



FACT SHEET

Question 3: Energy Choice Initiative

1. What is Question No. 3?

Question No. 3: The Energy Choice Initiative (ECI) is a statewide constitutional ballot initiative that will be placed before Nevada's registered voters at the November 8, 2016, General Election. Question No. 3 seeks to amend the *Nevada Constitution* by adding a new section to its Declaration of Rights regarding the provision of electric utility service in the State.

Question No. 3 reads: "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?"¹

A "YES" vote means that the Legislature would be required to establish a law to provide for an open, competitive retail electricity market by July 1, 2023. A "NO" vote means that the *Nevada Constitution* would not be amended to require the Legislature to provide a law for an open, competitive retail electricity market.

2. Why is this measure coming to the voters?

The Nevadans for Affordable, Clean Energy Choices Political Action Committee (PAC), "a statewide coalition,"² circulated a petition to voters and obtained the requisite number of signatures to qualify for the November 2016 ballot.³ For a petition to appear on the ballot, the Secretary of State makes a determination of sufficiency.³ On July 12, 2016, Nevada Secretary of State Barbara Cegavske certified that The Energy Choice Initiative was sufficient and designated it as Question No. 3.⁴

3. What happens if Question No. 3 passes?

Question No. 3: The Energy Choice Initiative is an initiative petition for amendment of the *Nevada Constitution*. Initiative petitions that propose to amend the *Nevada Constitution* require passage by the voters "in two successive elections before [they] can be added to the Nevada Constitution."⁵ If Question No. 3 passes, it will be placed on the ballot again at the 2018 General Election for voter approval "in the

¹ To qualify for the ballot, signatures of at least 10 percent of registered voters who voted in the previous General Election—in this case, the 2014 General Election—are required. Ten percent of voters in the preceding General Election means that the qualification requirement was at least 55,234 valid signatures. Source: Nevada Secretary of State. "Filing a Constitutional Initiative." Available: <http://nvsos.gov/sos/elections/initiatives-referenda/filing-a-constitutional-initiative>. There were 76,876 valid signatures on The Energy Choice Petition. A signature count is available on the Secretary of State's website. See: Office of Nevada Secretary of State Barbara K. Cegavske. 2016. "The Energy Choice Initiative Petition." Available: <http://nvsos.gov/sos/home/showdocument?id=4349>.

same manner as such question was originally submitted.”^b If a majority of voters approve the ballot initiative in 2016, and again in 2018, the Legislature and the Governor must enact statutes that set forth implementation for the amendment’s provisions by July 1, 2023.

If the voters approve ECI in November 2018, the Legislature and the Governor would have to enact legislation consistent with the amended language of the *Constitution* by July 1, 2023, that establishes a competitive retail electric energy market. The amendment would add the following concepts to Article 1 of the *Nevada Constitution*:

1. Declaration of Policy: Open and competitive electricity markets that afford choices among different providers; minimizing of economic and regulatory burdens for the promotion of competition and choice in the electric energy market.⁶
2. Rights of Electric Energy Purchasers: Every Nevadan customer—that is, residential, commercial, and industrial—would be entitled to electricity choice, which includes choosing one’s electricity utility service from the competitive retail market, producing one’s own electricity, or producing electricity in concert with others; no customer would be required to obtain its electricity from a single provider (effective no later than July 1, 2023).⁷
3. Implementation:
 - (a) No later than July 1, 2023, legislation must be enacted that conforms with the provisions of the constitutional amendment; the law must “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.”⁸ Deregulation of transmission and distribution is not mandated for the establishment of a competitive market.^c
 - (b) Once the law is enacted, any regulatory orders or provisions that conflict with the law are nullified; conforming legislation can be enacted—in part or in full—before July 1, 2023.⁹
 - (c) The amendment should not be understood as intended to undermine Nevada’s public policies on “renewable energy, energy efficiency and environmental protection”; the establishment of a competitive energy market does not undermine the Legislature’s ability to impose these types of policies.¹⁰
4. Severability: If any part of the amendment is deemed invalid, it would not affect the amendment’s other provisions.¹¹

^b The portion enclosed in quotes is obtained directly from the *Nevada Constitution*. See: Nev. Const. art. 19, § 2(4). Available: <https://www.leg.state.nv.us/const/nvconst.html#Art19>.

^c The electricity delivery process is comprised of four processes: generation, transmission, distribution, and retail service. See: U.S. Department of Energy, Energy Information Administration. 2015. “Electricity Explained: How Electricity Is Delivered To Consumers.” Available: http://www.eia.gov/Energyexplained/index.cfm?page=electricity_delivery.

4. What happens if Question No. 3 fails to pass?

If Question No. 3: The Energy Choice Initiative fails to pass, no further action will be taken on the initiative petition.¹² That is, it will not appear on the ballot at the General Election in 2018.

Nevada residents would continue to obtain their electricity service from the supplier in their designated service territory. There are nine electricity service providers in Nevada with service territories designated by the Public Utilities Commission of Nevada (PUCN): seven cooperative associations (Harney Electric Cooperative, Inc.; Mt. Wheeler Power, Inc.; Plumas-Sierra Rural Electric Cooperative, Inc.; Raft River Rural Electric Cooperative, Inc.; Surprise Valley Electrification Corporation; Valley Electric Association, Inc.; and Wells Rural Electric Company) and two subsidiaries of one investor-owned electric utility (Nevada Power Company and Sierra Pacific Power Company, doing business as NV Energy).¹³ There is also a municipal power authority, City of Fallon, and two public utility districts, Lincoln County and Overton.¹⁴ NV Energy supplies electricity to 2.4 million Nevadans over a near-46,000 square-mile service territory.¹⁵ Nevada's population is approximately 2.8 million, which suggests that NV Energy serves about 86 percent of its residents.¹⁶

If Question 3 fails to pass, the providers of electricity and electric service across the state would continue to operate within the same oversight and regulations that exist today. Each cooperative, public utility district, and municipality has its own form of government; the PUCN would continue to oversee the rates and operations of NV Energy. These governmental authorities have the ability to reformulate the rules of retail electric service at any time for the service territories within their jurisdictions without a constitutional amendment. Both the *Constitution* and the Nevada Revised Statutes remain open to process by the public or by the Legislature for amendment.

Thus, nothing in Nevada law would prevent a citizen from filing and circulating a new initiative petition in 2018 if the requisite numbers of signatures were obtained and then certified by the Nevada Secretary of State's Office by the specified deadlines. If such a ballot measure were a constitutional amendment, it would need to appear in identical form on both the 2018 and 2020 ballots and be approved by a majority of the voters before its provisions could be effectuated. The State Legislature, likewise, would not be prohibited from passing legislation related to the Energy Choice Initiative or even duplicative in nature.

Nongovernmental commercial or industrial end-use customers that consume an annual average of one megawatt of electricity in the service territory of an electric utility still would be able to file an application with the PUCN in order to produce or procure electricity from an alternative supplier to the one in their designated service territory.¹⁷ Chapter 704B of the Nevada Revised Statutes states that providers of new electric resources—that is, electric resources generated from assets not owned by a utility—are not defined as utilities.^d While such providers are not regulated as utilities, the PUCN retains oversight with regard to renewable portfolio standard obligations. Under Nevada's portfolio standard, all providers of electric service, including providers of new electric resources, must generate, acquire, or save electricity from portfolio energy systems or efficiency measures consistent with NRS 704.7821 and 704.78213.¹⁸

^d By extension, there are some providers of new electric resources serving eligible customers in Nevada under NRS 704B that are not included in the PUCN's list of nine electricity service providers. See also: Nevada Revised Statutes. Ch. 704B. Available: <https://www.leg.state.nv.us/nrs/NRS-704B.html>

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- ² Nevadans for Affordable Clean Energy Choices. "About Us." Available: <http://energyfreedomnv.com/#about>.
- ³ State of Nevada, Secretary of State. 2016. "Initiative & Referendum Guide 2016." Page 9. Available: <http://nvsos.gov/sos/home/showdocument?id=4080>.
- ⁴ Kaitlin Barker. "Nevada Secretary of State's Office Certifies Sufficiency of Three Petitions." Nevada Secretary of State Press Release. July 12, 2016. Available: <http://nvsos.gov/sos/Home/Components/News/News/2113/23>.
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- ⁹ State of Nevada. 2016. "Initiative Petition – Constitutional Amendment: THE ENERGY CHOICE INITIATIVE." Available: <http://nvsos.gov/sos/home/showdocument?id=4089>.
- ¹⁰ State of Nevada. 2016. "Initiative Petition – Constitutional Amendment: THE ENERGY CHOICE INITIATIVE." Page 1. Available: <http://nvsos.gov/sos/home/showdocument?id=4089>.
- ¹¹ State of Nevada. 2016. "Initiative Petition – Constitutional Amendment: THE ENERGY CHOICE INITIATIVE." Available: <http://nvsos.gov/sos/home/showdocument?id=4089>.
- ¹² Nev. Const. art. 19, § 2(3). Available: <https://www.leg.state.nv.us/const/nvconst.html#Art19>.
- ¹³ State of Nevada, Public Utilities Commission. "Electric, Natural Gas, LP Gas, and Alternate Sellers of Natural Gas Lists." The list of electric sellers is available at: <http://pucweb1.state.nv.us/PUC2/Electric/ElectCoReports.aspx?Util=Electric&AspxAutoDetectCookieSupport=1>; the PUCN "regulates investor-owned public utilities that provide a monopoly utility service to customers" (i.e., NV Energy)—it "does not regulate the service quality or rates of cooperatives or other non-profit utilities... [but] may have some limited oversight concerning these types of utilities' service territory, construction permits for new plant, and excavation practices that may impact underground facilities (pipeline, electrical wire, etc.)." See: State of Nevada, Public Utilities Commission. "FAQs: Who Does the PUCN Regulate?" Available: <http://puc.nv.gov/FAQ/Who Does the PUCN Regulate/>; on Nevada Power Company and Sierra Pacific Power Company doing business as NV Energy, see: NV Energy. "About Us." Available: <https://www.nvenergy.com/company/index.cfm>.
- ¹⁴ Information provided to the Guinn Center by NV Energy on October 19, 2016.
- ¹⁵ NV Energy. 2014. "Power Facts." Available: <https://www.nvenergy.com/company/facts.cfm>.
- ¹⁶ U.S. Department of Commerce, Bureau of the Census. "2010-2014 American Community Survey 5-Year Estimates: Demographic and Housing Estimates (Nevada)." Available: http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14_5YR/DP05/0400000US32.
- ¹⁷ Nevada Revised Statutes. Ch. 704B. Available: <https://www.leg.state.nv.us/nrs/NRS-704B.html>.
- ¹⁸ Nevada Revised Statutes. § 704.7821. Available: <http://www.leg.state.nv.us/nrs/nrs-704.html#NRS704Sec7821>; Nevada Revised Statutes. § 704.78213. Available: <http://www.leg.state.nv.us/nrs/nrs-704.html#NRS704Sec78213>.