

The meeting was held at 1:00 p.m. on Thursday, May 19, 2016, at the Clark County Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada.

COMMISSIONERS IN ATTENDANCE

Chairman	George F. Ogilvie III
Commissioner	Sam Bateman
Commissioner	Kara J. Kelley
Commissioner	Duncan R. McCoy
Commissioner	Steve Sisolak
Commissioner	Cody T. Winterton

COMMISSIONER NOT IN ATTENDANCE

Vice Chairwoman	Puoy K. Premsrirut
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DEPUTY ATTORNEYS GENERAL

Special Counsel, Attorney General	Jennifer T. Crandell
Special Counsel, Attorney General	Ann C. Pongracz
Deputy Attorney General	Christine Guerci-Nyhus

COMMISSION STAFF IN ATTENDANCE

Executive Director	Jayne Harkins, P.E.
Chief of Finance and Administration	Douglas N. Beatty
Assistant Director of Energy Services	Gail A. Bates
Assistant Director of Engineering and Operations	Robert D. Reese
Hydropower Program Manager	Craig N. Pyper
Natural Resource Manager	Angela K. Slaughter
Natural Resource Analyst	Peggy Roefer
Natural Resource Analyst	Warren Turkett
Senior Accountant	Gail L. Benton
Senior Energy Accountant	Richard M. Sanders
Office Manager	Judy K. Atwood
Administrative Assistant III	Carol L. Perone
Administrative Assistant II	Angela Sarno

OTHERS PRESENT; REPRESENTING

Consultant	Sara A. Price, Esq.
Office of the Attorney General	Jeffery Menicucci
Southern Nevada Water Authority	Jordan Bunker
Southern Nevada Water Authority	Scott Krantz

**COLORADO RIVER COMMISSION
OF NEVADA
MEETING OF May 19, 2016**

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The Colorado River Commission meeting was called to order by Chairman Ogilvie at 1:03 p.m. followed by the pledge of allegiance.

A. Conformance to Open Meeting Law.

Executive Director Jayne Harkins confirmed that the meeting was in compliance with the Open Meeting Law.

B. Comments from the public. (No action may be taken on a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken.)

Chairman Ogilvie asked if there were any comments from the public. There were none.

C. For Possible Action: Approval of minutes of the April 21, 2016 meeting.

Commissioner Kelley moved for approval of the minutes. The motion was seconded by Commissioner McCoy and approved by a unanimous vote.

D. For Possible Action: Consideration of and possible action to approve filing a Petition for Leave To Intervene (PLTI) with the Public Utilities Commission of Nevada (PUCN) to participate in future PUCN proceedings concerning the filing made by Nevada Power Company d/b/a NV Energy (NPC) of a proposed Hoover D tariff which will be applied to the Colorado River Commission of Nevada's (Commission's) Schedule D Hoover Contractors.

Gail A. Bates, Assistant Director of Energy Services, provided background for the Commission's consideration of filing a PLTI.

In 2013, the Nevada Legislature amended NRS 704.787, requiring the PUCN to establish a tariff under which NPC will provide transmission and distribution services to the Commission's Schedule D Hoover (Hoover D) Contractors. On May 5, 2016, NPC filed a Hoover D tariff with the PUCN and requested PUCN approval of this tariff by October 1, 2016 as required by NRS 704.787.

Under the terms of this proposed Hoover D tariff, the Commission's Hoover D Contractors will allow NPC to use their Hoover power allocations and they will receive a check from NPC reflecting the value of this power. These Contractors will continue to pay NPC's tariffed power rates for the other services they receive from the company.

Under the rules of the PUCN, the Commission must submit a PLTI in order to have the opportunity to participate in the PUCN's proceeding which will consider the Hoover D tariff proposed by NPC. Staff recommends that the Commission participate in this proceeding to protect the interests of the Commission and of its Hoover D Contractors. As required by the rules of the PUCN, the Commission has a direct and substantial interest in this proposed tariff,

which cannot be protected adequately by any other party. Accordingly, Staff requests that the Commission approve its request to file a PLTI in this proceeding.

Ms. Bates noted that the PUCN has set a deadline of June 1, 2016 for filing of PLTIs, and she recommend the Commission allow Staff to file the PLTI to obtain the opportunity to participate in discovery and to actively participate in the proceeding and any negotiations that may occur. It was further noted that the Commission's Contractors are evaluating whether they should intervene as well.

Commissioner Sisolak expressed concern towards costs of the filing the PLTI.

Ms. Bates explained that most of the cost is already written into Commission costs as in-house counsel and consultants are currently working with Staff on this matter.

Commissioner Sisolak stated he was okay with using in-house counsel and consultants but was not comfortable in hiring outside law firms or consultants that would cost the Commission hundreds of thousands of dollars.

Ms. Bates explained that the Commission has a consultant under contract and that contract was approved in part in anticipation of this proceeding. The consultant does take direction from Staff and that helps in controlling the cost.

Commissioner McCoy moved for approval on filing a PLTI with the PUCN to participate in future PUCN proceedings. The motion was seconded by Commissioner Kelley and approved by a unanimous vote.

E. <i>For Information Only:</i> Presentation from the Nevada Department of Administration's Purchasing Division on the State contracting process.
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Ms. Harkins introduced Jeffery Menicucci, Deputy Attorney General, who is legal counsel to the Nevada Department of Administration's Purchasing Division.

Mr. Menicucci explained the State contracting process and particularly contracting with Independent Contractors. A copy of Mr. Menicucci's presentation is attached and made a part of the minutes. (See Attachment A)

Following Mr. Menicucci's presentation, Commissioner Winterton asked a question regarding the instance of a contract recently between two government agencies, in particular between the Commission and the City of Boulder City. In the contract there is a State standard indemnification provision in which the two agencies were indemnifying each other. Commissioner Winterton asked whether this was unduly ambiguous and he asked for clarification on it.

Mr. Menicucci addressed Commissioner Winterton's concern by explaining that interlocal contracts go a couple of different ways: 1) a mutual indemnification is generally acceptable between government agencies because the agencies are all covered under the same limited

liability, or 2) two agencies get together and say neither party waives the right or defense to indemnification and leaves it at what the statutory of common law would provide.

Commissioner Winterton explained that he was just making sure that the Commission was not putting itself at undue risk of who is going to pay for what type of situation.

Mr. Menicucci noted that the real risk of indemnification is agreeing to indemnify a private entity.

Commissioner Sisolak thanked Mr. Menicucci for the presentation and asked if this presentation was a result of something the Commission did wrong.

Mr. Menicucci assured Commissioner Sisolak that he was not aware of any issues. Staff had requested a presentation on the State contracting process, and his office is trying to improve the dissemination of information on the contracting process.

Ann C. Pongracz, Special Counsel Attorney General, stated that she asked Mr. Menicucci to make the presentation, after checking with Commission's management, because of the fact that from time-to-time Staff can have difficulty determining which process is appropriate, what process to apply, and what the rules apply to purchasing by State agencies in contrast to the purchasing rules for local government agencies. Ms. Pongracz went on to explain that she and Mr. Menicucci have worked together in a practice group within the Attorney General's office that addresses transactional legal issues for the State and that she knew Mr. Menicucci to be very knowledgeable on State purchasing.

Commissioner Sisolak asked Mr. Menicucci for clarification about contract solicitation by Request for Proposal (RFP). He asked whether criteria and weighting are prescribed by statute, and whether the Commission is precluded from providing the weighting to RFP respondents.

Mr. Menicucci stated yes, the statute provides that the weights of the criteria shall not be provided to RFP respondents.

Commissioner Sisolak asked who determines the weights. Is this done by the Staff that assembles the RFP?

Mr. Menicucci answered that it depends upon who issued the RFP, stating that the committee or person who issues the RFP should determine the weights. This should be done ahead of time and is not disclosed in the RFP itself.

Commissioner Sisolak asked when the weights are disclosed to the RFP respondents.

Mr. Menicucci stated not until the contract is awarded.

Commissioner Sisolak asked if it is not until after the contract is awarded then when would the Contractor protest.

Mr. Menicucci explained that once a contract is awarded, there is a protest period of ten days and at that point a lot of things become available to the vendors that were not available before. The vendors can see the other proposals that were submitted, except where the information might be confidential; and can see the weights, and scores which have been given if requested.

Commissioner Sisolak asked whether protests are allowed after the RFP has been awarded.

Mr. Menicucci stated yes; once a notice of contract award is issued, the clock then starts for contractor protests. A bond must be filed with the appeal for 25% of the value of the contract, which can be significant. Once that is filed, there is an expedited hearing with an administrative judge and a stay of any further action on that contract.

Commissioner Sisolak asked whether RFPs would be voted on by a board.

Mr. Menicucci stated that, normally when dealing with Executive Branch agencies, there is not a board. Instead, an evaluation committee is appointed to receive the proposals, review and score proposals, and then the contract is awarded based on that score. If there is a public body there is a conflict between the confidentiality requirements to keep the contracts confidential until the contract is awarded and the Open Meeting Law that generally has business being conducted out in the public. It is a conflict that can be avoided if an evaluation committee is used. If a board itself were to score and evaluate the proposals, there could be a problem in harmonizing the confidentiality of the contracting system with the public meeting obligations of a public body.

Commissioner Sisolak stated it seems that using a committee is circumventing the Open Meeting Law to avoid having the discussion in public.

Mr. Menicucci noted there is a chapter about how to get contracts approved with an evaluation committee which is not considered a public body.

Commissioner Kelley asked who within the Commission assures compliance for this very detailed responsibility.

Ms. Pongracz responded that the Executive Director generally assigns one of the legal counsels from the Attorney General's office, depending on subject matter, to do the contract review and make the decision to involve anyone else that may be able to lend a hand.

Commissioner Kelley asked whether there is a presumption that by the time the contract comes to the Commission members the contract has been vetted on all of the State requirements.

Ms. Pongracz stated yes; and that is what it means when you see the "Approved as to form line" on the contract.

Chairman Ogilvie asked about amendments and when the amendment is below a certain amount the Commission can approve it without going to the Board of Examiners (BOE). An agency in general needs to be careful because a \$20,000 contract that is amended six times could end up

being a million dollars. Does that constitute as an *ultra vires* act of the agency such that an amendment at some point becomes void?

Mr. Menicucci replied it would not be considered in the example an *ultra vires* act because of the amount. The Clerk of the BOE, once it is approved, would report to BOE the next month that he signed the contract for over \$2,000 to \$49,999. If an amendment made the contract amount over \$50,000, that amendment would then be considered by the BOE which consists of the Governor, the Secretary of State and the Attorney General. Once the contract dollar amount starts getting large, the BOE does review the contract.

Commissioner Winterton asked Mr. Menicucci for his thoughts on private vendors asking the Commission to agree to a confidentiality provision.

Mr. Menicucci noted that needs careful review as there are public records laws that place an obligation on public bodies to produce documents that they have in their possession that are public documents. The State purchasing statutes have a provision in Nevada Revised Statutes 333.333 that requires the vendor to designate which parts of the document include confidential trade secrets. If that material is designated, then there is statutory authority not to produce the information pursuant to a public document request. The State is often not in a position to know if the material is trade secret or not. It should be noted that the agency is not an expert on the vendor's trade secrets, and if a request is received the vendor is expected to stand up and defend the material.

Jennifer T. Crandell, Special Counsel Attorney General, stated that she also represents the Nevada Tax Commission which has a well-defined statute and regulation that helps to deal with confidentiality. There are provisions which apply if someone considers the information to be confidential or trade secret; the meeting will be closed, the information is heard, and then it is determined if the information is actually confidential, trade secret or proprietary and move on with the discussion in a closed session.

Commissioner Sisolak asked if contracts are awarded by Staff or by an evaluation committee, and asked if the Commission does not vote on certain contracts and whether the Commission could get a list every quarter or something like that of contracts not approved by the Commission.

Ms. Harkins stated that Staff brings every contract to the Commission for approval. Staff does the technical review and the weights; the review committee includes Staff and some of the customers may participate on it as well depending on the contract.

Commissioner Sisolak asked when the protest period begins. Normally at the County after the staff recommends the award, the proponent gets so much time to protest. The proponent comes to the meeting and protest for a stated reason.

Ms. Pongracz clarified the steps to the process. Staff develops a proposal, goes through the RFP process and develops a recommendation for consideration of the Commission; which has been reviewed by counsel and presented in the Commissioner's briefing package. Once the

Commission approves, many contracts have to go on to the BOE for its consideration and approval.

Douglas N. Beatty, Chief of Finance and Administration, noted that in the RFP process Staff will evaluate and will make a recommendation on which Contractor is chosen. Staff notifies the vendors of Staff's recommendation that vendor "X" will get this contract, and then the 10 day window can start. If there is a protest Staff addresses it and does not present the contract to the Commission until it is resolved.

Robert D. Reese, Assistant Director of Engineering and Operations, stated that after the evaluation a notice goes out to all the bidding vendors with the intent of the Commission to award the contract. During that time frame the vendor has the opportunity to file a formal protest of the award of contract prior to the consideration of the Commission for approval.

Commissioner Sisolak clarified whether the protest is to the Staff's recommendation; not the awarding since the contract has not been awarded until Commission approves it.

Mr. Reese stated yes. Staff sends the intent notice out to the vendors who then have to do their due diligence to file a formal protest prior to the award of contract going to the Commission.

Commissioner Sisolak stated there is a cone of silence until that is published.

Ms Pongracz stated that Staff takes into account and incorporates input if any into the recommendation and brings it to the Commission with the contract. Once the Commission approves the contract, and if it is the type of contract that requires approval from the BOE, it is sent for further consideration to the BOE.

Chairman Ogilvie stated that construction contracts are exempt from the BOE.

Mr. Reese stated the 10 day window for a protest to be filed is when the notice of intent is sent to the vendors. There is a period of time when vendors can file the formal protest if they desire prior to a Commission meeting.

Commissioner Sisolak raised a question as to when the weights are determined.

Mr. Reese stated that the weights are established prior to the RFP but not disclosed to the vendor, and are applied when the contract is evaluated.

Commissioner Sisolak inquired as to when a vendor would find out what the weights and various criteria are.

Mr. Reese stated that when the notice of intent is issued, the vendor can request the bid registry and the weighted score.

Mr. Menicucci commented that the Purchasing Division's process is different since it is dealing with agencies and not public bodies that have a meeting on the matter. A notice of intent is sent,

a contract is then negotiated and the agency agrees to it, and at that point there is a notice of award and that starts the appeal process.

Commissioner Sisolak commented that is why a common complaint heard is that everyone has their own set of rules and everyone does things a little bit different.

Mr. Menicucci stated that in general when an evaluation committee comes back with a recommendation for a vendor sometimes the contract negotiation fails. The statute indicates a couple of options which include awarding the second vendor, and withdrawing the RFP and starting over. The appeal does not start until a notice of award is issued and both parties agree to enter into a contract.

Chairman Ogilvie asked Ms. Pongracz to speak with Mr. Menicucci and go through the Commission's process to guarantee compliance.

Ms. Pongracz agreed to do so.

F. *For Information Only: Introduction of the Colorado River Commission of Nevada's fiscal year 2018 and 2019 budget recommendation.*

Mr. Beatty presented the draft fiscal 2018 and 2019 budget recommendations to the Commission.

A copy of the presentation is attached and made a part of the minutes. (See Attachment B)

The Commission and customers will have time to continue the review of the budget prior to it being placed on the June meeting for Commission adoption.

Commissioner Kelley asked a process question. Is there an opportunity for an agency to ask the Executive Branch to reconsider the inclusion of an item that was not previously included in the Governor's budget during the Legislative Session after the Economic Forum meets?

Mr. Beatty answered yes, and the request would need to be coordinated with the Governor.

Commissioner Bateman left the meeting during this time.

Commissioner Kelley asked Staff to highlight any changes from the draft budget at the May meeting in an Executive cover memo for the Commission's briefing notebooks for the June meeting adoption of the budget.

Mr. Beatty agreed to do so.

G. For Information Only: Status update on the State and federal Post-2017 Hoover Power contracts.

Ms. Harkins stated that all contracts have been sent to the Commission customers and that executed contracts have been received already from Lincoln County Power District No. 1 and Basic Water Company. Contracts also have been approved by the City of Henderson, City of Las Vegas, Overton Power District No. 5, and SNWA, and Staff is awaiting the signed documents. Staff is expecting to receive all the signed contracts by the June Commission meeting, and to propose them for Commission approval at that time.

Chairman Ogilvie asked what happens after Commission approval.

Ms. Harkins stated that the contracts require the Governor's signature; and that Staff is working with the Governor's office to coordinate the Governor's signing of the contracts.

Ms. Pongracz presented an update on the State and federal Post-2017 Hoover Power Contracts. A copy of her presentations are attached and made a part of the minutes. (See Attachments C & D)

Chairman Ogilvie asked if there was an anticipated date for final agreement for the Federal Electric Service Agreement and the Restated Implementation Agreement.

Ms. Pongracz stated that the Restated Implementation Agreement is virtually complete but does not expect it to be released until the Electric Service Contract is complete, which about 98% complete, with just one issue waiting to be resolved. Staff is hopeful that this will happen before the end of May and to have final federal contracts in early June to include in the June Commission meeting.

H. For Information Only: Status update on the hydrologic conditions, drought, and climate of the Colorado River Basin, Nevada's consumptive use of Colorado River water, and other developments on the Colorado River.

Warren Turkett, Natural Resource Group Analyst, provided a report on the following:

- Unregulated Inflow into Lake Powell as of May 16, 2016
- Lake Powell Unregulated Inflow Water Year 2016 Forecast
- Storage Conditions as of May 16, 2016
- Reservoir Storage as of May 17, 2016
- Lake Powell Projections based on May 2016, 24-Month Study
- Lake Mead Projections based on May 2016, 24-Month Study
- CRSS Results - April 2016
- U.S. West Drought Monitor as of May 10, 2016
- U.S. Seasonal Drought Outlook as of April 21, 2016
- Precipitation – Colorado River Basin as of May 16, 2016
- Precipitation – Monthly for April 2016 and Water Year October 2015-April 2016

- Colorado Basin River Forecast Center Snowpack Conditions
- Temperature Deviations April 2016
- Las Vegas Monthly Precipitation
- Las Vegas Average Temperature
- Hydropower Capacity
- Consumptive Use Jan-Mar 2015 vs Jan-Mar 2016
- Water Use in Southern Nevada Jan-April 2016
- Water Use Comparison January – April 2016
- Water Use Monthly Cumulative Consumptive Use 2014, 2015, 2016

A copy of the presentation is attached and made a part of the minutes. (See Attachment E)

I. Comments from the public. (No action may be taken on a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken.)

Chairman Ogilvie asked if there were any comments from the public. There were none.

J. Comments and questions from the Commission members.

Chairman Ogilvie asked if there were any comments or questions from the Commission. There were none.

K. Selection of the next possible meeting date.

The next meeting is tentatively scheduled for 1:00 p.m. on Wednesday, June 29, 2016, at the Grant Sawyer State Office Building, 555 East Washington Avenue, Room 4412, Las Vegas, Nevada.

L. Adjournment.

The meeting adjourned at 2:44 p.m.

Jayne Harkins, P.E., Executive Director

APPROVED:

George F. Ogilvie III, Chairman