

STATE QUESTION NO. 3

Amendment to the *Nevada Constitution*

CONDENSATION (Ballot Question)

Shall Article 1 of the *Nevada Constitution* be amended to require the Legislature to provide by law for the establishment of an open, competitive retail electric energy market that prohibits the granting of monopolies and exclusive franchises for the generation of electricity?

Yes

No

EXPLANATION & DIGEST

EXPLANATION—This ballot measure proposes to amend the *Nevada Constitution* to require the Legislature to provide by law for an open, competitive retail electric energy market by July 1, 2023. The law passed by the legislature must include, but is not limited to, provisions that reduce costs to customers, protect against service disconnections and unfair practices, and prohibit the granting of monopolies and exclusive franchises for the generation of electricity. The law would not have to provide for the deregulation of the transmission or distribution of electricity.

Approval of this ballot measure would add a new section to the *Nevada Constitution* establishing that every person, business, association of persons or businesses, state agency, political subdivision of the State of Nevada, or any other entity in Nevada has the right to choose the provider of its electric utility service, including but not limited to, selecting providers from a competitive retail electric market, or by producing electricity for themselves or in association with others, and shall not be forced to purchase energy from one provider. The proposed amendment does not create an open and competitive retail electric market, but rather requires the Legislature to provide by law for such a market by July 1, 2023. The law passed by the Legislature cannot limit a person's or entity's right to sell, trade, or otherwise dispose of electricity. Pursuant to Article 19, Section 2, of the *Nevada Constitution*, approval of this question is required at two consecutive general elections before taking effect.

A "Yes" vote would amend Article 1 of the *Nevada Constitution* so that the Legislature would be required to pass a law by July 1, 2023, that creates an open and competitive retail electric market and that includes provisions to reduce costs to customers, protect against service disconnections and unfair practices, and prohibit the granting of monopolies and exclusive franchises for the generation of electricity.

A "No" vote would retain the provisions of Article 1 of the *Nevada Constitution* in their current form. These current provisions do not require the Legislature to pass a law that creates an open and competitive retail electric market and that includes provisions to reduce

costs to customers, protect against service disconnections and unfair practices, and prohibit the granting of monopolies and exclusive franchises for the generation of electricity.

DIGEST—Article 1 of the *Nevada Constitution* contains various rights granted to the people of Nevada. Approval of this ballot measure would add a new section to Article 1 of the *Nevada Constitution* that would require the Legislature to provide by law, no later than July 1, 2023, for an open, competitive retail electric energy market with protections that entitle customers to safe, reliable, and competitively priced electricity. The law passed by the legislature must include, but is not limited to, provisions that reduce costs to customers, protect against service disconnections and unfair practices, and prohibit the granting of monopolies and exclusive franchises for the generation of electricity. This constitutional amendment would have an impact on public revenue; however, the amount of the impact cannot be determined.

Existing law, found in Title 58 of the *Nevada Revised Statutes*, generally authorizes a single utility to provide electric service to customers in each electric service territory in the state. This means that most Nevadans are required to purchase electricity from a single provider. Utility providers are regulated by the Nevada Public Utilities Commission (PUC), which is charged with providing for the safe, economic, efficient, prudent, and reliable operation and service of public utilities, as well as balancing the interests of customers and shareholders of public utilities by providing public utilities with the opportunity to earn a fair return on their investments while providing customers with just and reasonable rates.

ARGUMENTS FOR PASSAGE

The Energy Choice Initiative

Vote YES on Question 3, the Energy Choice Initiative.

Nevada has some of the highest electricity rates in the West.¹ In addition, as ratepayers, we are limited in the types of renewable energy we can purchase because most of us are forced to buy energy from a monopoly.² Many businesses, including those who would relocate here and create new jobs, want more renewable energy.³

The problems with the current energy policy are:

- The electricity rates we pay are largely dictated by the Public Utilities Commission, not the free market.⁴ And those rates provide for a guaranteed return (profit) for the utility company.⁵
- There is a legal monopoly in most of Nevada’s electricity market and the rates charged to customers are not subject to pressure from competition.⁶
- Without an open market, it is difficult for Nevadans to take advantage of new technologies in energy generation.⁷
- Nevada residents and businesses often cannot choose the specific type of electricity they want—that fueled by renewable resources.⁸

Question 3 is a constitutional amendment that would create a right for Nevadans to purchase energy from an open electricity market. Residents and businesses will be allowed to purchase electricity from a provider of their choice.

A YES vote on Question 3 means you support:

- Eliminating the monopoly on retail power sales.⁹
- Creating a new marketplace where customers and energy providers come together.¹⁰
- Preserving the utility, whether it's NV Energy or another utility, as the operator of the electric distribution grid.¹¹
- Protecting consumers by requiring the Nevada Legislature to enact laws that entitle Nevadans to safe, reliable, and competitively priced electricity that protects against service disconnections and unfair practices.¹²
- Paying rates for electricity that are set by an open and competitive market, not an appointed government agency.¹³
- Allowing energy providers to offer electricity from any source – including renewable sources – without needing the approval of the Commission.¹⁴
- Keeping Nevada's renewable energy portfolio standard in place, along with Nevada's other renewable policies.¹⁵
- Allowing the Commission to continue to regulate Nevada's electricity market, but instead of regulating a single provider, they regulate the competitive market.¹⁶

Many people believe that competition in the electricity market drives prices down and provides more resource options for residents and businesses.¹⁷ To date, 24 states have passed legislation or regulatory orders that will allow some level of retail competition.¹⁸

It's time for Nevadans to have a choice.

Vote YES on Question 3.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252. Committee members: Matt Griffin (Chair), Nevadans for Affordable, Clean Energy Choices; and Lucas Foletta, Nevadans for Affordable, Clean Energy Choices. This argument, with active hyperlinks, can also be found at www.nvsos.gov.

¹ *Assessment and Recommendations: Alignment of Nevada Economic Development Policy and Energy Policy*, pages 13-14, Nevada State Office of Energy and Governor's Office of Economic Development (2013), available at <http://www.leg.state.nv.us/interim/77th2013/Committee/StatCom/Energy/Other/19-May-2014/5VBARTHOLETWhitePaper.PDF>.

² NRS 704.330(6).

³ *Las Vegas casinos seek to power their bright lights with renewable energy* (March 7, 2016), *The Guardian*, <https://www.theguardian.com/environment/2016/mar/07/las-vegas-casinos-solar-power-nevada-energy>; and *Companies Go Green on Their Own Steam* (March 8, 2016), *The Wall Street Journal*, <http://www.wsj.com/articles/companies-go-green-on-their-own-steam-1457483035>.

⁴ *Things to know on a ballot measure to end NV Energy monopoly* (Apr. 25, 2016), Reno Gazette Journal, <http://www.rgj.com/story/news/2016/04/23/things-know-ballot-measure-end-nv-energy-monopoly/83437680/>.

⁵ *Id.*; *Warren Buffet's Dacey Power Play* (June 10, 2016), Fortune, <http://www.bloomberg.com/news/articles/2016-06-10/buffett-s-power-play-pits-las-vegas-casinos-against-energy-unit>.

⁶ NRS 704.330(6); *Things to know on a ballot measure to end NV Energy monopoly* (Apr. 25, 2016), Reno Gazette Journal, <http://www.rgj.com/story/news/2016/04/23/things-know-ballot-measure-end-nv-energy-monopoly/83437680/>.

⁷ *Clean Power Startups Aim to Break Monopoly of U.S. Utility Giants* (Dec. 12, 2012), Inside Climate News, <https://insideclimatenews.org/news/20121212/renewable-power-startups-georgia-solar-panterra-energy-gen110-distributed-generation-rooftop-solar-hurricane-sandy>.

⁸ *Nevada Switch data centers now 100% renewable-powered* (Jan. 7, 2016), Reno Gazette Journal, <http://www.rgj.com/story/money/reno-rebirth/2016/01/06/switch-supernap-data-centers-100-percent-renewables-green-energy/78318378/>.

⁹ See Energy Choice Initiative.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Lowering Electricity Prices Through Deregulation*, Current Issues in Economics and Finance, The New York Federal Reserve, https://www.newyorkfed.org/medialibrary/media/research/current_issues/ci6-14.pdf; *Green Energy Guide*, Energy Savings, <https://www.energysavings.com/green-energy-guide.html>.

¹⁸ *Energy Deregulation, Overview: What's Changing and Why*, Washington Post, <http://www.washingtonpost.com/wp-adv/specialsales/energy/report/article10.html>.

REBUTTAL TO ARGUMENTS FOR PASSAGE

A Constitutional measure to deregulate energy markets in Nevada is unnecessary. No evidence exists that deregulation provides additional choice, advances renewable energy, or creates lower rates.

Nevada's average rates are 44% lower than California's, and 20% lower than the U.S. generally.¹ Deregulation hasn't produced lower prices for residents or businesses in states that have tried it.

Nevada's public policies are advancing renewable energy. Nevada's largest utility ranked 7th nationally for added solar last year.² Customers receive energy from 45 large-scale renewable projects capable of supplying 700,000-plus homes.³ Projects are 100% competitively bid, so customers get the lowest cost. Deregulated markets have not been shown to support renewable energy growth.

Utilities plan 20 years ahead to be there for Nevadans in the long-term, providing safe, reliable service.⁴ Deregulation takes away that safety net, exposing us to unpredictable energy markets.

Supporters of Question 3 say that 24 states allow for some level of deregulation. What they don't tell you is that Nevada is one of them. Implementing more deregulation would take years and cost Nevadans significant money. Nevada has set a clear path for stable energy prices and renewable energy development. Full deregulation would put Nevadans at risk and progress on hold.

The above rebuttal was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252. Committee member: Bradley Schrager (Chair), private citizen. This rebuttal, with active hyperlinks, can also be found at www.nvsos.gov.

¹ http://www.eia.gov/electricity/monthly/epm_table_grapher.cfm?t=epmt_5_6_a Table 5.6.A. Average Price of Electricity to Ultimate Customers by End-Use Sector, by State, May 2016 and 2015 (Cents per kilowatt hour).

² <http://www.solarelectricpower.org/discover-resources/solar-tools/2015-solar-power-rankings.aspx>.

³ https://www.nvenergy.com/brochures_arch/RenewablesBrochure.pdf.

⁴ N.A.C. 704.9215.

ARGUMENTS AGAINST PASSAGE

Deregulation of the energy market means a loss of control by Nevada's citizens. We allowed the airlines to be deregulated, and today air travel is a nightmare.¹ We allowed the banking system to be deregulated, and the housing and financial crisis followed.² It was deregulation of energy markets in California that allowed the Enron disaster.³ In fact, Nevadans considered deregulating the energy market in the 1990s, but the rolling blackouts and power shortages of the Enron crisis taught us that deregulation was too risky.⁴ We should not forget those lessons now, and this initiative should be defeated.

In state after state over the last three decades, proponents of deregulation across the country have promised that "energy choice" would mean lower costs, but the results have been ever-higher prices for energy, charged by private companies outside the control of state agencies.⁵

In deregulated New York, residential customers wound up paying energy costs 70% above the national average.⁶ In Texas, retail consumers pay fifteen percent higher electricity bills after deregulation than before it.⁷ And in Connecticut, customers of deregulated energy providers saw uncontrollable price jumps with little or no warning, increases the state was unable to stop or limit.⁸ Even this initiative's proponents agree that Nevada will no longer be able to set or secure any certain price or rate structure, and therefore will not be able guard against the same thing happening here. Deregulation of the energy market was supposed to offer consumer choice and better pricing and services, but it did not, and there is no way to guarantee it will provide any benefit at all to Nevadans.

Currently, Nevada's utility companies are regulated by the state, which approves or rejects any changes to rates and ensures that utilities cannot gouge Nevada customers.⁹ Recent studies show that Nevada consumers enjoyed the second-lowest rates of energy price increase in the

country, largely due to the prudent management of the market by public agencies.¹⁰ By contrast, U.S. Department of Energy data shows that electricity prices have risen more steeply in states with energy deregulation programs similar to that proposed by this initiative than in those without.¹¹

Nevada's energy is too important of a public resource to permit the unpredictable and uncontrollable cost increases that this market deregulation initiative would threaten. We should vote "No" on this very flawed ballot measure, and ensure Nevadans can maintain control over the state's energy market.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252. Committee member: Bradley Schragger (Chair), private citizen. This argument, with active hyperlinks, can also be found at www.nvsos.gov.

¹ Tom Sgouros, *The Disaster of Deregulation: Airlines*, RI Future, September 18, 2012, <http://www.rifuture.org/the-disaster-of-deregulation-airlines.html>.

² Sewell Chan, *Financial Crisis Was Avoidable, Inquiry Finds*, New York Times, January 25, 2011, http://www.nytimes.com/2011/01/26/business/economy/26inquiry.html?_r=0.

³ *California Electricity Crisis*, wikipedia.com, https://en.wikipedia.org/wiki/California_electricity_crisis#cite_ref-22.

⁴ Michelle Rindels, *Things to Know on Ballot Measure to End NV Energy Monopoly*, Las Vegas Sun, April 24, 2016, <http://lasvegassun.com/news/2016/apr/24/things-to-know-on-a-ballot-measure-to-end-nv-energy/>.

⁵ Public Sector Consultants, *Electric Industry Deregulation: A Look at the Experience of Three States*, October 2013, <http://www.pscinc.com/LinkClick.aspx?fileticket=IOIAyiNGrwl%3D&tabid=65>.

⁶ H. Carl McCall, New York State Comptroller, *Electric Deregulation in New York State*, February 2001, <http://www.osc.state.ny.us/reports/other/dereg.pdf>.

⁷ Jordan Blum, *Texas Consumers Pay More In Deregulated Electricity Markets*, Houston Chronicle, June 8, 2016, <http://www.houstonchronicle.com/business/energy/article/Texas-consumers-pay-more-in-deregulated-7972017.php>.

⁸ Jennifer Abel, *Deregulated Energy Providers: Are They a Good Deal: Customers of Ambit Energy Decry Unexpected Price Jumps*, Consumer Reports, April 24, 2014, <https://www.consumeraffairs.com/news/deregulated-energy-providers-are-they-a-good-deal-042414.html>.

⁹ Michelle Rindels, *Things to Know on Ballot Measure to End NV Energy Monopoly*, Las Vegas Sun, April 24, 2016, <http://lasvegassun.com/news/2016/apr/24/things-to-know-on-a-ballot-measure-to-end-nv-energy/>.

¹⁰ Texas Coalition for Affordable Power, *Electricity Prices in Texas*, August 2015, p.8, citing United States Energy Information Administration Electricity Data, <http://tcaptx.com/wp-content/uploads/2015/08/TCP-1035-ElectricityPricesinTX-Snapshot-A-Final.pdf>.

¹¹ David Johnston, "Competitively Priced Electricity Costs More, Studies Show," The New York Times, November 6, 2007. <http://www.nytimes.com/2007/11/06/business/06electric.html>.

REBUTTAL TO ARGUMENTS AGAINST PASSAGE

In breaking up Bell's telecommunications monopoly, we unleashed advances in technology that revolutionized how we live.¹ New companies entered the market and began competing for business by offering better products and services — and now we have cell phones with internet access, apps, and cameras.² Monopolies have no incentive to lower prices, become more

efficient, and offer more services.³ Under Question 3, energy markets will be opened like telecommunications, trucking, railroads, and natural gas.⁴

The opponents are wrong. Under Question 3, the safety, reliability, and quality of Nevada's energy will continue to be regulated by the Legislature, the PUC, and the federal government.⁵ Opponents try to scare people with Enron, without telling you that there are now effective and proven laws against market manipulation.⁶

Energy choice has been a success in other states. New Yorkers have seen electricity prices drop 34%⁷; in Texas it has caused rates to drop below the national average⁸; and in Connecticut, there are more than 24 suppliers offering over 200 different energy choices, some below standard rates by more than 30%.⁹ 22% of those offers are for 100% renewable energy.¹⁰ It's time for us to have choice in energy suppliers – vote yes on Question 3.

The above rebuttal was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252. Committee members: Matt Griffin (Chair), Nevadans for Affordable, Clean Energy Choices; and Lucas Foletta, Nevadans for Affordable, Clean Energy Choices. This rebuttal, with active hyperlinks, can also be found at www.nvsos.gov.

¹ *What We Can Learn From the History of Deregulation: US Telecommunications*, <https://www.bounceenergy.com/articles/texas-electricity/history-of-deregulation-telecommunication>.

² *Id.*

³ *Pure Monopoly: Economic Effects*, <http://thismatter.com/economics/pure-monopoly-economic-effects.htm>.

⁴ *Energy Deregulation, Overview: What's Changing and Why*, Washington Post, <http://www.washingtonpost.com/wp-adv/specialsales/energy/report/article10.html>.

⁵ See Energy Choice Initiative.

⁶ Prohibition of Energy Market Manipulation, <http://www.ferc.gov/enforcement/market-manipulation.asp>.

⁷ NY Electricity Prices Have Fallen 34% under Deregulation, June 17, 2015, <http://www.energymanagertoday.com/ny-electricity-prices-have-fallen-34-under-deregulation-0112925/>.

⁸ Electric deregulation cost Texas customers money, but they're beating the nation now, August 12, 2015, <http://www.houstonchronicle.com/business/energy/article/Electric-deregulation-cost-Texas-customers-money-6439943.php>.

⁹ Connecticut Energy Shopping Site Shows Opportunities for Savings, April 27, 2016, <http://www.resausa.org/news-events/connecticut-energy-shopping-site-shows-opportunities-savings>.

¹⁰ *Id.*

FISCAL NOTE

FINANCIAL IMPACT – CANNOT BE DETERMINED

OVERVIEW

Question 3 proposes to amend Article 1 of the *Nevada Constitution* by adding a new section requiring the Nevada Legislature to provide by law for an open, competitive retail electric energy market no later than July 1, 2023. To ensure that protections are established that entitle customers to safe, reliable, and competitively priced electricity, the law must also

include, but is not limited to, provisions that reduce costs to customers, protect against service disconnections and unfair practices, and prohibit the grant of monopolies and exclusive franchises for the generation of electricity.

FINANCIAL IMPACT OF QUESTION 3

If approved by the voters at the 2018 General Election, Question 3 will require the Legislature and Governor to approve legislation creating an open, competitive retail electric energy market between the effective date (November 27, 2018) and July 1, 2023. The Fiscal Analysis Division cannot predict when the Legislature and Governor will enact legislation that complies with the Initiative, nor can it predict how the constitutional provisions proposed within the Initiative will be implemented or which state or local government agencies will be tasked with implementing and administering any laws relating to an open, competitive retail electric energy market. Thus, the financial impact relating to the administration of the Initiative by potentially affected state and local government entities cannot be determined with any reasonable degree of certainty.

Under current law, state and local governments, including school districts, may receive revenue from taxes and fees imposed upon certain public utilities operating within the jurisdiction of that government entity, based on the gross revenue or net profits received by the public utility within that jurisdiction. The Fiscal Analysis Division cannot determine what effect, if any, the open, competitive retail electric energy market created by the Legislature and Governor may have on the consumption of electricity in Nevada, the price of electricity that is sold by these public utilities, or the gross revenue or net profits received by these public utilities. Thus, the potential effect, if any, upon revenue received by those government entities cannot be determined with any reasonable degree of certainty.

Additionally, because the Fiscal Analysis Division cannot predict whether enactment of Question 3 will result in any specific changes in the price of electricity or the consumption of electricity by state and local government entities, the potential expenditure effects on those government entities cannot be determined with any reasonable degree of certainty.

Prepared by the Fiscal Analysis Division of the Legislative Counsel Bureau – August 7, 2018

FULL TEXT OF THE MEASURE

THE ENERGY CHOICE INITIATIVE

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. Article 1 of the Nevada Constitution is hereby amended by adding thereto a new section to read as follows:

1. The People of the State of Nevada declare that it is the policy of this State that electricity markets be open and competitive so that all electricity customers are afforded meaningful choices among different providers, and that economic and regulatory burdens be minimized in order to promote competition and choices in the electric energy market. This Act shall be liberally construed to achieve this purpose.

2. Effective upon the dates set forth in subsection 3, every person, business, association of persons or businesses, state agency, political subdivision of the State of Nevada, or any other entity in Nevada has the right to choose the provider of its electric utility service, including, but not limited to, selecting providers from a competitive retail electric market, or by producing electricity for themselves or in association with others, and shall not be forced to purchase energy from one provider. Nothing herein shall be construed as limiting such persons' or entities' rights to sell, trade or otherwise dispose of electricity.

3. (a) Not later than July 1, 2023, the Legislature shall provide by law for provisions consistent with this Act to establish an open, competitive retail electric energy market, to ensure that protections are established that entitle customers to safe, reliable, and competitively priced electricity, including, but not limited to, provisions that reduce costs to customers, protect against service disconnections and unfair practices, and prohibit the grant of monopolies and exclusive franchises for the generation of electricity. The Legislature need not provide for the deregulation of transmission or distribution of electricity in order to establish a competitive market consistent with this Act.

(b) Upon enactment of any law by the Legislature pursuant to this Act before July 1, 2023, and not later than that date, any laws, regulations, regulatory orders or other provisions which conflict with this Act will be void. However, the Legislature may enact legislation consistent with this act that provides for an open electric energy market in part or in whole before July 1, 2023.

(c) Nothing herein shall 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.

4. Should any part of this Act be declared invalid, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the remaining provisions or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable. This subsection shall be construed broadly to preserve and effectuate the declared purpose of this Act.
