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Office of the Governor

June 17, 2011

The Honorable Ross Miller
Secretary of State
Capitol Building
101 South Carson Street
Carson City, NV 89701

RE: Assembly Bill 416 of the 76th Legislative Session

Dear Secretary Miller:

I am herewith forwarding to you, for filing within the constitutional time limit and without my approval, Assembly Bill 416, which is entitled:

AN ACT relating to energy; revising provisions governing the Solar Energy Systems Incentive Program; revising provisions governing the Wind Energy Systems Demonstration Program; revising provisions governing the Waterpower Energy Systems Demonstration Program; revising provisions governing the payment of incentives to participants in the Solar Program and the Wind Program; revising the prospective expiration of the Wind Program and the Waterpower Program; providing for the prospective expiration of the Solar Program; requiring the Public Utilities Commission of Nevada to adopt certain regulations; revising certain provisions governing certain energy-related tax incentives; revising certain provisions relating to plans filed by certain utilities; authorizing a utility to recover certain costs under certain circumstances; and providing other matters properly relating thereto.

This bill amends, in part, the statutory requirements associated with the submission of resource plans for the review and approval of the Public Utilities Commission ("PUC"). Resource plans account for how a public utility will meet consumer demand for electricity in our state. Under the current state of the law, utilities are required to submit these plans on a periodic basis to the PUC for approval, after a public hearing. The main purpose of the requirement is simple: to reduce electricity rates by subjecting the manner in which a utility proposes to meet consumer demand to the scrutiny of a public process and the approval of an impartial regulator. Thus, in accordance with NRS 704.741, utilities are required to submit to the PUC every three years a comparison of the best combination of sources of supply to meet projected consumer demand or the best method to reduce demand.

Resource plans help achieve rate savings not only through an analysis of the source of supply, but also through a review of the method of transmission of some sources, including renewable energy. NRS 704.741(4), for example, requires utilities to provide a plan for the construction

and expansion of transmission facilities designed to serve renewable energy zones to facilitate the achievement of renewable portfolio standards. The achievement of these standards produces environmental benefits and economic development gains in renewable energy in Nevada. The law provides that where such a transmission plan is approved, the utility may recover, at the discretion of the PUC, all just and reasonable costs of planning and constructing the facility.

Insofar as the central aim of resource plan approval is rate containment, we must strive to protect the integrity of that process. Nevada's consumers are too important to our economic recovery to subject to ratemaking that does not properly account for their interests.

AB 416, however, instead of seeking to strengthen consumer protections for the people of this state, substantially reduces the protections the resource plan approval process provides; it obscures the focus of the process by introducing new concerns not related to reducing rates for Nevadans, and it provides for cost recovery for energy exportation, in some cases without prior approval, contrary to traditional ratemaking principles.

The bill provides for the inclusion in resource plans of a utility's plan for the construction and expansion of transmission facilities to support the construction of renewable energy facilities without regard to the location of customers, and it requires inclusion of plans for transmission facilities that are anticipated to be necessary to serve the needs of any renewable energy facility that requests interconnection with the utility and delivers energy to purchasers located outside the State or service area of the utility.

Review of the construction and expansion of transmission facilities intended to benefit electricity consumers in other states, however, does not serve the traditional purpose of resource plan approval—to exercise downward pressure on rates for Nevadans. Instead, the broadening of the scope of resource plans threatens to undermine the interests of ratepayers because once approved, under NRS 704.110(11), related expenses would be deemed prudent and the utility would be allowed, at the discretion of the PUC, to recover all just and reasonable costs. This process would mean rate increases for the people of the state to finance the construction of facilities to service out of state consumers.

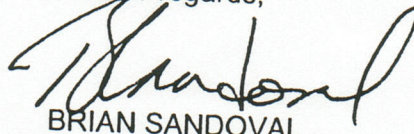
What is perhaps more troubling, however, is the bill's requirement that, if proposed facilities or transmission corridor actions do not fall with a resource plan filing requirement, or, alternatively, if the utility is required pursuant to federal law to commit to such facilities within a time that does not support a resource plan filing, the PUC shall allow the utility to recover reasonable and prudent expenses for the siting, development and permitting of the proposed facility or corridor activities conducted without inclusion in the plan.

The mandatory allowance for the recovery of such costs is entirely inapposite to the cost recovery principle expressed in the current rate case provisions, which provide, for example, for the permissive recovery of costs associated with a transmission facility linked to the attainment of renewable portfolio standards only after approval by the PUC. If such costs are permissive after approval, it is difficult to conceive of a public policy justification for mandatory costs in the absence of any approval at all.

The inconsistent policy approach would be, perhaps, reconcilable if the probability of expenses set to trigger the mandatory allowance of costs was limited. It appears, however, that is not the case. At least one public utility has made clear, during a hearing on a similar provision in a similar bill earlier this session, its intention to develop renewable transmission corridors. Under this bill, the plan for such development is not necessarily a requirement of a resource plan. Thus, it appears the utility would be entitled to the reasonable and prudent costs associated with that development. Those costs would not only be substantial, but they would reflect an unacceptable outcome: Nevada ratepayers forced to finance the transmission of renewable energy to out of state consumers without the opportunity to comment beforehand. Moreover, there is no provision in the bill to allow ratepayers, in the event any investment shouldered by them succeeds, to participate in that success through reduced rates.

This bill threatens not only to undermine the value of the resource plan approval process in maintaining reasonable electricity rates and prudent facilities approvals, but it will provide for increased rates to cover utility expenditures unrelated to the provision of electricity in this state. To increase utility rates on Nevadans struggling to emerge from a severe economic recession would result in the imposition of an unnecessary and unfair burden on our recovery. Therefore, I exercise my constitutional grant of authority to veto AB 416 and return it to you without my signature and without my approval.

Sincere regards,



BRIAN SANDOVAL
Governor

Enclosure

cc: The Honorable Brian Krolicki, President of the Senate (without enclosure)
David A. Byerman, Secretary of the Senate (without enclosure)
Susan Furlong, Chief Clerk of the Assembly (without enclosure)
Brenda Erdoes, Esq., Legislative Counsel (without enclosure)