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Energy; Geothermal Energy

Univeristy of the Pacific, McGeorge School of Law

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Energy

Energy; geothermal energy

N.R.S. §704.— (new); §§322.005, 361.027, 445.178, 533.030, 534.010, 534.050, 534A.010, 704.030, 704.870 (amended).
SB 164 (Jacobsen); STATS 1981, Ch 358

The Public Service Commission of Nevada (hereinafter referred to as the Commission)¹ is responsible for establishing and maintaining regulations pertaining to public utilities.² The enactment of Chapter 358 enlarges the jurisdiction of the Commission to include the regulation of the sale of geothermal energy³ to the public.⁴ Under Chapter 358, all persons⁵ who sell geothermal energy to the public are affected with a public interest, and constitute a public utility subject to the jurisdiction and control of the Commission.⁶ The Commission is given the authority to promulgate just and reasonable regulations which provide a system of permits for the sale of geothermal energy.⁷ These permit regulations must include provisions that (1) require the applicant to specify the geographic area that he or she can reasonably provide the services authorized,⁸ (2) preclude the granting of an exclusive right to supply geothermal energy,⁹ and (3) preclude the denial of a permit due to an existing gas or electric utility serving the proposed area.¹⁰ Furthermore, the applicant will be required to enter into a contract with each customer, the form and scope of which is subject to the review and approval of the Commission.¹¹ The contract must specify the period of time during which service is to be provided, not to be less than three

1. See N.R.S. §704.010 (definition of Commission).

2. See generally *id.* §704.— 1 (authority of Commission is derived from and limited to authority granted here and in §§704.033, 704.035).

3. See *id.* §§322.005, 361.027, 534A.010 (amending the definition of geothermal resource to mean the natural heat of the earth and the energy associated with that natural heat, pressure, and all dissolved or entrained minerals that may be obtained from the medium used to transfer that heat, excluding hydrocarbons and helium).

4. See generally *id.* §704.—.

5. See *id.* §704.015 (definition of person).

6. *Id.* §704.— 1. See also *id.* §§704.— 2, 704.030 6 (corporations or other persons who sell geothermal energy to entities which resell the energy are not subject to these restrictions).

7. See *id.* §704.— 3.

8. See *id.* §704.— 3(c).

9. See *id.* §704.— 3(b).

10. See *id.* §704.— 3(a).

11. See *id.* §704.— 3(d).

years unless expressly waived by the customer,¹² and the rates or the formula for determining the rates that will be charged during the term of the contract.¹³ The contract must also include a binding arbitration clause¹⁴ pertaining to damages suffered by the customer as a result of a disruption in service.¹⁵ The utility will be liable for damages unless it shows the disruption was caused by circumstances beyond its control, establishes that it was not negligent, or proves any other affirmative defense.¹⁶

Additionally, in granting an operating permit, the Commission must consider certain factors.¹⁷ Specifically, the Commission must consider the applicant's fitness, willingness, and ability to provide the services authorized in the permit.¹⁸ The applicant must have tested the geothermal reservoir to determine whether it appears to be capable of providing sufficient energy to supply its intended uses,¹⁹ and the system which the applicant intends to use to produce and distribute the heat must meet the appropriate standards.²⁰ Finally, the Commission may continue to regulate these utilities to ensure that each utility conforms with the conditions set forth in its operating permit and that adequate service is being provided.²¹

In a related measure dealing with geothermal resources, existing law permits the appropriation of water when it is not subject to existing rights and the diversion is for a beneficial use.²² Beneficial use currently includes the appropriation of water for recreational purposes.²³ Chapter 358 supplements the scope of beneficial use by including the utilization of groundwater for energy, including heat and pressure.²⁴ The energy may be obtained through an actual diversion when there is a water right, or through a process which is not diversionary but extracts heat, for which a water right may be obtained to protect an interest in the energy produced by the groundwater.²⁵ Moreover, existing law defines the domestic use of underground water wells to include

12. *See id.* §704.— 3(d)(1).

13. *See id.* §704.— 3(d)(2).

14. *See generally id.* §§38.015-38.205 (Uniform Arbitration Act).

15. *See id.* §704.— 3(d)(3).

16. *See id.*

17. *See generally id.* §704.— 4.

18. *See id.* §704.— 4(a).

19. *Id.* §704.— 4(b).

20. *Id.* §704.— 4(c).

21. *Id.* §704.— 5.

22. *See id.* §533.030 1, 2. *See also id.* §533.035 (beneficial use as the basis, measure, and limit of the right to use water).

23. *See id.* §533.030 2.

24. *See id.* §533.030 3.

25. *Id.*

culinary and household purposes, and in single-family dwellings to include the watering of a family garden, a lawn, and domestic animals.²⁶ Chapter 358 expands the scope of domestic use to include geothermal resources for domestic heating.²⁷

26. *Id.* §534.010 1(c).

27. *Id.*

Energy