of this docket. In the interest of fundamental fairness and to avoid perpetuating the demonstrably false assertions and conclusions reached by the Report, the Commission should reject the Report.

1. ***Nevada's Residents pay some of the highest electricity rates in the nation.***

The Report's discussion of Nevada's electricity rates is erroneous at best, and outright false at worst. The Report proudly states that Nevada is "maintaining some of the lowest rates in the United States."⁴⁰ What the Report does not say is that Nevada's residential ratepayers pay some of the highest rates in the United States. In a Report that pretends to focus on residential ratepayers

³⁹ The rules regarding statutory interpretation in Nevada are well-settled. "When presented with a question of statutory interpretation, the intent of the legislature is the controlling factor and, if the statute under consideration is clear on its face, a court cannot go beyond the statute in determining legislative intent." *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983). And, a court "must" construe statutes "to give meaning to all of their parts and language" and "should read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation." *Bd. of County Com'rs v. CMC of Nevada, Inc.*, 99 Nev. 739, 744, 670 P.2d 102, 105 (1983).

⁴⁰ Report at p. 12.

and the "the average monthly electric bills of Nevadans," this oversight (or omission) calls into question all of the Report's conclusions.⁴¹

At 12.5 cents per kilowatt hour ("kwh"), residential rates are higher than those of thirty-one other states.⁴² Even that figure paints too rosy of a picture, though, because a discussion of national averages is not helpful. States have dramatically different electricity economies, a point acknowledged by the Report.⁴³ It makes no sense to compare Nevada to eastern states (or California) that are in factually dissimilar circumstances. It is like saying that Nevada is sunnier than Oregon, or warmer than Washington – of course it is. The fact that Nevada has lower electricity prices than New York, California, Massachusetts and other high-cost states where utilities are saddled with difficult to maintain systems and costs of outdated or shut down nuclear plants – among a multiplicity of other factors - should come as no surprise to anyone, and trumpeting it is an accomplishment is misleading. Even so, the Report is an inaccurate and misleading document that ignores the simple and unarguable fact that Nevada residents pay electric rates that are higher than those paid by residents of most other states despite the state's many structural advantages that should lead to lower than average rates:

Average National Residential Rates, February 2018

1.	Hawaii	31.52	9.	Vermont	18.03
2.	Massachusetts	22.23	10.	Maine	16.22
3.	Rhode Island	21.66	11.	New Jersey	15.87
4.	Connecticut	21.59	12.	Michigan	15.62
5.	Alaska	21.11	13.	Wisconsin	14.29
6.	New Hampshire	19.84	14.	Pennsylvania	13.95
7.	California	19.15	15.	Maryland	13.43
8.	New York	18.19	16.	Kansas	12.87

⁴¹ Report at p. 6.

⁴² https://www.eia.gov/electricity/monthly/current_month/epm.pdf

⁴³ Report at p. 18.

17.	Delaware	12.60
18.	Minnesota	12.56
19.	Nevada	12.50
20.	Alabama	12.29
21.	Ohio	12.25
22.	Illinois	12.23
23.	New Mexico	12.21
24.	Arizona	12.20
25.	Florida	12.14
26.	Colorado	11.73
27.	Iowa	11.65
28.	Indiana	11.52
29.	Virginia	11.47
30.	North Carolina	11.44
31.	West Virginia	11.38
32.	Mississippi	11.26
33.	Texas	11.08
34.	South Carolina	11.04
35.	Wyoming	10.86
36.	Georgia	10.83
37.	South Dakota	10.76
38.	Oregon	10.73
39.	Montana	10.70
40.	Utah	10.41
41.	Kentucky	10.36
42.	Tennessee	10.33
43.	Idaho	10.10
44.	Oklahoma	9.85
45.	Arkansas	9.80
46.	Missouri	9.78
47.	Nebraska	9.61
48.	Washington	9.54
49.	North Dakota	9.15
50.	Louisiana	8.94

It could make more sense to compare Nevada to states in the west: nearby states have similar power supplies, regulatory systems, and economies. By that measure, Nevada residents pay the second-highest rates in all of the west, second only to California. Idaho's average residential rate is 10.10 cents per kwh. Utah's is 10.41 cents per kwh. Oregon's is 10.73 cents per kwh. Arizona's is 12.20 cents per kwh.

Average Western Residential Rates, February 2018

California	19.15
Nevada	12.50
New Mexico	12.21
Arizona	12.20
Colorado	11.73
Wyoming	10.86
Oregon	10.73
Montana	10.70
Utah	10.41
Idaho	10.10
Washington	9.54

Further, this Report does not even use the most recent data. It uses data from 2016, even though information from January 2018 was available by the time the Report was finalized.⁴⁴ The Report's upbeat conclusions were suspect based even on that 2016 data, but they look even less credible when current figures are used. In 2016, average residential prices were 11.51 cents per kwh.⁴⁵ More recent numbers show that rates have grown to 12.5 cents per kwh.⁴⁶

This Commission sets these rates, and it should know that Nevadans pay rates that are far higher than those of other western states. Yet this Report appears to be designed to shield the monopoly that the Commission regulates at the expense of Nevada customers.

⁴⁴ See <https://www.eia.gov/electricity/monthly/archive/march2018.pdf> (March edition of *Electric Power Monthly*, with data from January 2018).

⁴⁵ State electricity profiles 2016.

⁴⁶ https://www.eia.gov/electricity/monthly/current_month/epm.pdf

2. *The Report relies on NV Energy's guesswork to "estimate" and exaggerate potential startup costs.*

The Report puts forth an astonishing sum for "Estimate New Startup Costs of the Energy Choice Initiative": "approximately 101 million dollars." This number is far beyond any reasonable estimate of startup costs, and can only be justified by wholesale adoption of NV Energy's inflated numbers.

Of those \$101 million, the Report estimates "between 10 and 20 million dollars for new software and computer system technology for NV Energy . . . and between 49 and 95 million dollars for a new integrated computer system technology for NV Energy in a retail market."⁴⁷ The Report uses the mid-range of these figures to arrive at a combined total cost of \$87 million.⁴⁸ NV Energy's comments do not explain how it arrived at these numbers, but as a public opponent of the Initiative, it is unsurprising that its estimates were astronomical, if unsupported. It is surprising, though, that the Report accepts these numbers as if they were the estimate of an independent, impartial consultant. In addition, nowhere does the Report indicate that its estimate of these enormous costs is drawn exclusively from the guesswork of NV Energy, the Initiative's biggest opponent.

Other parts of the Report's startup cost estimate are no better sourced. The Report estimates that initial outreach and education will cost around \$10 million dollars.⁴⁹ That number is drawn from Staff's testimony during hearings, but there are no studies or other evidence in the record to support that number. Staff's filed comments include no information about potential education or outreach costs. Again, the Commission should not rely in any way on unsourced estimates instead of identifying best practices to save money and build an effective market, as it was tasked to do.

3. *The Initiative does not deregulate Nevada's electricity sector.*

This Report would have Nevadans believe that the Initiative will eliminate all oversight of the state's electricity markets. Nothing could be further from the truth. The Initiative asks

⁴⁷ Report at p. 64, *citing* NV Energy Post-Workshop Comments at 18, 20.

⁴⁸ Report at p. 64. ECI could comment at length regarding the Report's decision to just use the mid-point of these estimates – why not go with the low number, if NV Energy thinks it could accomplish the purported task for that much? Why should Nevadans pay more than the minimum?

⁴⁹ Report at p. 64.

Nevadans to decide how to regulate the electricity market, not whether it should be regulated. Seventy-three percent of voting Nevadans decided in 2016 that it is time to reregulate Nevada's electricity markets because the current regulatory structure is no longer the will of the people.

States that have already instituted some form of energy choice maintain consumer protection programs, regulate distribution rates, approve construction of new transmission and generation assets, oversee markets, regulate market participants, set rules regarding advertising, and ensure that all customers have access to reliable service. Nevada will do the same, and in a way consistent with the state's interests and values.

This Report mentions "deregulation" 67 times. Yet, it fails to discuss what sort of regulation might be necessary or advisable when Nevada implements the Initiative, even though such a task was well within the bounds of the directive to identify how Nevada might "design[] and establish[] a competitive retail electric service market" including "the best practices and structure for Nevada." Implicit in "design," "establish," and "structure" is the idea that whatever market is created will be regulated.

4. *The Report's finding of "inconsistencies" is groundless and contrary to well-established Nevada law.*

The Report's reading of the Initiative and its conclusion that there are "conflicting and competing ambiguous provisions contained within its language" and ideas "in conflict" is contrary to well-established Nevada law.⁵⁰ The Report argues that the Initiative will invalidate any attempt by the Legislature to address issues related to renewable energy, energy efficiency, and environmental protection. If the Report is right (and it is not), the majority of the Initiative's text would be meaningless.

⁵⁰ Report at p. 31.

It is bedrock Nevada law that statutes and constitutional provisions should be interpreted *in pari materia*, meaning that various sections of a law should be read in context.⁵¹ It is also well-established that the Nevada Supreme Court will interpret laws to avoid rendering parts of them meaningless.⁵² Even if the Commission were charged with interpreting the constitution, the Report blows past both of these rules.

The Initiative allows Nevadans a choice of electricity providers that choose to enter the market.⁵³ That choice is not boundless, though, as the legislature shall create new laws that "ensure that protections are established that entitle consumers to safe, reliable, and competitively priced electricity."⁵⁴ Further, the Initiative shall not be construed "to invalidate Nevada's public policies on renewable energy, energy efficiency, and environmental protection or limit the Legislature's ability to impose such policies on participants in a competitive electricity market."⁵⁵ The legislature sets the policy of the state through passage of law. Contrary to the Report's baffling claims, the Initiative in fact *guarantees* that the Legislature continues to have full authority to carry out that task.

More generally, the Report presumes that any Constitutional provision cannot be limited in any way. ECI recommends that the Commission review *Schenck v. United States*, 249 U.S. 47, 52 (1919) ("The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic."), *Employment Division v. Smith*, 494 U.S. 872, 879 (1990) ("the right of free exercise does not relieve an individual of the obligation to comply with a "valid and neutral law of general applicability"), and *D.C. v. Heller*, 554 U.S. 570, 595 (2008)

⁵¹ See, e.g. *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 294, 995 P.2d 482, 485 (2000), *State Farm Mut. Auto. Ins. Co. v. Comm'r of Ins.*, 114 Nev. 535, 541, 958 P.2d 733, 737 (1998), *Kondas v. Washoe Cty. Bank*, 50 Nev. 181, 254 P. 1080, 1082 (1927), *State v. Esser*, 35 Nev. 429, 129 P. 557, 559 (1913).

⁵² See, e.g. *Seput v. Lacayo*, 122 Nev. 499, 502–03, 134 P.3d 733, 735 (2006).

⁵³ Initiative § 1.

⁵⁴ Initiative § 2.

⁵⁵ Initiative § 3(c).

("we do not read the Second Amendment to protect the right of citizens to carry arms for *any sort of confrontation*"). In this context, the Initiative's direction to establish a "competitive retail electric market" consistent with "Nevada's public policies on renewable energy, energy efficiency and environmental protection" with "protections... that entitle customers to safe, reliable, and competitively priced electricity" looks logical and not at all contradictory.

ECI could continue pointing out inconsistencies, errors, and oversights in this Report. Even a casual reading of the Report reveals dozens of other misrepresentations or factual inaccuracies, and little or no discussion of information about "best practices and structures" for establishing a competitive retail market, should the Initiative be approved.⁵⁶ It also demonstrates a troubling lack of understanding of how the energy business works – a troubling fact if it were to be adopted by the agency charged with regulating that industry within the state. Due to the press of time, these comments discuss only a few of the most egregious inaccuracies, but ECI also points out the following errors, oversights, and omissions, none of which are related to the four questions the Commission was tasked with answering:

- "Nevada ranks no. 4 in total solar jobs and has more per-capital solar jobs than any other state."⁵⁷ The Report fails to acknowledge that over 2,500 Nevadans lost their solar jobs after the Commission eliminated Nevada's net metering policy in 2015.⁵⁸
- "Net Energy Metering/rooftop solar laws and policies recently enacted through Assembly Bill 405, as well as other energy programs, will likely be negatively affected."⁵⁹ For reasons discussed above, the Initiative will not affect most existing energy policy, including the state's net metering and rooftop solar programs. In fact, both will likely

⁵⁷ Report at p. 14.

⁵⁸ <https://www.reviewjournal.com/business/energy/nevada-loses-400-solar-jobs-but-still-ranks-4th-nationally/>

⁵⁹ Report at p. 6.

expand in a competitive market due to the Initiative's guarantee that Nevadans may "produc[e] electricity for themselves."⁶⁰

- The Initiative will "bring new exposure for Nevada ratepayers to market volatility and profit-driven ratemaking practices."⁶¹ Nevadans are already exposed to "market volatility" because NV Energy has persuaded the Commission to allow dollar-for-dollar recovery of fuel costs to force Nevada customers to protect the monopoly from market volatility.⁶² That means rates already go up when natural gas is more expensive. Nevadans will be no less protected from market volatility than they are today.
- "The Energy Choice Initiative will likely require... over \$45 million dollars in new annual operation and maintenance costs."⁶³ The Report refers exclusively to NV Energy's biased estimates to calculate these inflated costs, despite that no policy nor framework has yet been established on which to base costs estimates.⁶⁴
- "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."⁶⁵ This is speculation. It will be up to Nevada's legislature and all Nevadans to determine the structure of a new electricity market, which will determine how the benefits of that market are spread. Until the rules of a new market are set, it is impossible to say how different customers will benefit.

⁶⁰ Initiative § 2.

⁶¹ Report at p. 6.

⁶² See https://www.nvenergy.com/publish/content/dam/nvenergy/brochures_arch/help/understand-your-bill/South-RES-flatrate-understand-your-bill.pdf (describing NV Energy's Base Tariff Energy Rate, allowing for "dollar-for-dollar" recovery of "fuel and purchased power costs"),

⁶³ Report at 6.

⁶⁴ See Report at pp. 55, 65, citing *NV Energy Initial Comments TA-7 at 2*, NV Energy Post-Workshop Comments at 20.

⁶⁵ Report at p. 6.

- "NV Energy has also proposed a historic \$84 million across-the-board rate decrease for most Nevada ratepayers... due to a reduction in the corporate income tax rate."⁶⁶ This is no act of beneficence on NV Energy's part, as it is legally obligated to pass on tax savings to its customers.⁶⁷
- "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."⁶⁸ This assertion rests of the Report's various conclusions regarding potential costs associated with the Initiative – conclusions that are backed by no evidence, as demonstrated above.

DATED this 27th day of April, 2018.

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⁶⁶ Report at p. 16.

⁶⁷ NAC 704.6532(6),

⁶⁸ Report at p. 6.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing **REPLY COMMENTS OF NEVADANS FOR AFFORDABLE CLEAN ENERGY CHOICES** upon each of the parties on the attached service list via electronic mail.

DATED this 27th day of April, 2018

/s Erin L. Parcels

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