DOE/CS/20289-29

STUDY OF THE IMPACTS OF REGULATIONS AFFECTING THE ACCEPTANCE OF INTEGRATED COMMUNITY ENERGY SYSTEMS

PRELIMINARY BACKGROUND REPORT

MASTER

Public Utility, Energy Facility Siting and Municipal Franchising Regulatory Programs in Nevada

DUANE A. FEURER
CLIFFORD L. WEAVER
KEVIN C. GALLAGHER
DAVID HEJNA
KEVIN J. RIELLEY

January, 1980

WORK PERFORMED UNDER DOE CONTRACT NO.

DE-AC02-78CS20289

Ross, Hardies, O'Keefe,
Babcock & Parsons
One IBM Plaza
Suite 3100
Chicago, Illinois 60611

DISCLAIMER

DOE/CS/20289-29

Distribution Category UC-95d

STUDY OF THE IMPACTS OF REGULATIONS AFFECTING THE ACCEPTANCE OF INTEGRATED COMMUNITY ENERGY SYSTEMS

PRELIMINARY BACKGROUND REPORT

Public Utility, Energy Facility
Siting and Municipal Franchising
Regulatory Programs in Nevada

DUANE A. FEURER
CLIFFORD L. WEAVER
KEVIN C. GALLAGHER
DAVID HEJNA
KEVIN J. RIELLEY

January, 1980

WORK PERFORMED UNDER DOE CONTRACT NO.

DE-AC02-78CS20289

Ross, Hardies, O'Keefe,
Babcock & Parsons
One IBM Plaza
Suite 3100
Chicago, Illinois 60611

UNITED STATES DEPARTMENT OF ENERGY

Division of Buildings and Community Systems
under Contract No. DE-AC02-78CS20289

ABSTRACT

This report is one of a series of preliminary reports describing the laws and regulatory programs of the United States and each of the 50 states affecting the siting and operation of energy generating facilities likely to be used in Integrated Community Energy Systems (ICES). Public utility regulatory statutes, energy facility siting programs, and municipal franchising authority are examined to identify how they may impact on the ability of an organization, whether or not it be a regulated utility, to construct and operate an ICES.

This report describes laws and regulatory programs in Nevada. Subsequent reports will (1) describe public utility rate regulatory procedures and practices as they might affect an ICES, (2) analyze each of the aforementioned regulatory programs to identify impediments to the development of ICES and (3) recommend potential changes in legislation and regulatory practices and procedures to overcome such impediments.

CHAPTER 1

INTRODUCTION

One response to current concerns about the adequacy of the nation's energy supplies is to make more efficient use of existing energy sources. The United States Department of Energy (DOE) has funded research, development and demonstration programs to determine the feasibility of applying proven cogeneration technologies in decentralized energy systems, known as Integrated Community Energy Systems (ICES), to provide heating, cooling and electrical services to entire "communities" in an energy conserving and economic manner.

The relevant "community" which will be appropriate for ICES development will typically consist of a combination of current energy "wasters" -- i.e., installations with large energy conversion facilities which now exhaust usable amounts of waste heat or mechanical energy -- and current energy users -- i.e., commercial or residential structures which currently obtain electricity and gas from a traditional central utility and convert part of it on customer premises to space heating and cooling purposes.

In most current applications, energy conversion facilities burn fuels such as coal, oil or natural gas to produce a single energy stream, such as process steam or electricity, for various industrial processes or for sale to other parties. However, the technology exists to produce

more than one energy stream from most energy conversion processes so that the input of a given amount of fuel could lead to the production and use of far more usable energy than is presently produced. This technology is the foundation of the ICES concept. Current examples of the technology can be found on university campuses, industrial or hospital complexes and other developments where a central power plant provides not only electricity but also thermal energy to the relevant community.

It is generally assumed by DOE that ICES will be designed to produce sufficient thermal energy to meet all the demands of the relevant community. With a given level of thermal energy output, an ICES generation facility will be capable of producing a level of electricity which may or may not coincide with the demand for electricity in the community at that time. Thus, an ICES will also be interconnected with the existing electric utility grid. Through an interconnection, the ICES will be able to purchase electricity when its community's need for electricity exceeds the amount can be produced from the level of operations needed to meet the community's thermal needs. In addition, when operations to meet thermal needs result in generation of more electricity than necessary for the ICES community, the ICES will be able to sell excess electricity through the interconnection with the grid.

ICES may take a variety of forms, from a single owner-user such as massive industrial complex or university campus where all energy generated is used by the owner without sales to other customers, to a large residential community in which a central power plant produces heat and electricity which is sold at retail to residents of the community. Since successful operation of an ICES presupposes that the ICES will be able to use or sell all energy produced, it can be anticipated that all ICES will at some point seek to sell energy to customers or to the electric utility grid from which the electricity will be sold to customers. By their very nature ICES are likely to be public utilities under the laws of many, or even all, states.

The Chicago law firm of Ross, Hardies, O'Keefe, Babcock & Parsons has undertaken a contract with the Department of Energy to identify impediments to the implementation of the ICES concept found in existing institutional structures established to regulate the construction and operation of traditional public utilities which would normally be the suppliers to a community of the type of energy produced by an ICES.

These structures have been developed in light of policy decisions which have determined that the most effective means of providing utility services to the public is by means of regulated monopolies serving areas large enough to permit economies of scale while avoiding wasteful

duplication of production and delivery facilities. These existing institutional structures have led to an energy delivery system characterized by the construction and operation of large central power plants, in many cases some distance from the principal population centers being served.

In contrast, effective implementation of ICES depends to some extent upon the concept of small scale operations supplying a limited market in an area which may already be served by one or more traditional suppliers of similar utility services. ICES may in many instances involve both existing regulated utilities and a variety of non-utility energy producers and consumers who have not traditionally been subject to public utility type regulation. It will also require a variety of non-traditional relationships between existing regulated utilities and non-regulated energy producers and consumers.

Ross, Hardies, O'Keefe, Babcock & Parsons is being assisted in this study by Deloitte Haskins & Sells, independent public accountants, Hittman Associates, Inc., engineering consultants, and Professor Edmund Kitch, Professor of Law at the University of Chicago Law School.

The purpose of this report is to generally describe the existing programs of public utility regulation, energy facility siting and municipal franchising likely to relate to the development and operation of an ICES, and the construction of ICES facilities in Nevada. Attention is given

to the problems of the entry of an ICES into a market for energy which has traditionally been characterized by a form of regulated monopoly where only one utility has been auth- implementation of the ICES concept and a series of recommendations for responding to those impediments. orized to serve a given area and to the necessary relationships between the ICES and the existing utility. In many jurisdictions legal issues similar to those likely to arise in the implementation of the ICES concept have not previously been faced. Thus, this report cannot give definitive guidance as to what will in fact be the response of existing institutions when faced with the issues arising from efforts at ICES implementation. Rather, this report is descriptive of present institutional frameworks as reflected in the public record.

Further reports are being prepared describing the determination and apportionment of relevant costs of service, rates of return and rate structures for the sale and purchase of energy by an ICES. Impediments presented by existing institutional mechanisms to development of ICES will be identified and analyzed. In addition to identifying the existing institutional mechanisms and the problems they present to implementation of ICES, future reports will suggest possible modifications of existing statutes, regulations and regulatory practices to minimize impediments to ICES.

This report is one of a series of preliminary reports covering the laws of all 50 states and the federal government. In addition to the reports on individual states, Ross, Hardies, O'Keefe, Babcock & Parsons is preparing a summary report which will provide a national overview of the existing regulatory mechanisms and impediments to effective implementation of the ICES concept and a series of recommendations for responding to those impediments.

CHAPTER 2

REGULATION OF PUBLIC UTILITIES IN NEVADA

I. PUBLIC AGENCIES WHICH REGULATE PUBLIC UTILITIES

The authority to regulate the operations of public utilities in Nevada is vested generally in the Public Service Commission (Commission). The Commission is comprised of three members appointed by the governor to four year terms.[1/] One of the members is designated by the governor to act as chairman and serves in that capacity at the pleasure of the governor.[2/] Commissioners must be free from employment or pecuniary interests which are incompatible with the duties of the Commission.[3/]

Within the purview of its powers, the authority of the Commission supercedes that of local governments.[4/] Local governments play a role in regulating public utilities only through the exercise of their zoning and franchising powers. In addition, municipally-owned utilities are totally exempt from Commission control.[5/] No specific procedure is provided by which the decisions of local governments regarding utilities may be reviewed by the Commission.

II. JURISDICTION OF THE COMMISSION

The jurisdiction of the Commission extends to all "public utilities," which are defined to include:

> any person, partnership, corporation, company, association, their lessees, trustees, or receivers. . . that now or hereafter may own, operate, or control . . . any plant or equipment, within the

> state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal, heat, gas, coal slurry, light, power in any form or by any agency, water for business, manufacturing, agricultural, or household use, or sewerage service, whether within the limits of municipalities, towns, villages, or elsewhere. 6/

The Nevada Attorney General has opined that a provider of air conditioning was not a public utility within the scope of this definition. 7/

The facilities subject to Commission jurisdiction are defined in terms of "any plant or equipment, or any part of a plant or equipment, . . . for . . . production, delivery, or furnishing" the jurisdictional services. 8/ This provision is broad enough to provide the Commission with authority to regulate all facilities involved in the furnishing of the jurisdictional services. For example, in Steamboat Canal Co. v. Garrison, 9/ the court held that a ditch used to supply water for agricultural purposes was a public utility "plant" and subject to Commission jurisdiction, even though no machinery was involved, because the legislative purpose was to protect the public dependent upon such services.

There is no statutory requirement that there be a sale or the receipt of compensation for a service to be subject to Commission jurisdiction. The statute requires only that the service be furnished for or to "other" persons, firms, associations, or corporations. 10/ Thus, there is no statutory basis for a distinction between direct and indirect sales. In fact, several statutory provisions regarding sales

of surplus energy by non-public utilities and purchases of surplus energy by public utilities indicates that the legislature envisioned Commission regulation of indirect sales.[11]

There is also no specific statutory requirement that services be provided to the public at large or that utility facilities be dedicated to public use. A public utility, however, must supply its services to other "persons, firms, associations, or corporations," indicating that more than one user must be involved.[12] This definition is clarified somewhat in opinions of the Nevada Attorney General. In one opinion, for example, the provision of electrical power to 60 tenants by the landlord of a shopping mall was regarded as sufficient to establish Commission jurisdiction.[13] The opinion treated as irrelevant the fact that the electricity was furnished by a "total energy plant" supplying more than one service, that the shopping mall was entirely located on private property, and a landlord-tenant relationship was involved. It stressed, instead, that the tenants were a "captive public" entitled to the protection of the Commission. The opinion further stated that "the 'public' need not include the state or even an entire community . . . the 'public' need only comprise a minimum of two persons."[14] However, the Attorney General has stated that the Commission has no authority over a power company selling electricity to only one customer on a long-term contractual basis.[15]

A utility which is not a "public utility" subject

to the Commission's jurisdiction may, nevertheless be required to obtain Commission approval of sales of its surplus output.[16] A person, company, corporation, or association that is not "engaged in business as a public utility" and which does not "furnish, sell, produce, or deliver to others light, heat, power or water under a franchise received from the state or from any county or municipality within the state" can "sell, produce, furnish, and deliver" its surplus light, heat, power, or water to others only if it first applies to the Commission.[17] The sale of surplus power would not by itself make the utility a "public utility" but approval of the sale would hinge upon a finding by the Commission that it would serve the public interest.[18] Similarly, a public utility may purchase surplus "water or electric current for resale or for purposes other than its own use" only if it first receives Commission approval.[19]

A public utility, on the other hand, will probably be subject to the siting jurisdiction of the Commission even if it serves only one customer. The Commission can control the locations of plants and equipment used "directly or indirectly" for the generation and transmission of electricity that is not "wholly consumed on the premises of and by the producer thereof."[20] Once the site of a utility facility has been approved, it must be "constructed, operated, and maintained in accordance with the permit issued by the Commission, along with any "terms, conditions, and modifications contained therein."[21] The

scope of the Commission's jurisdiction under this provision is unclear, however.

Certain types of utilities are exempted to varying degrees from Commission jurisdiction. For example, "every cooperative association or nonprofit corporation or association and every supplier of services described in Chapter 704 [Regulation of Public Utilities] supplying such service for the use of its own members only" is partially exempt from Commission jurisdiction.[22] These entities must obtain certificates of convenience and necessity prior to initiating operations, and they are required to furnish the Commission with whatever books, records, and accounts it requests.[23] They are explicitly exempted, however, from other regulatory powers of the Commission.[24] Thus, these entities avoid regulation of rates by the Commission.

In addition, the Commission does not exercise its regulatory authority over municipally-owned or operated utilities. Municipalities are explicitly exempted from the requirement of obtaining a certificate of convenience and necessity.[25] A Commission spokesman stated that, because of the express exemption from its certificating authority, the Commission has not sought to exercise its general regulatory powers over those utility services that are municipally-owned or operated.[26] Nevada courts have narrowly construed this exemption, however. For example, in White Pine Power Dist. No. 9 v. Publ. Serv. Comm'n,[27] the plaintiff, a public power district which lacked a certificate of convenience and necessity, was denied standing to

challenge a Commission decision approving the sale of utility facilities to one of its competitors. The court reasoned that a "municipal power district" (a public corporation organized to supply power within a municipality) was not a "municipality" as the term is used in the statute. The state attorney general similarly stated that water and sanitation districts are not municipalities and, therefore, are not exempt from the jurisdiction of the Commission.[28/]

III. POWERS OF THE COMMISSION

The Commission is vested with "full power of supervision, regulation, and control" of public utilities.[29/] In addition, the Commission is authorized to investigate complaints (that the division of consumer relations is unable to resolve) regarding "any regulation, measurements, practice or act affecting or relating to . . . the production, transmission, or delivery or furnishing of heat, light . . . water, or power, or any service in connection therewith or the transmission thereof."[30/] These provisions provide the Commission with a broad statutory basis from which to exercise control over virtually all of the activities of public utilities.

In addition to this general supervisory authority, the Commission has been granted numerous specific powers. One such power is the power to regulate rates, tolls, and charges. Public utilities are required to file schedules with the Commission showing all the charges they have established.[31/] No change can thereafter be made in any schedule of rates or

charges "except upon 30 days notice to the Commission."[32] The Commission may, either upon complaint or upon its own motion, "enter upon an investigation or, upon reasonable notice, enter upon a hearing concerning the propriety of any such charges."[33] After an investigation and hearing, the Commission is authorized to "fix and order substituted therefore such rate or rates, tolls, charges, or schedules as shall be just and reasonable."[34]

The Commission has the power to regulate standards of service. Every public utility is required to furnish "reasonably adequate service."[35] If after investigation and a hearing, the Commission finds:

> that any regulation, measurement, practice, act or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise in violation of the provision of (Chapter 704) or if it be found that the service is inadequate, or that any reasonable service cannot be obtained, the Commission shall have the power to substitute therefor such other regulations, practices, services or acts and make such order relating thereto as may be just and reasonable. [36]

The Commission is also empowered to establish standards for the measurement of quality, pressure, voltage, or the like;[37] to prescribe standards for the use, operation, and maintenance of electric wires and poles;[38] to determine and order necessary repairs of all property used in public utility service;[39] and to regulate the manner in which power lines and pipelines cross or connect with other such lines.[40] No public utility may restrict or abandon service without Commission approval.[41]

In addition to the above powers, the Commission has express authority to prescribe a system of accounts and require a variety of reports;[42] to regulate the issuance of securities by Nevada corporations;[43] to approve the merger of a subsidiary with a public utility corporation;[44] to control a transfer of stock that amounts to 15% or more of the common stock or that would result in a change in the corporate control of a public utility;[45] to control the siting of a variety of utility facilities;[46] and to control the initiation of public utility operations by the grant or denial of a certificate of public convenience and necessity.[47] The Commission also has considerable rule-making authority. It is authorized to promulgate all "necessary and reasonable rules and regulations governing the procedure, administration, and enforcement of the provisions of [Chapter 704]."[48]

IV. AUTHORITY TO ASSIGN RIGHTS TO PROVIDE SERVICE IN A GIVEN AREA

A. Generally

A certificate of public convenience and necessity from the Commission is a prerequisite to the initiation of public utility operations in Nevada. All public utilities are required to secure such a certificate prior to beginning operations or the construction of any "line, plant, or system or any extension of a line, plant or system.[49] No certificate is required, however, for extensions as long as the utility operates only within a service area previously established for

it by the Commission which is not already served by a public utility of like character.[50] Municipalities constructing, leasing, operating, or maintaining their own utility services are totally exempt from the Commission's certificating authority.[51]

B. Competition

If the Commission finds, after a hearing, that there will be a duplication of service by public utilities within a given area, it must in its discretion,

> either issue a certificate of public convenience and necessity assigning specific territories to one or to each of such utilities, or, by certificate of public convenience and necessity, otherwise define the conditions of rendering service and construction, extensions within such territories, and shall order the elimination of such duplication. [52]

It, therefore, has authority to issue exclusive certificates and to prevent more than one public utility from serving the same area. A Commission spokesman confirmed that the Commission's policy is to avoid competition among utilities in the same area.[53] The Commission can, however, eliminate duplication by conditioning the terms of service as well as granting exclusive certificates, which indicates that it may be able to arrange an equitable distribution of customers.

C. Certificating Procedure

The statutory procedure for obtaining a certificate of public convenience requires that the applicant "furnish evidence of its corporate character and of its franchise."[54] The Commission can conduct any investigation necessary to determine the propriety of granting the requested certificate

and will generally hold a public hearing before making its determination.[55/] The Commission may, however, dispense with the hearing if it receives no protest against granting the certificate.[56/] The Commission will grant the certificate if it determines that the operation or construction will serve "the present or future public convenience or necessity."[57/]

D. Service Area Disputes

The Commission has the authority to resolve service area disputes. Proceedings to resolve these disputes may be instituted by the filing of a complaint by an aggrieved party or on the Commission's motion.[58/] The Commission will resolve service area disputes after a hearing on the issues presented.[59/]

E. Transfer of Franchises and Abandonment of Service

No public utility may abandon or restrict service unless the abandonment or restriction is approved by the Commission after a hearing.[60/] No criteria for the approval of an abandonment of service have been enumerated. The Commission must also approve the transfer of a certificate of public convenience.[61/] Before approving the transfer of a certificate, however, the Commission is directed to consider:

> a. the utility service performed by the transferor and the proposed utility service of the transferee;
>
> b. other authorized utility services in the area; and
>
> c. whether the transferee is fit, willing, and able to perform the services of a public utility.[62/]

In any case, the Commission may, when granting or transferring

a certificate, impose such terms and conditions as the public convenience and necessity may require.[63/]

V. APPEALS OF REGULATORY DECISIONS

Although no provision is made for rehearing by the Commission, any interested party may appeal an order of the Commission fixing rates or an order fixing any regulations, practices or services. Appeals are taken to the district court and must be filed within ninety days of entry of the order.[64/] This provision has been interpreted as allowing appeals of final orders only.[65/]

Any party to the appeal may introduce evidence in addition to that contained in the transcript of the Commission proceedings.[66/] However, if new evidence is introduced, proceedings must be stayed for thirty days to allow the Commission to consider the new evidence unless the parties to the proceedings stipulate to the contrary.[67/] The Commission may modify its order based on the new evidence and report its action to the court within twenty-five days.[68/] An appeal from the decision of the district court may be taken within sixty days to the supreme court "as in other civil actions."[69/]

FOOTNOTES

1. Nev. Rev. Stat. §703.030 (Supp. 1977).
2. Id. §703.030.
3. Ibid.
4. Id. §704.020(2)(b).
5. Id. §704.340.
6. Id. §704.020(2)(b) (Michie 1973).
7. Op. Atty. Gen. No. 486 (Jan. 31, 1968). (A landlord providing an air conditioning service to the tenants of a shopping center was not a public utility because this was not a service specifically enumerated in the statutory definition of public utilities.)
8. Nev. Rev. Stat. §704.020(2)(b) (Supp. 1977).
9. 43 Nev. 298, 185 P.801 (1919).
10. Nev. Rev. Stat. §704.020(2)(b) (Supp. 1977).
11. Id. §§704.310, 704.320 (Michie 1973).
12. Id. §704.020(2)(b).
13. Op. Atty. Gen. No. 371 (Jan. 3, 1967).
14. Id. at 54.
15. Op. Atty. Gen. No. 109 (Feb. 7, 1964).
16. Nev. Rev. Stat. §§704.310, 704.320 (Michie 1973).
17. Id. §704.310(1).
18. Id. §704.310(2).
19. Id. §704.320.
20. Id. §704.855(2).
21. Id. §704.865(1).
22. Id. §704.675 (Supp. 1977).
23. Ibid.
24. Ibid.

25. Id. §704.340.

26. Mr. P. Fagan, Staff Counsel, Commission, Telephone conversation, 8/8/78.

27. 76 Nev. 497, 358 P.2d 118 (1961).

28. Op. Atty. Gen. No. 58 (Aug. 1, 1963).

29. Nev. Rev. Stat. §704.020(2)(b)(Supp. 1977).

30. Id. §704.450.

31. Id. §704.070.

32. Id. §704.100(1).

33. Id. §704.110(1).

34. Id. §704.120(1).

35. Id. §704.040(1).

36. Id. §704.120(2).

37. Id. §704.220.

38. Id. §704.250.

39. Id. §704.260.

40. Id. §704.280.

41. Id. §704.390.

42. Id. §704.180.

43. Id. §§704.322 to 704.328.

44. Id. §78.488.

45. Id. §704.410(8).

46. Id. §§704.820 to 704.900.

47. Id. §§704.330 to 704.370.

48. Id. §704.210(1).

49. Id. §704.330.

50. Id. §704.330(2).

51. Id. §704.340(1).

52. Id. §704.330(6).

53. Mr. P. Fagen, Staff Counsel, Commission, Telephone conversation 8/8/78.

54. Nev. Rev. Stat. §704.350 (Supp. 1977).

55. Ibid.

56. Id. §704.370(2).

57. Id. §704.330(1).

58. Id. §704.330(4).

59. Ibid.

60. Id. §704.390.

61. Id. §704.410(1).

62. Id. §704.410(5).

63. Id. §§704.370(1), 704.410(6).

64. Id. §704.450(1).

65. Public Service Commission v. Community Cable T.V., 91 Nev. 32, 530 P.2d 1392 (1975).

66. Nev. Rev. Stat. §704.540(4) (Michie 1973).

67. Id. §704.560(1).

68. Id. §704.560(2).

69. Id. §704.580(1).

CHAPTER 3

SITING OF ENERGY FACILITIES IN NEVADA

I. PUBLIC AGENCIES WHICH ADMINISTER SITING LAWS

The Nevada Utility Environmental Protection Act[1] (the Siting Act) is the principal statute governing the siting of energy facilities. The Siting Act is administered by the Public Service Commission.

The provisions of the Siting Act and the powers of the Commission are not preemptive. Rather, the Commission is intended to provide a forum for the efficient and expeditious handling of such matters.[2] Control over siting is retained by those state and local agencies with authority to plan and regulate development generally. The most important of these agencies are the Department of Conservation and Natural Resources (including the state Environmental Commission), the Department of Highways, the state Conservation Commission and local governments. Apart from their independent approval powers, the Environmental Commission, interested local governments, certain non-profit corporations and individuals may directly participate as parties in permit proceedings before the Commission.[3]

II. JURISDICTION OF THE COMMISSION

The Siting Act provides that "no public utility shall . . . commence to construct a utility facility in the

state without first having obtained a permit therefor from the Commission."[4/]

"Public utility" is defined to include the definition in the general public utility chapter, which includes any plant or equipment, or any part of a plant or equipment, within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal, heat . . . power in any form, . . . water for business, manufacturing . . . within the limits of municipalities, towns, or villages, or elsewhere."[5/] The definition of public utility is broadened under the Siting Act to include "any plant or equipment within this state used directly or indirectly for the generation and transmission of electrical energy, except plants or equipment used to generate electrical energy that is wholly consumed on the premises of and by the producer thereof."[6/]

Persons subject to the Siting Act are defined to include "any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization." However, the Commission has not sought to exercise jurisdiction over the siting of municipally owned facilities.[8/] The reason for this is most likely related to the Commission's historical lack of regulatory jurisdiction over municipally owned utilities under other statutes granting the Commission jurisdiction. See

Chapter 2 for a discussion of the Commission's other powers and its jurisdiction.

The "utility facilities" which a public utility may not commence to construct without Commission approval include electric generating plants and their associated facilities; electric transmission lines and their associated facilities with a designed capacity of at least 60 kilovolts (and not subject to undergrounding by local ordinance when constructed outside incorporated cities); gas transmission lines, storage plants, compressor stations, and their associated facilities (when constructed outside incorporated cities); and water storage and transmission facilities.[9/]

"Commence to construct" is also defined broadly. It includes any "clearing of land, excavation, or other action which would adversely affect the natural environment of the site or route of a utility facility, but does not include changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions."[10/] The replacement of an existing facility by a comparable one (as determined by the Commission) is specially exempted by a separate provision.

An exemption from the Commission's siting jurisdiction is made for facilities that were in operation as of July 1, 1971.[12/] Further exemptions are provided if, prior

to July 1, 1971, an application for approval of construction was made to any federal, state, regional, or local governmental agency possessing siting authority comparable to that of the Commission,[13] or if construction was actually approved by any governmental agency and debts were incurred to finance it prior to July 1, 1971.[14] The location of facilities over which an agency of the federal government has exclusive jurisdiction are also exempt from Commission control.[15]

The Commission also has authority to monitor the operations of approved facilities to insure compliance with the terms of the permits issued. Those utility facilities falling under the terms of the Siting Act must be "constructed, operated, and maintained in conformity with such permit and any terms, conditions and modifications contained therein."[16]

The Commission has broad rule-making powers. Applicants must submit such information as the Commission may "by regulation or order" require.[17] In addition, the Commission is authorized to "make necessary and reasonable rules and regulations governing the procedure, administration, and enforcement of the provisions" of the chapter within which the Siting Act is codified.[18] Rules that have been adopted thus far, however, are entirely procedural in nature, and do not further define the Commission's jurisdiction.[19]

As noted, the provisions of the Siting Act do not preempt or supersede other state and local requirements.

Before the Commission may grant a permit for the construction of a utility facility, it must find that the location conforms to all other applicable laws and regulations.[20] The Nevada Environmental Commission, local governments "in the area in which any portion of such facility is to be located," residents of interested communities, and environmental groups may all participate as of right in hearings under the Siting Act.[21] There are no provisions, however, regarding the emphasis the Commission must give to recommendations made by such agencies, groups and persons.

III. CERTIFICATION PROCEDURES

An application for a permit under the Siting Act must include a description of the location of the proposed facility, a summary of any studies regarding the projected environmental impact of the facility, a statement explaining the need for the facility, and a description of reasonable alternative locations.[22] The applicant must furnish whatever additional information the Commission may require, but administrative regulations or guidelines in this regard have not yet been promulgated.[23] The application must be accompanied by proof of service "of a copy on the clerk of each local government in the area in which any portion of the facility is to be located."[24] It must also provide proof of newspaper publication of a summary of the application in the area where the facility is proposed to be located.[25] A copy of the

application must be filed as well with the Nevada Environmental Commission.[26/]

The Commission may dispense with a hearing under the Siting Act if no objection to the granting of a permit has been filed on behalf of any interested party within 45 days after notice was provided.[27/] In all other cases the Commission must hold a hearing in order to evaluate an application. No statutory time limits are imposed upon the Commission within which it must hold the hearing or render its final decision. A spokesman for the Commission has confirmed that the Commission has not bound itself by regulation to act within any specified time.[28/] The hearing is conducted according to rules promulgated by the Commission.[29/]

The Siting Act contains procedures for judicial review separate from those under the general public utility chapters discussed in Chapter 2, above. A party aggrieved by any order issued by the Commission on an application for a permit under the Siting Act may seek a rehearing within 15 days.[30/] A party aggrieved by the "final order of the Commission on rehearing" may obtain judicial review by filing a complaint in district court within 30 days. The scope of review on appeal is limited to whether the opinion and order of the Commission are:

(a) In conformity with the constitution and laws of Nevada and the United States;

(b) Supported by substantial evidence in the record;

(c) Made in accordance with the procedures set forth in the [Siting Act] or an established order, rule or regulation of the Commission; and

(d) Arbitrary, capricious, or an abuse of discretion.31/

IV. CERTIFICATION STANDARDS

The legislative purpose underlying the Siting Act is to establish an orderly and efficient process for insuring that essential energy facilities are located and constructed with minimal adverse effect upon the environment.32/ The grant of a permit for the construction, operation, and maintenance of a utility facility by the Commission is made contingent upon its finding:

(a) The basis of the need of the facility;

(b) The nature of the probable environmental impact;

(c) That the facility represents the minimum adverse environmental impact, considering the available technology, the economics of the various alternatives and other pertinent considerations;

(d) That the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder; and

(e) That the facility will serve the public interest.33/

If the Commission determines that the location of a proposed facility should be modified, it may condition its permit in an appropriate manner.34/ In addition, if a proposed facility involves the generation of electricity for export outside the state, the Commission may condition the

grant of the permit upon an agreement by the public utility to make an amount of electrical power available for use within the state.[35/] As noted, there is no provision specifying what weight, if any, the Commission must give to the views of the parties which may participate at the Commission's hearing on the permit application.

V. LOCATION AND PLANNING OF DEVELOPMENTS GENERALLY

In addition to receiving a permit from the Commission under the Siting Act, the developer of a power plant may have to meet the requirements of several state agencies and local governments.

A. Environmental Commission

Subsumed within the Department of Conservation and Natural Resources for administrative purposes, the Environmental Commission is authorized to require the registration of all sources of air pollution and to require that written notice be provided prior to the construction, installation, alteration or establishment of any such source.[36/] It may prohibit the construction of any source of air pollution that does not meet the appropriate emission standards,[37/] and it may require that an appropriate operating permit be obtained.

The Environmental Commission is also authorized to establish standards for the discharge of water pollutants.[39/] Without a valid water pollution permit, it is unlawful for anyone to discharge from a pipe, ditch, channel, tunnel, con-

duit or similar source any pollutant, including heat, into the waters of the state.[40/]

B. Division of State Lands

The Division of State Lands of the Department of Conservation and Natural Resources functions as a state land use planning agency.[41/]

The Division of State Planning has no permitting authority. Rather, it is responsible for:

> 1. Preparation and continuing revision of a statewide inventory of the land and natural resources of the state;
>
> 2. Compilation and continuing revision of data, on a statewide basis, related to population densities and trends, economic characteristics and projections, environmental conditions and trends, and directions and extent of urban and rural growth;
>
> 3. Projections of the nature and quantity of land needed and suitable for various public, quasi-public and private uses; and
>
> 4. Preparation and continuing revision of an inventory of environmental, geological and physical conditions (including soil types) which influence the desirability of various uses of land.[42/]

In the event that an inconsistency develops between the land use plans of two or more adjacent or overlapping local government entities, which are unable to resolve the problem themselves, the matter is submitted to the state land use planning agency for a decision.[43/]

E. Local Government

Local governments also possess significant control

over the location of developments, including the construction of energy facilities. The governing bodies of cities and counties are authorized to adopt zoning ordinances to "regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land."[44/] Such zoning ordinances must be adopted in accordance with a land use master plan.[45/] The master plan, when appropriate, must include "general plans for . . . utilities, and rights-of-way, easements and facilities therefor."[46/] Local governments may also enact ordinances to regulate, control or prohibit air pollution.[47/]

1. Nev. Rev. Stat. §§704-820 to 900 (1973).
2. Id. §704.825.
3. Id. §704.885.
4. Id. §704.865(1).
5. Id. §§704.020(2), 704.855(1).
6. Id. §704.855(2).
7. Id. §704.850.
8. Mr. P. Fagen, Commission Staff Counsel, Telephone Conversation, August 8, 1978.
9. Nev. Rev. Stat. §704.855 (1977).
10. Id. 704.840.
11. Id. §704.865(1).
12. Ibid.
13. Id. §704.865(3)(a).
14. Id. §704.865(3)(b).
15. Id. §704.865(3)(c).
16. Id. §704.865(1).
17. Id. §704.870(1)(e).
18. Id. §704.210(1).
19. Mr. P. Fagan, Commission Staff Counsel, Telephone Conversation, August 8, 1978.
20. Nev. Rev. Stat. §704.890(1)(d) (1973).
21. Id. §704.885.
22. Id. §704.870(1).
23. Mr. P. Fagan, Commission Staff Counsel, Telephone Conversation, August 8, 1978.
24. Nev. Rev. Stat. §704.870(3) (1973).

25. Id. §704.870(4).

26. Id. §704.870(2).

27. Id. §704.880.

28. Mr. P. Fagan, Commission Staff Counsel, Telephone Conversation, August 8, 1978.

29. Ibid.

30. Nev. Rev. Stat. §704.895(1) (1973).

31. Id. §704.895(2).

32. Id. §704.825.

33. Id. §704.890(1).

34. Id. §704.890(2).

35. Id. §704.892.

36. Id. §§445.491(a)-(b) (1975).

37. Id. §445.491(1)(b).

38. Id. §445.491(1)(c).

39. Id. §445.201 (1977).

40. Id. §§445.176, 445.178, 445.221.

41. Id. §321.700.

42. Id. §321.720.

43. Id. §321.761.

44. Id. §278.250(1).

45. Id. §278.250(2).

46. Id. §278.160(1)(h).

47. Id. §§244.361 (1975), 268.410 (1977).

CHAPTER 4

FRANCHISING OF PUBLIC UTILITIES IN NEVADA

I. EXPRESS AUTHORITY TO GRANT FRANCHISES

A. Municipalities

Cities and towns in Nevada can incorporate if they are inhabited by at least 250 voting residents.[1/] Municipalities are classified according to size;[2/] however, cities of the first, second and third classes have been granted identical powers.[3/] Metropolitan cities, the first city with a population of 75,000 or more located in a county having a population of 200,000 or more,[4/] are granted powers somewhat different than those granted other classes of cities.[5/]

Cities of the first, second and third classes are authorized by statute to "provide, by contract, franchise or public enterprise, for any utility to be furnished to the city for the residents thereof."[6/] This provision, on its face, empowers these cities to grant franchises for any utility purpose. The only limitation on the type of services on utilities which can be franchised is that the franchisee provide "utility" service. In addition, these cities are empowered to "provide by lease, contract or franchise . . . any service demanded by the inhabitants of the city which is within the power of the city by charter or law to provide."[7/] Because cities are authorized to establish any public utility,[8/] this too should amount of a comprehensive grant of franchising

authority.

However, another statute provides that cities of the first, second and third classes can:

> contract with, authorize, or grant any person, company or association a franchise to construct, maintain, and operate gas, electric, or other lighting works in the city 9/

This provision strictly limits municipal franchising authority to the enumerated services and provides further that "no franchise for any purpose shall be granted within any [city of the first, second or third class] except as herein provided."10/ This proviso arguably limits municipal franchising powers to those enumerated within this statute. In light of the specific grants of more comprehensive franchising authority discussed above and a specific grant authority to franchise cable television operations,11/ one must assume that the word "herein" in this proviso refers to the entire chapter rather than this section of the chapter. No reported judicial decisions have discussed the effect of this proviso.

The statutory grants of franchising authority to metropolitan class cities closely parallel the provisions applicable to cities of the first, second and third classes. Metropolitan class cities are authorized to "provide, by contract, franchise, or public enterprise, for any utility to be furnished to the city for the inhabitants thereof."12/ These cities also have authority to provide by franchise any service which is within the power of the city by law to

provide.[13] Like the other classes of cities, metropolitan cities are authorized to establish any public utility.[14] The combination of these provisions indicates an intent to grant comprehensive franchising powers to metropolitan class cities. As was the case with cities of the first, second and third classes, metropolitan class cities also have been granted additional specific franchising authority with respect to specific utility services. These cities may "grant franchises to any person, firm, or corporation to . . . construct, maintain, and operate gas, electric, or other lighting and heating works in the city."[15] Unlike the similar proviso applicable to other classes of cities, this provisio states that "no franchise for any purpose shall be granted within the city except as provided in this chapter."[16] The wording of this provision lends support to the interpretation discussed above of the proviso applicable to cities of the first, second and third classes.

Municipalities in Nevada may also be formed by special charters granted by the legislature.[17] In addition to the powers enumerated above, some cities may exercise franchising powers under their individual charters. For example, in City of North Los Vegas v. Central Telephone Co.,[18] the city was authorized by charter to "engage in public utility business or issue franchises for the same."

B. Counties

Boards of county commissioners in Nevada are expressly empowered to grant to any

> person, company, corporation, or association the franchise, right and privilege to construct, install, operate, and maintain . . . electric light, heat and power lines, gas and water mains . . . and all necessary or proper appliances used in connection therewith or appurtenant thereto, in the streets, alleys, avenues, and other places in any unincorporated town or city in such county, and along the public roads and highways of such county. 19/

The county franchising authority over electric power lines is clear. While the authority to grant franchises for steam lines is not explicit, that authority can reasonably be implied. The statutory authority over "water main" franchises should be broad enough to encompass the piping necessary for the heating and cooling services of an energy facility. Such lines would also fall within the terms of the statute as "appliances" used in "connection" with or "appurtenant" to a basic electrical service. Steam pipes may even logically be considered "heat . . . lines," although the juxtaposition of "heat" with "electric light . . . and powerlines" indicates that only electric transmission lines were intended to be covered by that provision. In addition, boards of county commissioners are authorized to grant franchises to any "person, association, or corporation engaged in the business of supplying electric light, heat, or power in two or more

counties of this state and who or which desires to extend such business into any other county or counties."[20] These provisions do limit the services which may be franchised by counties but do not limit the type of entity which is eligible for a franchise. Neither are counties limited to granting franchises only to "public utilities" or other entities providing service for the public use.

II. PROCEDURES FOR GRANTING FRANCHISES

A. Counties

The basic procedures governing grants of franchises by counties are established by statute. To secure a franchise, an application must be filed with the board of county commissioners stating the name of the applicant and the length of time for which the franchise is desired; designating the places where the franchise is to be exercised and, if in any unincorporated city or town, the streets and other places through, over, under, or along which the franchise is sought; and providing a map or plat delineating, so far as practicable, the proposed route or right-of-way of any light, heat, or power lines or gas or water mains.[21] If, however, the franchise is sought by an electric utility supplying service in two or more counties, it may not be necessary to either map the proposed route of the transmission lines or to identify the actual streets in any unincorporated cities or towns through which they may pass.[22]

If the franchise is to be exercised within an unincorporated city or town, the application must be accompanied by a petition in writing signed by a majority of the resident taxpayers.[23/] The taxpayers must own and pay taxes upon real property within the county.[24/] Notice and a public hearing must be provided before the county board makes its decision regarding a franchise application.[25/] In the case of an application by an electric utility serving two or more counties, the notice need only be such as the board "may deem reasonable."[26/] In all other cases it must include newspaper publication once a week for four weeks and posting in three public places.[27/] The potential franchises must bear the expense of publication.[28/]

The recipient of a county franchise must also take out a bond, in a sum specified by the board, guaranteeing that construction of the appropriate transmission lines or pipelines shall commence by a specified date. In the case of an electric utility supplying light, heat or power in two or more counties, construction must begin within six months.[29/] In all other cases, construction must begin within 60 days.[30/] Upon the granting of a franchise to a multi-county electrical utility, "the county clerk shall issue to the grantee a formal franchise for the term so granted . . . for which a charge of $5 shall be made."[31/]

A statutory procedure is also provided for the extension of franchises granted to multi-county electrical utilities. A franchisee seeking such an extension is required to provide its name, a listing of the counties in which it operates, the time when the former franchise was granted, the unexpired portion of the term thereof, and the length of time for which the franchise is to be extended (which together with the unexpired term of the former franchise cannot exceed 50 years).[32/] The county board need only provide such notice of the application as it deems reasonable and shall hear any objections and render a decision at its next regular meeting.[33/] The extended franchise is finalized by the issuance of a "formal franchise" by the county clerk.[34/]

B. Municipalities

Detailed procedures are also provided for the grant of a franchise by a metropolitan city. The grant must be made by city's board of commissioners by the passage of an ordinance.[35/] Prior to granting a franchise, the board must adopt a resolution detailing the name of the applicant and the purpose, character, terms, time and conditions of the franchise. The resolution must also establish a date for a public hearing at which the proposed franchise will be considered. The resolution must be published at least twice in the two weeks succeeding its adoption.[36/] The franchise

may be granted on the date set for the public hearing or at any board meeting within 35 days after the public hearing.

The procedures by which other municipalities may grant franchises are not clearly defined. The power to grant franchises is exercised by the city council.[37] No other procedural requirements are established by statute and, therefore, the city council "may provide by ordinance the manner and details necessary for the full exercise of such power.[38]

Municipal ordinances (except for cities of the metropolitan class) can embrace only one subject, which must be clearly indicated in the title.[39] They must be published once in a newspaper of general circulation at least one week prior to their adoption.[40] An ordinance does not take effect until it is signed by the mayor, it once again receives newspaper publication, and an additional 20 days have elapsed.[41]

C. Role of Public Service Commission

A certificate of public convenience and necessity from the state Public Service Commission is not a prerequisite to obtaining a county or municipal franchise. However, if, the francise is a public utility and is not municipally owned, it must obtain a certificate from the Commission prior to commencing construction of facilities or initiating service.[42] Proof that the appropriate franchises have been acquired may,

be required by the Commission before granting a certificate.[43]

III. CRITERIA TO BE USED IN EVALUATING A FRANCHISE REQUEST

Statutory provisions do not expressly limit the granting of franchises to those holding themselves out as ready and willing to serve the public at large, for utility purposes. Under certain statutory provisions, franchises may be granted only to an entity providing specified services.

While the statutes do not specifically prohibit the granting of a franchise absent of finding that the grant will serve the public good, the procedures established to control the granting of franchises suggest that, as a practical matter, such a limitation is present. County franchises cannot be granted within an unincorporated city or town until the board of commissioners determines that a majority of the resident taxpayers have signed the necessary petition and desire the franchise.[44] Unless the applicant for a franchise provides electrical service in more than one county, the board of commissioners is also required to "fix the terms and prescribe the conditions under which the franchise is to be granted, the character or kinds of service to be rendered, the maximum rates to be charged for the service, and other matters as may be properly connected therewith."[45] The obligation

of the county commissioners to protect the public interest in this fashion is relaxed only if the recipient of the franchise is a public utility (as a person, association, or corporation supplying electricity in two or more counties must inevitably be), in which case the public interest is protected by the Commission.[46/] The grantee of a franchise operating in a single county must, moreover, "provide a plant with all necessary appurtenances of approved construction for the full performance of his, her, their or its franchise duties, rights and obligations, and for the needs, comfort, and convenience of the inhabitants of the various unincorporated towns and cities, county, or place to which such franchise relates."[47/] Thus, county franchises can only be granted under a statutory scheme that is designed to protect the public interest and it is unlikely that such a franchise could be granted for purposes not clearly beneficial to the public.

The procedural safeguards established for the municipal grant of a franchise are less comprehensive but suggest a similar result. Metropolitan cities, for example, are expressly empowered to franchise electrical and heating works, but they must first hold a public hearing and adopt

a resolution specifying the "terms, time and conditions of the proposed franchise."[48/] The more general grant of franchising authority made to cities of this class requires that utility services be furnished "to the city for the inhabitants thereof."[49/] Other classes of municipalities may grant franchises for services "demanded by the inhabiants,"[50/] "to be furnished to the city for the residents thereof";[51/] or to establish a variety of lighting works which may be associated with "the privilege of furnishing light for the public buildings, streets, sidewalks, and alleys of the city."[52/] This statutory framework also suggests that municipal franchises can only be granted in furtherance of the public interest.

There are no statutory requirements for obtaining the approval of the Commission or for engaging in competitive bidding prior to the grant of a franchise. Franshising has not been an area of significant litigation in Nevada, and there are no judicially established standards for evaluating franchise requests.

IV. CHARACTERISTICS OF A FRANCHISE

A. Duration and Termination

Local government franchises in Nevada are limited in duration by statute and can only be granted for specified periods of time. Franchises granted by metropolitan cities

must also be for a specified period of time and cannot exceed 50 years.[53] Other classes of manicipalities are limited to the granting of franchises for a duration of 50 years, unless they are given greater power under a special legislative charter.[54] No procedure is available for the extension of municipal franchises. Franchises granted to electrical utilities operating in two or more counties may not exceed 50 years in duration.[55] They may, however, be extended under a simplified application procedure for as much as an additional 50 years. All other county franchises are limited to 25 years.[56] All applications for county franchises must indicate the length of time for which the franchise is desired.[57]

B. Exclusivity

Counties are expressly forbidden to grant exclusive franchises.[58] No comparable restriction has been imposed by statute with respect to the granting of franchises by municipalities. Judicial decisions, however, have indicated that exclusive rights are not favored in Nevada.

For example, in Lake v. Virginia and Truckee R.R. Co.,[59] the plaintiff had been granted an exclusive franchise by the legislature to operate a toll road across a river. The court, nevertheless, allowed the railroad to construct its own bridge over the river. It stressed that plaintiff was under no obligation to provide a bridge strong enough

to support trains. A bridge to be used solely for railroad purposes (even though it might carry paying passengers) was, therefore, different from an ordinary bridge and would not interfere with plaintiff's exclusive right to control other means of transport across the river. In Las Vegas Valley Water Dist. v. Michelas,[60/] a public water district attempted to invade a six-block area already being supplied with water under a certificate of public convenience and necessity issued by the Commission. The court held that the grant of a Commission certificate did not amount to an exclusive franchise and refused to enjoin the competition. It reasoned that a grant of special privileges could be made exclusive only if specifically authorized by the legislature, and since the public water district was legislatively exempt from Commission control, it would not be prevented from invading the territory served by another supplier.

C. Other Characteristics

All county franchises are subject to a 2% tax on the net profits earned through the exercise of the franchise.[61/] Additional conditions regarding the terms of service may also be imposed by the county board of commissioners.[62/] All such conditions, except for the 2% tax and a maximum duration fixed upon franchise grants,

may, however, be disallowed by the commission in the case of public utilities.[63/] The statutes applicable to municipalities contain no specific authority to impose conditions on franchises.

As has already been indicated, the extent to which local governments can control the initiation of public utility operations is unclear. The Commission need not require that a franchise be secured prior to issuing a certificate of public convenience and necessity, although it may do so.[64/] It is unlikely, however, that the Commission can override the refusal of a city or county to grant a franchise because the Commission has not been expressly granted such authority.

Neither the statutes nor reported case law have resolved the issue of whether a local government can preclude operation by a certificated utility by refusing to grant a franchise.

1. Nev. Rev. Stat. §265.010 (1973).
2. Id. §§266.055 (1)(2)(3).
3. Id. §266.05 et seq.
4. Id. §§266A.005 - 266A.555 (1977).
5. Id. §266A.015 (b).
6. Id. §266.285 (1973).
7. Id. §268.081 (1975).
8. Id. §266.90.
9. Id. §266.300 (1)(b) (1973).
10. Id. §266.300.
11. Id. §266.305.
12. Id. §266A.195.
13. Id. §267.120.
14. Id. 266A200 (1).
15. Id. §266A.210 (1)(b) (1977).
16. Id. §266A.210.
17. Nev. Const. Art. 8, §1.
18. 85 Nev. 620.460 P. 2d 835 (1969).
19. Nev. Rev. Stat. §709.050 (1973).
20. Id. §709.180.
21. Id. §§709.060 - 709.120, 709.190 - 709.280 (1973).
22. Id. §709.190.
23. Id. §§709.070 (1), (2).
24. Id. §709.070 (1).

25. Id. §§709.070 (2) - (b), 709.200.
26. Id. §709.200 (1)(b).
27. Id. §709.070 (4) - (5).
28. Id. §709.020 (2).
29. Id. §709.220.
30. Id. §709.100.
31. Id. §709.280.
32. Id. §709.250.
33. Id. §709.260.
34. Id. §709.280.
35. Id. §266A.210 (4) (1977).
36. Id. §266A.210 (3).
37. Id. §§266.285, 266.300 (1973).
38. Id. §266.260.
39. Id. §266.110 (1973).
40. Id. §266.115(1)(1977).
41. Id. §266.115(3).
42. Id. §704.330 (1975).
43. Id. §704.350.
44. Id. §§709.090, 709.210 (1973).
45. Id. §709.090.
46. Id. §709.160.
47. Id. §709.130 (1)(a).
48. Id. §266A.210 (3) (1977).
49. Id. §266A.195 (1).

50. Id. §268.081 (1975).

51. Id. §266.285.

52. Id. §266.300 (1975).

53. Id. §266A.210 (2) - (3) (1977).

54. Id. §266.300 (2) (1973).

55. Ibid.

56. Ibid.

57. Ibid.

58. Id. §709.130(5).

59. 7 Nev. 294 (1972)

60. 77 Nev. 171,360 P. 2d 1041 (1961).

61. Nev. Rev. Stat. §§709.110, 709.230 (1973).

62. Id. §709.090.

63. Id. §709.160.

64. Id. §704.350 (1975).