

The meeting was held at 1:03 p.m. on Tuesday, November 12, 2013, at the Grant Sawyer State Office Building, 555 East Washington Avenue, Suite 4401, Las Vegas, Nevada.

**COMMISSIONERS IN ATTENDANCE**

|               |                       |
|---------------|-----------------------|
| Chairman      | George F. Ogilvie III |
| Vice Chairman | Berlyn D. Miller      |
| Commissioner  | Bob Coffin            |
| Commissioner  | J. Brin Gibson        |
| Commissioner  | Duncan R. McCoy       |
| Commissioner  | Puoy K. Premsrirut    |
| Commissioner  | Steve Sisolak         |

**SPECIAL COUNSEL, ATTORNEYS GENERAL**

|                                  |                      |
|----------------------------------|----------------------|
| Special Counsel Attorney General | Jennifer T. Crandell |
| Special Counsel Attorney General | Ann C. Pongracz      |

**COMMISSION STAFF IN ATTENDANCE**

|  |                     |
|--|---------------------|
| Executive Director                               | Jayne Harkins, P.E. |
| Chief of Finance and Administration              | Douglas N. Beatty   |
| Assistant Director of Engineering and Operations | Robert D. Reese     |
| Manager, Energy Services                         | Gail A. Bates       |
| Manager, Hydropower Program                      | Craig N. Pyper      |
| Manager, Natural Resources Group                 | McClain L. Peterson |
| Natural Resource Analyst                         | Jason Thiriot       |
| Natural Resource Analyst                         | Warren Turkett      |
| Assistant Hydropower Program Manager             | Lisa M. Ray         |
| Hydropower Program Specialist                    | Dana Corkill        |
| Senior Accountant                                | Gail L. Benton      |
| Senior Energy Accountant                         | Kalora E. Snyder    |
| Office Manager                                   | Judy K. Atwood      |
| Administrative Assistant IV                      | Brenda L. Haymore   |
| Administrative Assistant III                     | Carol L. Perone     |

**OTHERS PRESENT; REPRESENTING**

|                                 |                     |
|---------------------------------|---------------------|
| Consultant                      | Sara A. Price, Esq. |
| Self                            | Marybel Batjer      |
| Self                            | Christian Gerlach   |
| Southern Nevada Water Authority | Jordan Bunker       |
| Southern Nevada Water Authority | John Entsminger     |
| Southern Nevada Water Authority | Patricia Mulroy     |

**COLORADO RIVER COMMISSION  
OF NEVADA  
MEETING OF NOVEMBER 12, 2013**

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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 or questions from the public.

Christian Gerlach, 3414 Fort Niagara Avenue, North Las Vegas, Nevada, 89032, had comments. Mr. Gerlach stated that he had concerns about water quality, specifically citing an issue that was raised last year on October 29, 2012, by Senator Mark Manendo and Bob Coffin about potential issues from shale and oil development in Colorado and it affecting the quality in Southern Nevada.

Mr. Gerlach commented on issues regarding information presented to Northern Nevada. There is shale and oil fracking development going on right now and it is of great concern that there are no actual regulations on it until July 2015. Prior to the regulation date, hydrologic fracking is occurring and the concern is about the groundwater intermixing with the Colorado River.

Mr. Gerlach has spoken with the State of Nevada water hydrologist earlier this year and was told there is some intermingling between the Colorado River and Southern Nevada's water table, the extent to which is not fully understood.

Chairman Ogilvie thanked Mr. Gerlach and asked if there were any other comments or questions from the public.

Commissioner Coffin stated that he had looked into what is going on upstream not in Nevada but in the Upper Basin states, and did sign a letter indicating concern as a member of the Southern Nevada Water Authority. Commissioner Coffin did not speak as a member of the Commission about the dangers regarding what is going on above our water supply.

**C. For Possible Action: Approval of minutes of the October 8, 2013 meeting.**

**Commissioner Coffin moved for approval of the minutes. The motion was seconded by Vice Chairman Miller and approved by a unanimous vote.**

**D. For Possible Action: Consideration of and possible action to set the amount of collateral the Colorado River Commission of Nevada's (Commission's) retail industrial customers are required to post for calendar year 2014 pursuant to their contracts with the Commission.**

Ms. Dana Corkill, Hydropower Program Specialist, stated that Staff was presenting and seeking approval for the Commission's retail industrial customers' collateral requirements for the calendar year of 2014. The Commission is required by statute, Nevada Revised Statutes (NRS) 538.181(2) and Nevada Administrative Code (NAC) 538.744, to conduct an annual review of the creditworthiness of its industrial customers.

NRS 538.181(2) requires that Commission's power customers, except federal and state agencies and political subdivisions, to provide an indemnifying bond or other collateral approved by the Nevada State Board of Examiners "in such sum and in such manner as the commission may require, conditioned on the full and faithful performance" of their power contracts. NAC 538.744(1)(b) extends the collateral exemption to include NV Energy and the Valley Electric Association. Accordingly, every contract by which the Commission sells power to the retail industrial customers who are subject to the requirements of this statute contains provisions for collateral in the form of a letter of credit, cash deposit, or other approved collateral. NAC 538.744 requires the Commission to conduct an annual review of the creditworthiness of its retail industrial customers in October of each operating year. Based on that review, the Commission establishes the amount and prescribes the manner in which the customer is required to furnish collateral pursuant to its contracts with the Commission.

NAC 538.744 provides that "[i]n no case will the amount of collateral established by the Commission be less than one-fourth of the contractor's gross annual purchases" and, provides further that the amount of the required collateral may be greater than this minimum where necessary to protect the State from potential loss. "Gross annual purchases" is defined in the regulation as "the total amount of a contractor's actual purchases of power, transmission and other related services, if any, under all its contracts with the commission, invoiced by the commission during the test period," that is, "the 12 consecutive months immediately preceding the month containing the date of review." Given the present date of review as October 1, 2013, the test period runs from October 1, 2012 through September 30, 2013.

Staff continuously monitors the payment history, stock value and credit rating of the affected customers and reviews the financial press for information that may be of value in determining their credit risk. Staff also reviews past loads and purchases and considers estimated future requirements based on customers' estimated loads. Based on its evaluation of this data, Staff has concluded that the creditworthiness of these customers warrants a recommendation that the Commission adjust and set the respective amounts of their required collateral to the minimum allowable by NAC 538.744 as reflected below.

To determine the collateral required of each industrial customer for Calendar Year 2014, Staff calculated 25 percent of that customer's Adjusted Gross Annual Purchases during the

test period, October 1, 2012 through September 30, 2013, reflecting actual purchases during the test period with adjustments for those Customers who estimate significantly higher load for the Calendar Year. The results are as follows:

|                                      | Adjusted Gross          | Proposed Collateral   | Present               | Increase or Decrease  |
|--------------------------------------|-------------------------|-----------------------|-----------------------|-----------------------|
| Customer                             | Annual Purchases*       | 25%                   | Collateral            | Of Present Collateral |
|                                      | 10/1/12 through 9/30/13 | of previous column    |                       |                       |
| <b>American Pacific Corporation*</b> | \$2,861,782.11          | \$715,445.53          | \$595,928.30          | <b>\$119,517.23</b>   |
| <b>Basic Water Company*</b>          | \$804,022.15            | \$201,005.54          | \$163,008.76          | <b>\$37,996.78</b>    |
| <b>Lhoist North America, Inc.*</b>   | \$57,614.10             | \$14,403.53           | \$14,189.54           | <b>\$213.99</b>       |
| <b>Tronox, LLC*</b>                  | \$1,866,284.77          | \$466,571.19          | \$444,939.63          | <b>\$21,631.56</b>    |
| <b>Olin Chlor Alkaline Products*</b> | \$9,006,950.15          | \$2,251,737.54        | \$1,755,462.05        | <b>\$496,275.49</b>   |
| <b>Titanium Metals Corporation*</b>  | \$9,175,687.44          | \$2,293,921.86        | \$2,234,053.62        | <b>\$59,868.24</b>    |
|                                      |                         |                       |                       |                       |
| <b>Total</b>                         | <b>\$23,772,340.72</b>  | <b>\$5,943,085.19</b> | <b>\$5,207,581.90</b> | <b>\$735,503.29</b>   |
|                                      |                         |                       |                       |                       |

\*The "Gross Annual Purchase" is based on the total Monthly Invoices plus the total Parker-Davis Advance Fund Invoices and then adjusting for the following:

1) Collateral Credit/Refund added back into the invoice totals.

Ms. Corkill stated that after review of the retail industrial customers' gross annual purchases for 2013 as well as future requirements for 2014 it has been determined that collateral requirements for calendar year 2014 will collectively be \$5,943,085.19. This is an increase from calendar year 2013 of \$735,503.29.

The main cause of the increase is the market power prices in FY2013 as compared to FY2012; and for some customers, a load increase also affected the collateral requirements. The industrial customers have been briefed and are prepared to adjust the collateral requirements upon approval by the Commission.

Vice Chairman Miller stated that as a member of the Board of Directors and stockholder with American Pacific Corporation that he would abstain from the vote.

**Commissioner McCoy moved for approval of the recommended 2014 collateral requirements for the Commission's retail industrial customers. The motion was seconded by Commissioner Gibson and approved by a unanimous vote of the remaining Commissioners. Vice Chairman Miller abstained from voting on this item.**

**E. *For Possible Action:* Consideration of and possible action to approve the First Amendment to Contract for Services of Independent Contractor, for continuation of the contract for legal services with Fennemore Craig, P.C. and the Commission.**

Jennifer T. Crandell, Special Counsel, Attorney General gave a summary of the First Amendment to Contract for Services of Independent Contractor, for continuation of the contact for legal services with Fennemore Craig, P.C. and the Commission.

The Commission is presently engaged in litigation with The Navajo Nation as to their claims to main stem Lower Basin Colorado River water. The pending lawsuit was initiated in 2003, which challenges current Colorado River operations, including the Guidelines, Federal banking regulations (which permit us to bank our water in Arizona and California) and potentially the agreements and associated river operations relating to Minute No. 319 with Mexico. In addition, this significant litigation threatens the stability of the Law of the River that the Seven Basin States rely on, and may ultimately result in a water adjudication in the District Court or the United States Supreme Court. Mr. Caster has undertaken representation of the Sovereign State of Nevada, and with the Attorney General's consent, is serving as a Special Deputy Attorney General. He also represents the Commission and the Southern Nevada Water Authority.

On March 2013, the Commission approved a contract between the Commission and Fennemore Craig, P.C., primary attorney Lauren Caster, Esq., to engage his services to provide legal representation in *The Navajo Nation v. U.S.*, CV-03-00507 PCT PGR, in the United States District Court, For the District of Arizona, and related matters. Prior to contract approval by the Board of Examiners, the Attorney General met with the Executive Director and Senior Deputy Attorney General Crandell and requested that she be made a party to the contract, and that Mr. Caster's appointment as a special deputy attorney general be specifically written into the contract. The Amendment to the Contract reflects these changes. The Board of Examiners approved the Amendment to the Contract on June 11, 2013.

The current contract with Fennemore Craig, P.C. is for \$150,000 per fiscal year, for the two-year contract. The First Amendment will increase this amount to \$250,000 per fiscal year, for the two-year contract. The majority of the work anticipated under the contract occurred shortly after the beginning of the first full fiscal year (July 2013-14), which included serving as coordinating counsel for the Defendant Interveners with the Department of Justice, coordinating defense strategy among the numerous Defendant Interveners, and the research and preparation of a potentially dispositive motion for *The Navajo Nation v. United States Department of Interior, et. al.*, Case No. CV-03-00507-PCT-GMS. Currently, the Defendant and Defendant Interveners have filed various Motions to Dismiss the case, which are pending before the Court. It is anticipated that opposition and reply briefs as well as oral argument will be filed and/or occur during the current fiscal year (July 2013-14).

If the potentially dispositive motions currently on file with the Court are unsuccessful, the case will then proceed to a second round of motions which may include extensive research and discovery. The additional funding requested will be available to then complete this work.

In the current 2013-14 fiscal year, Fennemore Craig, P.C. has billed approximately \$140,000 of the \$150,000 available. It should be noted that during the accounting period for prior fiscal year July 2012-13, only \$23,000 was billed under the contract, leaving a balance of \$127,000. No provision in the existing contract permits a carry-over of approved but unused funds to the next fiscal year. This is an additional reason for the increase in funding requested.

Ms. Crandell provided a background summary of the status of the case. A Motion to Dismiss by the Federal Defendants and six Defendant Intervenors have each filed a separate Motion to Dismiss. Staff coordinated extensively among the Defendant Intervenors, did preliminary research for all available defenses, and various Defendant Intervenors were assigned various defenses to prevent writing duplicative briefs. The court has allowed sixty pages per brief which were filed and the opposition by the Navajo Nation is due November 14, 2013. In theory the Navajo Nation could write a brief of up to 420 pages. A Motion to Consolidate the Navajo brief was filed with the court and was granted permitting them to file one brief in response to all the different Defendant Intervenors briefs. That brief is expected to be approximately 120 pages. The reply brief will be due December 16, 2013.

Ms. Crandell explained in broad categories a description of work performed by Mr. Caster. Ms. Crandell stated that if necessary a non-meeting may be called to explain in further detail what the policy considerations were, what the theories have been, and what has been discussed and whether those strategies should be used or not used.

In broad terms Mr. Caster's work has included quite a bit of research on helping Staff develop a Nevada policy and what it should be on various issues. There needed to be a resolution to the policy question in order to decide how to formulate the Motion to Dismiss. The brief also reflects extensive coordination with the Southern Nevada Water Authority (SNWA), their lawyers and their outside counsel. There was a lot of coordination and research of issues that were raised by the SNWA in connection with this case, but not necessarily connected to the Motion to Dismiss filing.

This is an administrative record review type of case which has not been lodged with the court because of the filing of the Motion to Dismiss. The record has not been lodged, but Mr. Caster went ahead and obtained what public records were available and did a terrific job in locating a lot of records that the federal government had developed with respect to the different operational programs so that Staff could adequately address the National Environmental Policy Act (NEPA) argument, which is what the filed brief targeted. Mr. Caster's work also consisted of coordinating with six other Defendant Intervenor groups as well as preparation and research for the Motion to Dismiss. Mr. Caster researched

many different legal theories, then Staff decided which would best serve the State of Nevada.

This case has also included a number of Motions to Intervene by the State of Colorado, the Hopi Tribe, and Mr. Caster has looked at what the responses should be to those Motions. Now there is a Seconded Amended complaint the Navajo Nation has determined that they are dropping their sixth claim for relief, which is really targeting the Central Arizona Project (CAP) contracts. They recognized that they had not included every single contract and every party to every CAP contract, and those would be necessary indispensable parties to the case. The Navajo Nation asked for a Stipulation and Staff Stipulated to allow them to amend their complaint, keeping in place the time schedule for the current Motion to Dismiss.

If needed in a more confidential setting details can be provided as to the work Mr. Caster has completed. Staff has reviewed Mr. Caster's bills which are detail oriented in outlining his services, and is comfortable with his billing practices thus far. The majority of work was front loaded in this case so hopefully we win the Motion to Dismiss. If the case does go to a second round of briefings and a Motion for Summary Judgment, there will be an enormous administrative record to go through. Staff will need additional assistance in the event that the Motion to Dismiss does not succeed.

Chairman Ogilvie stated that he had comments and questions. He did not view this as a failure of vigilance on the part of Staff, he did not view this as a function of improper billing practices on the part of Mr. Caster, but he as well as the rest of the Commission is surprised by the size of the billings thus far. From personal perspective going back to when the approval of the contract to engage Mr. Caster and his firm, his recollection is at the time there was hope that there would be a resolution short of litigation that may have occurred in or around May of 2013. If that was not successful then perhaps the Commission would have to engage in litigation. Settlement attempts were not successful and we are now litigating. At the time the Commission was approving the contract the approval was not basing the approval of the contract on optimism that the case would be settled. The approval of the contract and the not-to-exceed value of the contract was based on an assumption that if the case was not settled, and Staff would have to go forward with litigation, the assumption in the cost of the litigation were erroneous and that happens.

Chairman Ogilvie stated that there is a concern by the magnitude in which the value was missed, and concern about controlling costs going forward. It would not be the Chairman's preference to approve an increase in the contract value without his further review of the amendment request and review of the billing.

Chairman Ogilvie stated that there is an understanding that Staff is midstream in the litigation and is not suggesting that the contract be pulled at this point. A Motion to Dismiss has been filed and a reply has to be filed, which is going to cost more. Before going forward, the Chairman requested an anticipated cost estimate through the end of this fiscal year from Mr. Caster.

Chairman Ogilvie was not in favor of approving an increase of the not-to-exceed value of the contract for the next fiscal year without setting a litigation budget and a discovery plan. It comes down to a question of if this is an item that has to have action taken on currently or can some questions be answered between now and the next regular Commission meeting, since it is before the reply brief due date of December 16.

Ms. Harkins stated that this Amendment would need to go before the Board of Examiners (BOE). Ms. Harkins explained that if the contract is approved today that it would not be considered for approval until January. Staff would be unable to meet the submission deadline for the January Board of Examiners meeting since the next Commission meeting is following the deadline.

Chairman Ogilvie stated that he would like to think about the contract more and would like to hear if there were any additional questions or comments from the Commissioners.

Commissioner Sisolak asked what the hourly rate that Mr. Caster is charging, and if it is discounted.

Ms. Crandell stated \$435.00 per hour. The rate was discounted from \$480.00 per hour.

Commissioner Sisolak stated that he has a problem with the not-to-exceed high dollar contracts because the contract inevitably go over and require an amendment to raise the limit. This is a never ending problem with these types of contracts. Commissioner Sisolak asked if the contract had a Request for Proposal (RFP) at the time of looking for services.

Ms. Crandell stated the contract was not done with RFP process. Many attorneys were vetted approximately a year in advance prior to hiring Mr. Caster.

Commissioner Sisolak stated that he was concerned that the contract amendment consists of raising the dollar amount by an enormous increase. Commissioner Sisolak stated that for a half a million dollars that he could not support the amendment, and that there would have to be another way to do this.

Commissioner Coffin stated that by looking at the stakes would a delay of a few weeks matter. Commissioner Coffin asked if Chairman Ogilvie was looking for a way to defer voting on the amendment currently and have a chance to review the billing. A delay could be done and call for a special Commission meeting to reconsider the amendment. Commissioner Coffin stated that he was surprised that the BOE did not meet until January, and thought that there was a BOE meeting in December, because the Interim Finance Committee normally meets in December after the BOE meeting.

Ms. Harkins stated that the BOE does meet in December but due to the deadline for the agenda being five weeks out, by the time the Commission has a meeting the submittal deadline has been missed which pushes the contract to the next month. The next BOE

meeting that the agenda material submittal deadline could be met would be the January meeting.

Commissioner Coffin stated that the Administration Staff in Carson City and the leadership of the Committee which meets right after to approve these contracts sometimes grant extensions, from previous experience. Quite possibly there may be a little leeway.

Ms. Crandell stated that in an emergency the Attorney General (AG), who is a party to this contract, has advised initially when this contract was first coming before the Commission there was concern about timelines and the AG thought that a special meeting could be called with the Governor and the BOE if this was an emergency. Staff could ask for a special meeting if the Commission deemed it an emergency.

Commissioner McCoy stated that the timeframe is interesting, there is no time on this and other cases have dragged on and on. If the Chairman and Commissioners need more time, Commissioner McCoy stated that he is available for a special meeting.

Chairman Ogilvie asked if there is an understanding or have any representations been made by Mr. Caster about the amount of work that is going to be required, particularly the cost of the work needed for the reply brief.

Ms. Crandell stated that the remaining work for the balance of the fiscal year is going to be to review the Navajo Nation's response brief that is being filed on November 14, 2013. The reply brief will be drafted; and then await the oral argument setting which could take place in the spring. Ms. Crandell stated this is a really complex case and would not think that the judge would come out with a decision. Mr. Caster did not provide a ball park number of what the remaining work would cost.

Chairman Ogilvie stated the December 16, 2013 date is set and nothing can be done to extend it; and inquired if there is something that the Commission could do today that gets Mr. Caster the approval need to get through the December 16 filing of the reply brief.

Ms. Crandell stated that the Commission could consider a lesser amount.

Chairman Ogilvie asked if there is an understanding with Mr. Caster about how much it will cost to get a reply brief filed.

Ms. Crandell stated there was not a ball park figure of what the reply brief would cost. Ms. Crandell did not ask Mr. Caster that question.

Chairman Ogilvie asked if it is possible for the Commission to defer this consideration until the Chairman has had the opportunity to review the bills; and give Staff the opportunity to have communication with Mr. Caster about the cost of reviewing the voluminous opposition to the Motion to Dismiss, researching and drafting and filing a reply brief. The Chairman would like to consider an Amendment with the additional

scope of information as opposed to reviewing the Amendment as it is phrased on the Commission agenda.

Ms. Harkins stated certainly, Staff could review the Chairman's request.

Chairman Ogilvie noted that a special Commission meeting to consider the Amendment would be required and asked if Mr. Caster will require approval before he embarks on additional work.

Ms. Crandell stated that there is an additional \$10,000 left in the budget; and Staff has not given permission to do additional work without the funding.

Chairman Ogilvie asked what would need to be done to address the concerns that have been expressed by the Commission.

Ms. Crandell stated that a telephonic meeting could be scheduled to review and resolve the concerns.

Chairman Ogilvie proposed that questions be answered. The Chairman and the Commission are not in favor of changing midstream, but are not in favor of approving the agenda item as it is phrased. There needs to be an increase in funding to this fiscal year in order to at least get beyond the reply briefing deadline on the Motion to Dismiss. Chairman Ogilvie asked the Commission if there were any comments of objections.

Commissioner Sisolak asked if Mr. Caster was present at the meeting.

Ms. Crandell stated no.

Commissioner Sisolak stated that he had a problem with the fact that Mr. Caster did not come to the meeting. The amendment consists of a half a million dollars over two years and was there an assumption that the contract would be approved with no questions. When a contract is up for approval of this size, a representative should be available to explain what is needed and why to answer some of these basic questions. Commissioner Sisolak asked if Mr. Caster was given representation that all is great and there would be no problems in getting approval, or was he told that this is a major change in the contract and representation should be available.

Ms. Crandell stated Staff did not recommend that Mr. Caster attend, and did not think that this would be such a difficult question for the Commission to amend the contract. Mr. Caster was not advised to attend.

Commissioner Sisolak stated that there are a lot of unanswered questions and that there is an understanding that there is a time sensitivity to the contract, but at the same time Commissioner Sisolak did not know when the bills fall into place and Staff had to know this was coming earlier than when this agenda was posted. Whether it was from the last meeting there may have been some time for auditing the bills and have this discussion.

Commissioner Sisolak stated that he cannot support the amendment until the Commission can review the bills, and get some estimates for the additional work needed. If this contract is granted there is nothing that prevents Fennemore Craig, P.C. from coming back in January and asking for another amendment for more funding for this fiscal year because there is no known date as to when the case will end. This is a lot of money and the Commission should be very concerned about it.

Chairman Ogilvie stated that recognizing the concerns is there a proposal as to how to proceed. The Commission should get some questions that have been brought up answered and the schedule a special meeting to authorize and approve and increase for this fiscal year needed to get through the filing of the reply brief.

Chairman Ogilvie stated that he agreed with Commissioner Sisolak, that after December this will not be the end of the case, there will still be an argument for the Motion to Dismiss. Chairman Ogilvie stated that he would like a more definitive answer as to what it will take to get the Commission through this process. Staff indicated after the oral argument the court may wait six to nine, maybe even twelve months before a decision which would go into the next fiscal year. The next fiscal year can be addressed at a later time. Before the Commission takes action the Chairman proposed that some questions be answered, and then have a special meeting.

Ms. Harkins stated that Staff could have a special meeting, and can get the information that Commission has requested. Staff can also speak to Mr. Caster about being more specific about how much he thinks it would take through the oral arguments, it has not been scheduled yet, and get through the reply briefs to the Motion to Dismiss. Then Staff can work on scheduling to get the amendment to the BOE.

Commissioner Premsrirut stated that she pulled the docket from this litigation and it is gargantuan. It is approximately fifty pages long with parties filings left and right. While there is an understanding to curb litigation costs, it is difficult to do when stepping into a herculean fight this large.

Commissioner Premsrirut agreed to look at an extension to review the bills, and get some feedback from Mr. Caster as what additional costs and fees need to be incurred to get to the end of the Motions practice.

Vice Chairman Miller stated that there is concern about the timing of the billing. The fact that only \$23,000 was paid under the previous agreement, but billings outstanding of \$127,000 were not until the next fiscal year. Vice Chairman Miller asked if Fennemore Craig, P. C. was late in submitting billing.

Ms. Crandell stated no, by the time the contract was approved by the Commission and then approved by the BOE which has a long delay. Staff could not authorize Mr. Caster to work, so there was only a short amount of time that work was performed in the first fiscal year. There is no provision in the contract to roll the unspent funds into the next

fiscal year. It was a matter of timing and trying to get the contract approved and then approved by the BOE to authorize Mr. Caster to begin work. That is why there was the change in the amounts.

Commissioner Premsrirut asked about the discussion regarding Mr. Caster's work being defining Nevada policies, and asked to see what the policies are and potentially what work has been done can help with other matters, so there could be an added value to the money that has already been spent.

Ms. Crandell asked if Commissioner Premsrirut asked if she would like more background on what Staff had Mr. Caster do to determine what the State of Nevada's stand should be on some various issues.

Commissioner Premsrirut stated yes, if in the billing there could be highlights of the work performed. If there is a portion in the Motions practice could be written out so Commissioner Premsrirut can ascertain what work was done.

Ms. Crandell stated that a summary could be provided after the Commission meeting or a non-meeting could be called to prevent disclosing publically what type of strategy and discussions have been used in determining Nevada policy as it is subject to Attorney Client Privilege.

**Commissioner Sisolak moved to hold until the information requested is provided to the Commission, and then a special Commission meeting can be called. The motion was seconded by Commissioner Premsrirut and approved by a unanimous vote.**

**F. *For Information Only:* Status update on Motions to Intervene in various regulatory proceedings before the Public Utilities Commission of Nevada and Federal Energy Regulatory Commission proceedings.**

Gail Bates, Manager of Energy Services, provided an update on Motions to Intervene in various regulatory proceedings before the Public Utilities Commission of Nevada (PUCN) and Federal Energy Regulatory Commission (FERC) proceedings.

The Commission has intervened in a number of PUCN and FERC regulatory proceedings. The following summarizes the status of each Docket.

***FERC Docket No. ER13-255:*** Application by Nevada Power Company to increase the transmission and ancillary service rates contained in their Open Access Transmission Tariff (OATT). A settlement-in-principle has been reached and a settlement agreement is in the process of being drafted.

***FERC Docket Nos. ER13-1605-000, ER13-1607-000, and EC13-113:*** Interrelated applications made by NV Energy, Inc., on behalf of its public utility subsidiaries, Nevada Power Company (Nevada Power) and Sierra Pacific Power Company (Sierra Pacific), (collectively NV Energy) requesting authorization for: (1) an internal corporate

reorganization of Sierra Pacific and Nevada Power (EC13-113); (2) the combination of the transmission and ancillary service rates of Nevada Power Company and Sierra Pacific Power Company into single-system rates (ER13-1605-000); and (3) a revision of the terms and conditions in their OATT to reflect the consolidation of Nevada Power and Sierra Pacific, their respective transmission systems and single-system rates (ER13-1607-000). These dockets have been set for hearing and settlement judge proceedings and discovery is ongoing. NV Energy has requested a deferral of the ER13-113 docket given its delay in state regulatory proceedings.

***FERC Docket No. EC13-128:*** Merger application of Silver Merger Sub, Inc., NV Energy, Inc., Nevada Power Company, and Sierra Pacific Power Company (collectively, Applicants). When the merger is complete, NVE will be a direct, wholly owned subsidiary of MidAmerican Energy Holdings Company (MidAmerican). FERC is considering the merger application. The Applicants have requested a ruling by no later than December 19, 2013 so that the merger can be completed by January 2014.

***PUCN Docket No. 13-05056:*** Application of Nevada Power Company d/b/a NV Energy (Nevada Power) and Sierra Pacific Power Company d/b/a NV Energy (Sierra) for approval to consolidate Nevada Power and Sierra into a single jurisdictional utility, transfer and modify Certificates of Public Convenience and Necessity to reflect the consolidated utility's new legal name of NV Energy Operating Company, and consolidate generation assets. The Joint Applicants state that the need to consolidate the legal and regulatory structures of Sierra and Nevada Power is driven by the completion of the One Nevada Transmission Line or "ON Line," which is scheduled to be placed in service at the end of 2013. Pursuant to Procedural Order No. 2 issued by the PUCN, NV Energy was required to submit additional information, supporting testimony and analyses to support their merger application on or before October 21, 2013. However, on October 17, 2013, NV Energy filed a Motion to Vacate Existing Procedural Schedule and Adopt a New Procedural Schedule. A PUCN decision on the motion is pending.

***PUCN Docket No. 13-07021:*** Application of NV Energy, Inc. (NVE) and MidAmerican Energy Holdings Company (MidAmerican) (with its wholly owned subsidiaries Silver Merger Sub, Inc. (Merger Sub) and NVE Holdings, LLC (LLC) (together, the Joint Applicants) for approval to proceed with the merger of NVE with Merger Sub. Upon completion of the merger, NVE will become an indirect wholly owned subsidiary of MidAmerican. Testimony has been filed and discovery is ongoing in this Docket. Hearings before the PUCN are scheduled for Nov. 18-22 in Las Vegas.

There are three types of FERC cases:

- 1) There is a rate filing that impacts transmission and ancillary service rates for 2013.
- 2) There is a rate filing that impacts transmission and ancillary service rates for 2014 and beyond due to the completion of the On-Line transmission project.
- 3) There is a merger application between NV Energy and MidAmerican.

In the case involving rates for 2013, the parties are working on a settlement document. That document is likely to come before the Commission for approval in December.

In the case involving rates for 2014 and beyond, that case has been set for hearing and settlement judge proceedings.

In the case involving the merger between NV Energy and MidAmerican, the case has not been set for hearing or settlement judge proceedings and a decision is expected by December 19, 2013.

On the PUCN side, there are two types of filings:

- 1) There is an operational merger proceeding due to the completion of the On-Line Transmission Project that at least has the potential to impact rates.
- 2) There is a merger application between NV Energy and MidAmerican.

In the operational merger case, NV Energy has requested a delay in the procedural schedule. There is a pre-hearing conference been scheduled to hear the arguments and rule on the delay in the procedural schedule.

In the merger between NV Energy and MidAmerican, several parties have signed a stipulation in that docket and several others have withdrawn. The Commission is likely to withdraw from that docket given that the Commission's approach was to monitor this case for any spillover effects into rates. Staff is coordinating with the SNWA on the timing of the withdrawal.

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| <p><b>G. <i>For Possible Action: Consideration of and possible action to adopt Colorado River Commission of Nevada Resolution 2013-2, commending Marybel Batjer for her service to the Commission.</i></b></p> |
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Ms. Harkins read into the record Colorado River Commission Resolution 2013-2 commending Commissioner Marybel Batjer for her service to the Colorado River Commission of Nevada. A copy of the resolution is attached and made a part of the minutes. (See Attachment A.)

Chairman Ogilvie expressed his appreciation and gratitude for Commissioner Batjer's impressive experience and exceptional personality. Ms. Batjer is a terrific public servant as displayed by all the positions she has held, and continues to hold; and her mark has been left on the Commission. Ms. Batjer was an extremely valuable and dedicated Commissioner and taught the Chairman a lot and will be greatly missed.

Commissioner McCoy stated that Ms. Batjer is an example to what everyone in the public sector should aspire to be; and if Ms. Batjer's resume is any indication, Nevada has not seen the last of her. Nevada and California are very fortunate to have her as a representative.

Commissioner Sisolak expressed that Ms. Batjer resolution speaks about what she has done; it does not speak about who she is and the impact that her work has had on millions of people that she does not know. Ms. Batjer has been a true example of what everyone in the public sector should aspire to be and he is proud to know her and call her a friend.

Commissioner Coffin stated the Governor of California is extremely fortunate to be getting such a great asset, the new position is not something to be taken lightly, and not many realize the strength that Ms. Batjer brings to his administration.

Chairman Ogilvie presented Ms. Batjer with the Colorado River Commission of Nevada's commemorative coin. The coin was minted at the Dayton, Nevada mint. A description of the coin was included with the coin and was read by the Chairman.

Ms. Batjer thanked the Commission for the honor, by all of the kind thoughts, and for recognizing her father in the resolution. Serving on the Colorado River Commission has been such an honor and pleasure. Ms. Batjer stated that she was honored by three governors as well as many other Commissioners with great pride. The Staff has done fine work in Carson City as well as in Southern Nevada and appreciates the professionalism demonstrated in the work that is accomplished for the benefit of the people of Nevada.

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| <p><b>H. <i>For Information Only:</i> 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.</b></p> |
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Warren Turkett, Natural Resource Analyst, provided a report on the following:

- Lake Powell Unregulated Inflow Comparison with History
- Recent Paleo Studies
- Unregulated Inflow into Lake Powell
- Storage Conditions
- Lake Powell End of Month Elevations
- Lake Mead End of Month Elevation Projections
- U.S. Drought Monitor
- U.S. Monthly Drought Outlook
- Precipitation – Colorado River Basin
- Colorado River Basin Forecast Center
- Monthly Precipitation for September 2013
- McCarran International Airport
- Record of Precipitation, Las Vegas, NV
- Record of Precipitation
- Water Use in Southern Nevada
- Water Use Comparison

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

Commissioner Coffin asked for a summary of the Paleo Journal Articles.

**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 other comments or questions 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 members. There were none.

**K. Selection of the next possible meeting date.**

The next meeting was tentatively scheduled for 1:00 p.m. on Tuesday, December 10, 2013, at the Grant Sawyer State Office Building, 555 East Washington Avenue, Suite 4412, Las Vegas, Nevada.

**L. Adjournment.**

The meeting adjourned at 2:10 p.m.

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Jayne Harkins, P.E., Executive Director

APPROVED:

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George F. Ogilvie III, Chairman