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## Office of the Governor

June 16, 2017

The Honorable Barbara Cegavske  
Nevada Secretary of State  
101 North Carson Street  
Carson City, NV 89701

### **RE: Assembly Bill 206 of the 79th Legislative Session**

Dear Secretary of State Cegavske:

I am herewith forwarding to you, for filing within the constitutional time limit and without my approval, Assembly Bill 206 ("AB 206"), which is entitled:

AN ACT relating to renewable energy; authorizing the establishment of certain programs for the purchase of electricity produced by certain renewable energy facilities; declaring the policy of this State concerning renewable energy; revising the portfolio standard for providers of electric service in this State; revising the manner in which providers of electric service may comply with the portfolio standard; expanding the definition of "provider of electric service" for the purposes of the portfolio standard; requiring the Public Utilities Commission of Nevada to revise any existing portfolio standard applicable to a provider of new electric resources to comply with the portfolio standard established by this act; revising provisions relating to the approval of a plan filed by an electric utility to increase the supply of electricity or reduce demand; and providing other matters properly relating thereto.

### **Introduction**

I compliment the sponsors of AB 206. We share the goal of making Nevada the clean energy capital of the world. This bill would further this aspiration by increasing Nevada's

already strong Renewable Portfolio Standard (“RPS”) from twenty-five percent by 2025 to forty percent by 2030.<sup>1</sup>

I am fully aware that increasing the RPS as proposed in this bill is very popular, and under different circumstances I would support this bill.<sup>2</sup> However, I have a responsibility to consider the approval of this bill with Nevada’s current and future energy costs, policy and ratepayers in mind.

Thus, although the increase in the RPS proposed at this time in AB 206 is one that I would otherwise support, the consequences of approving this bill must be considered through the lens of recent changes to Nevada energy policy and those likely to be adopted in the near future. These changes can only be characterized as massive shifts in energy policy that have already dramatically altered the energy landscape in Nevada. They are occurring in real time, with energy policy evolving in real time.<sup>3</sup>

### **Net Metering**

Since the approval of the current “twenty-five by twenty-five” RPS in 2009, solar rooftop net metering has grown in Nevada. Approximately 30,000 Nevadans have applied to install rooftop solar on their homes and sell excess energy back to the grid at retail rates. I am proud to support net metering legislation and policies that will make Nevada a leader in rooftop solar. Yesterday, I signed AB 405, which will encourage thousands more Nevadans to install rooftop solar on their homes and deliver excess power back to the grid at retail rates, on a sliding scale. This bill will promote more clean energy and jobs in Nevada.

### **Exiting Companies**

Nevada also adopted legislation in 2001 that allowed large entities to exit the Nevada power grid and purchase power from third parties. Since 2015, several large companies have taken advantage of this law to save money and purchase power from third party energy providers. As a condition of leaving the existing system, they were required to pay multi-million dollar “exit fees” for their fair share of the cost of utility assets already built and to protect remaining ratepayers from paying for an inordinate share of the costs associated with these stranded assets. AB 206 would dramatically change the terms associated with their decision to exit, and require a new RPS standard on their power purchases. Such a result was not contemplated or anticipated by these exiting

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<sup>1</sup> The Solar Energy Industries Association ranks Nevada 1<sup>st</sup> in solar capacity per capita. <http://www.seia.org/research-resources/top-10-solar-states> ; A new report also ranks Nevada 4<sup>th</sup> nationally in solar capacity. Las Vegas Review Journal, June 8, 2017, <https://www.reviewjournal.com/business/new-report-ranks-nevada-4th-nationally-in-solar-capacity/>.

<sup>2</sup> It is also my understanding that there is a sense of urgency to approve this bill in order for new projects to take advantage of the full federal investment tax credits before they decrease.

<sup>3</sup> See SB 123 (Emissions Reduction Capacity Replacement Plan) of the 2013 Legislative Session, Assembly Bills 5 (PACE), 223 (Energy Efficiency), 405 (Restore Rooftop Solar), and Senate Bills 65 (Resource Planning), 145 (Electric Vehicle Infrastructure), 146 (Distributed Resource Planning), 150 (Energy Efficiency), 204 (Storage Incentives) and 407 (Green Fund) of the 2017 Legislative Session.

companies, and imposes additional costs on top of the millions of dollars they have already paid to exit the Nevada power grid.

### **Energy Choice**

It is also critical to note that a monumental change in energy policy in Nevada is likely to be approved by voters next year. In 2016, 72 percent of Nevadans voted “yes” for the Energy Choice Initiative (the “Initiative”) that will allow Nevadans to choose their energy provider and enshrine energy choice in Nevada’s Constitution. If passed a second time in the 2018 general election, Nevada’s energy market will change permanently and substantially.

Currently, there is only one primary energy company that provides electricity to ninety percent of the residents in Nevada. This provider is subject to the current RPS and is responsible for transmission, generation and maintenance of the electric system.

Should the Initiative pass, the incumbent utility will be required to exit, and sell off its generation assets, including renewable generation and purchase power agreements (“PPA”). Any stranded costs associated with this exit could be the responsibility of the ratepayers, resulting in higher power bills for most Nevadans.

If energy choice is approved, Nevada would enter a new environment where there are multiple energy providers competing for individual business, similar to cable TV, internet and telephone service. For the first time, most Nevadans will no longer purchase their power from a monopoly utility, and have the choice to purchase their energy from a third party provider. These new energy providers would be subject to the enhanced RPS mandated by AB 206 and would likely seek to recover the stranded costs associated with stranded assets from the exiting incumbent utility through energy charges passed onto ratepayers.

Indeed, AB 206 recognizes and compounds the concerns associated with energy choice by specifically directing the Public Utilities Commission of Nevada (“PUCN”) to disregard any “uncertainty” created by the Initiative in this decision making process. See Section 2.59, Subsection (3). In fact, this section provides, in pertinent part: “If such a ballot question [energy choice] is approved...the costs and benefits of any such renewable energy contract or renewable energy facility...must be transferred to a provider of electricity or the retail customers of a provider of electricity.” (Emphasis added).

Sound policy should be able to withstand and respond positively to robust regulatory scrutiny, and not ignore the critical and historical role of the PUCN in developing energy policy. AB 206 usurps the role of the PUCN and specifically prohibits it from considering the “uncertainty” of energy choice.

## **Energy Storage**

Another consideration is my recent approval of SB 204, which for the first time adopts energy storage as part of Nevada's clean energy future. Although it is certain that the enactment of this legislation will put Nevada even further ahead of other states with regard to our energy policies, the questions surrounding the interaction between an enhanced RPS, energy choice and energy storage are ones that can only be answered after further examination and input from energy experts.

## **The Ratepayer**

With all of the discussion on historical, new and emerging energy policy, a primary consideration often gets lost in the laudable goals of more clean energy and energy choice: the ratepayers. If these aggressive new energy policies are enacted, it is the ratepayer who bears the risk of increased rates. Indeed, as mentioned above, AB 206 specifically provides that it is the ratepayer who has the risk of increased rates associated with the likely construction of new installations of renewable energy projects and contracts to meet the requirements of AB 206.

The questions associated with the acknowledged costs, risks and rate issues connected to an enhanced RPS are ones that were not fully answered during the debate on AB 206. The responses to these questions are critical in terms of impacts on ratepayers and energy policy in Nevada.

## **Energy Choice Committee**

With the likely adoption of energy choice and all of these energy proposals, goals, policies, questions and costs in mind, I formed the Committee on Energy Choice ("CEC") through Executive Order on February 9, 2017. Members of the CEC include representatives from utilities, large companies, regulators, ratepayer representatives, subject matter experts, clean energy advocates, and legislators<sup>4</sup>, and is chaired by the Lieutenant Governor of Nevada.

The purpose of the CEC is to study the very complex issues discussed above, their interrelationships, and potential consequences on energy policy and costs in Nevada in anticipation of the adoption of the Initiative. The CEC will meet regularly for the next 13 months and ultimately make recommendations to me in July of 2018, in advance of the 2019 Legislature. It is my position that such an approach is prudent and better answers the questions on how energy choice will affect Nevada's RPS, net metering, energy storage, exiting companies and the effects on ratepayers, as well as informing the 2019 Legislature and regulatory agencies.

In addition to the CEC, I also signed into law this Session Assembly Bill 452, which directs the Legislative Committee on Energy to further review and study the impacts of the

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<sup>4</sup> The Legislative members include the sponsor of this bill and the Chairman of the Senate Energy Committee in the Legislature.

Initiative on the future of energy policy and regulation in Nevada. Both the Executive and the Legislative Branches of government recognize the unanswered questions associated with energy choice and will be reviewing energy policies in advance of the 2019 Legislative Session. Adopting AB 206 is thus premature and would conflict with the goals and the roles of these committees.

### **Enhanced Renewable Portfolio Standard**

There is no doubt that on the surface, an increase in the RPS to forty percent in Nevada by 2030 is an important step, particularly because clean energy is a major part of our nation's energy future. Nevada is, and will be, a leader in this clean energy future as we have limitless solar potential and large geothermal, wind and lithium resources.

Indeed, Nevada has already met its existing RPS, and is the beneficiary of cheap (sometimes free), excess and unused renewable energy imported from California, which cannot use all of its clean energy generated as a result of its fifty percent RPS. Unless and until energy storage matures, an enhanced Nevada RPS policy will also produce excess renewable energy at the wrong times, which may not be able to be used by Nevada ratepayers, forcing Nevadans, like Californians, to pay for clean energy generated in Nevada that we do not need, and cannot use.

Such a result, of course, is unintended, but would cause increased rates for consumers without a return benefit. Moreover, if the incumbent utility is required to build large scale solar or enter into PPAs to meet the requirements of the new RPS proposed in AB 206, and thereafter be required to exit and cease generation because of energy choice, it is the ratepayers who will bear the risk for the stranded costs associated with new solar construction and PPAs resulting from this legislation.

Such an outcome is one that is better considered by the CEC, Legislative Committee on Energy, and the 2019 Legislature.

### **Support for AB 206**

It is conceded that AB 206 has received widespread local and national support. It is the subject of positive television, print and social media advertising and reporting. However, it is unclear if this support contemplates the ramifications on Nevadans of AB 206, its increased RPS and its implications on energy choice, net metering, energy storage and increased rates. Indeed, I am aware of only four states (Connecticut, Maine, Massachusetts, and New Jersey) that increased RPS before or in tandem with the adoption of a restructured energy market. These are issues that I must consider prior to signing a bill that on its surface is immensely popular.<sup>5</sup>

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<sup>5</sup> AB 206 did receive widespread opposition including the Nevada Resort Association, the Las Vegas Metro Chamber of Commerce, the Reno-Sparks Chamber of Commerce, the Henderson Chamber of Commerce, and NV Energy.

Moreover, I have reviewed numerous letters, emails and press articles, and spoken with supporters of this bill. None of them know, or could adequately answer, the questions associated with the risks of approving this bill prior to the adoption of energy choice.

### **Conclusion**

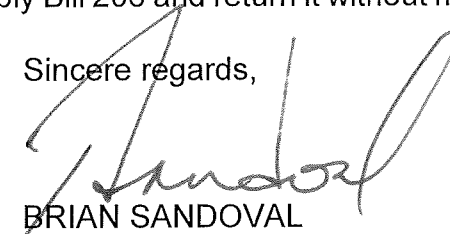
In conclusion, I reiterate my commitment to more clean, renewable energy in what I call the "New Nevada". Nevada will be the nation's leader in clean and renewable energy generation development. On the path to this goal, however, decisions must be responsibly informed with research, study and debate, particularly with the likelihood of the approval of energy choice in Nevada next year. For these reasons, although the promise of AB 206 is commendable, its adoption is premature in the face of evolving energy policy in Nevada.

### **Future Action**

To achieve the goals set forth in AB 206, and to respond to the concerns raised in this veto message, I will amend my Executive Order regarding the Committee on Energy Choice to direct it to study, review and discuss an increased RPS in the face of energy choice and make recommendations to me and the 2019 Legislature.

For these reasons, I veto Assembly Bill 206 and return it without my signature or approval.

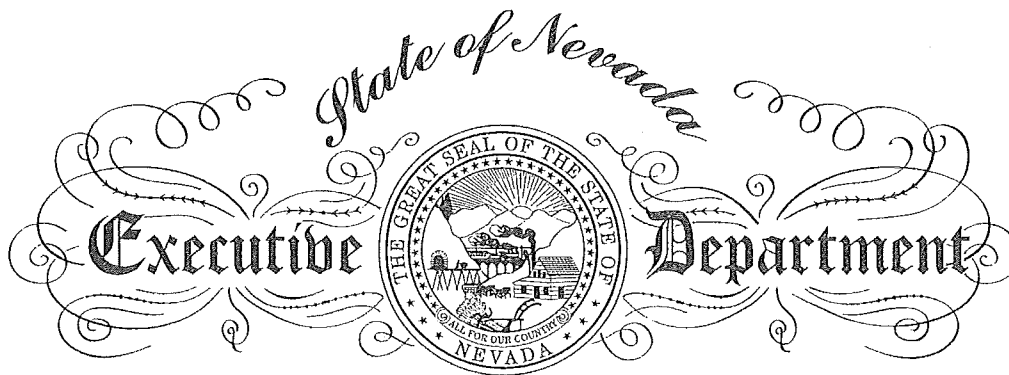
Sincere regards,



BRIAN SANDOVAL  
Governor

Enclosure

- cc: The Honorable Mark Hutchison, President of the Senate (without enclosure)
- The Honorable Jason Frierson, Speaker of the Assembly (without enclosure)
- The Honorable Aaron Ford, Senate Majority Leader (without enclosure)
- Claire J. Clift, Secretary of the Senate (without enclosure)
- Susan Furlong, Chief Clerk of the Assembly (without enclosure)
- Brenda Erdoes, Esq., Legislative Counsel (without enclosure)



**Executive Order 2017-10**

**ORDER AMENDING EXECUTIVE ORDER 2017-03**

**WHEREAS**, I, as Governor of the State of Nevada, established the Governor's Committee On Energy Choice ("CEC") by issuing Executive Order 2017-03 on February 9th, 2017;

**WHEREAS**, the issues the CEC was tasked with addressing included, but was not limited to:

- A. The need to amend laws governing the generation, transmission, purchase, and delivery of electricity to all Nevadans;
- B. Ensuring that all Nevadans have reasonable access to the open energy markets;
- C. Protecting consumers from energy-rate increases caused by the opening of energy markets;
- D. Preventing ratepayers and investors from possible economic losses associated with stranded investments;
- E. Promoting innovation and development in Nevada's renewable energy industries;
- F. Developing and expanding Nevada's energy industries such that Nevada become a net exporter of energy; and
- G. Providing Nevadans with energy choice as soon is reasonably practical or possible;

**WHEREAS**, the 79th Legislative Session recently concluded with the passage of, among other legislation, two bills concerning renewable energy: (1) Assembly Bill 206, which would have raised Nevada's renewable portfolio standards; and (2) Senate Bill 392, which would have allowed community solar gardens to begin operating in Nevada;

**WHEREAS**, both bills were vetoed on Friday, June 16th, 2017, because, among other things, there was significant uncertainty as to how the policies in the bills would be affected by the proposed amendment to the Nevada Constitution contained in the upcoming 2018 ballot question: The Energy Choice Initiative (the "Initiative");

**WHEREAS**, the members of the CEC are uniquely qualified to examine whether or how to implement the ideas in Assembly Bill 206 and Senate Bill 392 should Nevada's voters pass the Initiative for the second time;

**WHEREAS**, it is necessary and prudent that the CEC study, review, and discuss Nevada's renewable portfolio standards and community solar gardens, and make recommendations to the Office of Governor and the Legislature prior to the 2019 Legislative Session; and

**WHEREAS**, Article 5, Section 1 of the Nevada Constitution provides: "The supreme executive power of this State, shall be vested in a Chief Magistrate who shall be Governor of the State of Nevada."

**NOW, THEREFORE**, by the authority vested in me as the Governor by the Constitution and laws of the State of Nevada, it is hereby ordered as follows:

1. Executive Order 2017-03 shall be amended to add the following topics to those the Governor's Committee On Energy Choice shall address:

- a. Increasing Nevada's renewable portfolio standards;
  - b. Allowing community solar gardens to begin operating in Nevada.
2. Executive Order 2017-03 shall remain in force and effect in all other respects.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City, this 16th day of June, in the year two thousand seventeen.



A handwritten signature in black ink, appearing to read 'Sandoz', is written over a horizontal line.

Governor of the State of Nevada

By the Governor:

A handwritten signature in black ink, appearing to read 'Barbara K. Cogan', is written over a horizontal line.

Secretary of State

A handwritten signature in black ink, appearing to read 'Chadwick', is written over a horizontal line.

Deputy Secretary of State