

The Colorado River Commission of Nevada meeting was held at 1:30 p.m. on Tuesday, November 13, 2018 at the Clark County Government Center in the Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada.

COMMISSIONERS IN ATTENDANCE

Chairwoman	Puoy Premsrirut
Vice Chairwoman	Kara J. Kelley
Commissioner	Steve Sisolak
Commissioner	Dan H. Stewart
Commissioner	Cody Winterton

COMMISSIONER(S) NOT IN ATTENDANCE

Commissioner	Marilyn Kirkpatrick
Commissioner	John F. Marz

DEPUTY ATTORNEY GENERAL

Special Counsel, Attorney General	Christine Guerci
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COMMISSION STAFF IN ATTENDANCE

Deputy Executive Director	Eric Witkoski
Chief, Finance and Administration	Douglas N. Beatty
Assistant Director of Energy Services	Gail A. Bates
Assistant Director of Engineering and Operations	Robert D. Reese
Assistant Director of Energy Information Systems	Kaleb Hall
Manager, Hydropower Program	Craig N. Pyper
Manager, Natural Resources Program	Angela Slaughter
Natural Resource Analyst	Peggy Roefer
Natural Resource Analyst	Warren Turkett, Ph. D.
Senior Energy Accountant	Gail L. Benton
Senior Energy Accountant	Richard M. Sanders
Senior Energy Accountant	Stephanie Salleroli
Office Manager	Gina L. Goodman
Administrative Assistant IV	Katie Aguilar
Administrative Assistant IV	Kira Bakke
Administrative Assistant III	Kris Perry
Administrative Assistant II	Joshua Cleveland
Administrative Assistant II	Laterria Graves

OTHERS PRESENT; REPRESENTING

City of Boulder City	Skip Spilman
Self	Sara Price
Southern Nevada Water Authority	Jordan Bunker
Southern Nevada Water Authority	Katie Horn
Southern Nevada Water Authority	Colby Pellegrino
Southern Nevada Water Authority	Julie Wilcox

**COLORADO RIVER COMMISSION
OF NEVADA
MEETING OF NOVEMBER 13, 2018**

INDEX

<u>Agenda Item</u>	<u>Subject</u>	<u>Page No.</u>
A.	Conformance to Open Meeting Law	1
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)	1
C.	<i>For Possible Action:</i> Approval of minutes of the October 9, 2018 meeting	1
D.	<i>For Possible Action:</i> Update on Commission Staff activities	1
E.	<i>For Possible Action:</i> Consideration of and possible action to approve and authorize the Executive Director or Deputy Executive Director to execute, in substantially the same form as that attached hereto, the Colorado River Basin States Drought Contingency Plan (DCP) agreements for the Lower Basin, and to execute ICS exhibits to the 2007 Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement that are consistent with the DCP agreements and presented for approval on or before June 30, 2019. The agreements are in furtherance of the effort to protect critical Lake Powell and Lake Mead elevations. In the Upper Basin, DCP includes drought response operations for Colorado River Storage Project Act reservoirs and the creation of demand management storage capacity. In the Lower Basin, DCP requires by additional water contributions to Lake Mead and creates flexibility in operations to incentivize additional voluntary water conservation to be stored in Lake Mead. The agreements for execution include: 1) the Agreement Concerning Colorado River Drought Contingency Management and Operations (“Companion Agreement”); 2) the Lower Basin Drought Contingency Plan Agreement (“Lower Basin DCP Agreement”); 3) the DCP Contributions and ICS Space Accumulation Limits Sharing Agreement and 4) SNWA’s ICS Exhibit to the 2007 Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement.....	2

**COLORADO RIVER COMMISSION
OF NEVADA
MEETING OF NOVEMBER 13, 2018**

INDEX (CONTINUED)

F.	<i>For Information Only:</i> Update on the activities of the Financial and Audit Subcommittee.	9
G.	<i>For Information Only:</i> Update on pending legal matters, including Federal Energy Regulatory Commission or Public Utilities Commission of Nevada filing.	10
H.	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.).	11
I.	Comments and questions from the Commission Members ...	11
J.	Selection of next possible meeting date	11
K.	Adjournment	11

The Colorado River Commission of Nevada meeting was called to order by Chairwoman Premsrirut at 1:30 p.m. followed by the pledge of allegiance.

A. Conformance to Open Meeting Law.

Deputy Executive Director Eric Witkoski confirmed that the meeting was posted 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 will be taken.)

Chairwoman Premsrirut asked if there were any comments from the public. There were none.

C. For Possible Action: Approval of minutes of the October 9, 2018 meeting.

Commissioner Stewart moved for approval of the minutes. The motion was seconded by Commissioner Winterton. Vice Chairwoman Kelley mentioned an omission on page 3 of the minutes; namely to add for the record the commitment on behalf of Staff and the auditors to remain on schedule. The motion with the amendment passed unanimously.

D. For Information Only: Update on Commission Staff activities.

Mr. Witkoski gave an update on Commission Staff activities.

- The Commission would like to recognize the exiting Executive Director Jayne Harkins on her service.
- Staff is continuing to work on the Salt Lake City Area Integrated Projects (SLCAIP) Allocation process, and an update may be given at the December Commission Meeting.

Chairwoman Premsrirut asked about any pertinent changes to the SLCAIP Allocation and requested that a representative from the City of Las Vegas be present at when the Allocation is heard.

Mr. Witkoski answered that Staff was still awaiting comments on the SLCAIP allocation and agreed that the City of Las Vegas should be represented.

Commissioner Sisolak asked Staff to provide him a list of the Commission budget account for staffing and a position report.

Mr. Witkoski confirmed that Staff would provide the requested information.

E. For Possible Action: Consideration of and possible action to approve and authorize the Executive Director or Deputy Executive Director to execute, in substantially the same form as that attached hereto, the Colorado River Basin States Drought Contingency Plan (DCP) agreements for the Lower Basin, and to execute ICS exhibits to the 2007 Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement that are consistent with the DCP agreements and presented for approval on or before June 30, 2019. The agreements are in furtherance of the effort to protect critical Lake Powell and Lake Mead elevations. In the Upper Basin, DCP includes drought response operations for Colorado River Storage Project Act reservoirs and the creation of demand management storage capacity. In the Lower Basin, DCP requires by additional water contributions to Lake Mead and creates flexibility in operations to incentivize additional voluntary water conservation to be stored in Lake Mead. The agreements for execution include: 1) the Agreement Concerning Colorado River Drought Contingency Management and Operations (“Companion Agreement”); 2) the Lower Basin Drought Contingency Plan Agreement (“Lower Basin DCP Agreement”); 3) the DCP Contributions and ICS Space Accumulation Limits Sharing Agreement and 4) SNWA’s ICS Exhibit to the 2007 Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement

General Manager John Entsminger and General Counsel Greg Walch for Southern Nevada Water Authority gave a presentation on the Colorado River Basin State Drought Contingency Plan (DCP) agreements.

I. BACKGROUND:

- A. Reclamation’s current operational rules for operation of Lake Powell and Lake Mead – adopted in 2007 - are insufficient to protect against reservoirs declining to critically low elevations if dry conditions persist or worsen. In fact, over the past decade, the drought has increased the risk of declining to critical reservoir levels nearly four-fold since implementation of the December 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (2007 Guidelines).
- B. In response to these historic drought conditions, officials in the seven Colorado River Basin States, the Department of Interior and the Republic of Mexico have been working on Drought Contingency Plans (DCPs)
- C. In 2017, the Colorado River Basin States supported efforts by the United States and Mexico to finalize and adopt “Minute 323” to the 1944 Water Treaty between the two nations. Minute 323 provides that if a Lower Basin Drought Contingency Plan is put into effect in the United States, Mexico will also undertake water savings (a “Binational Water Scarcity Contingency Plan”) in parity with the U.S. These savings will be recoverable when reservoir conditions improve.
- D. Plans in the Lower Basin states of Arizona, California and Nevada have been drafted separately, but parallel to, plans drafted in the Upper Basin states of Colorado, New Mexico, Utah and Wyoming. Both Plans are intended to help protect critical reservoir elevations in their respective

basins and provide a synergistic benefit to the entire River Basin when operating in tandem.

- E. Modeling studies of the DCPs indicate that when implemented together with Mexico's Binational Water Scarcity Contingency Plan, the risk of reaching critical elevations in Lakes Powell and Mead through 2026 is significantly reduced to the low probabilities (averaging 5% or less) computed when the 2007 Interim Guidelines were adopted.
 - F. The agreements include an Upper Colorado River Basin Drought Contingency Plan and a Lower Colorado River Basin Drought Contingency Plan.
 - a. The Upper Basin DCP is designed to: a) protect critical elevations at Lake Powell and help assure continued compliance with the 1922 Colorado River Compact, and b) authorize storage of conserved water in the Upper Basin that could help establish the foundation for a Demand Management Program that may be developed in the future.
 - b. The Lower Basin DCP is designed to: a) require Arizona, California and Nevada to contribute additional water to Lake Mead storage at predetermined elevations, and b) create new flexibility to incentivize additional voluntary conservation of water to be stored in Lake Mead.
 - G. The Upper and Lower Basin DCPs contain actions in addition to those authorized or required by the 2007 Guidelines
- II. KEY DOCUMENTS: The documents necessary to implement the Upper and Lower Basin DCPs are the following:
- A. Companion Agreement
 - B. Lower Basin Drought Contingency Plan Agreement and
 - C. Attached Exhibit 1 - Lower Basin Drought Contingency Operations
 - D. Upper Basin Drought Response Operations Agreement
 - E. Upper Basin Demand Management Storage Agreement
 - F. DCP Contributions and ICS Space Accumulation Limits Sharing Agreement
- A. Companion Agreement: The Companion Agreement, between the United States, acting through the Secretary of the Interior (Secretary) and the Commissioner of Reclamation, and all parties in both the Upper Basin and the Lower Basin, will attach and incorporate both the Upper Basin DCP documents and the Lower Basin DCP documents. The Companion Agreement acknowledges that:
- a. The Upper and Lower Basin DCPs are intended to allow the development and testing of water management tools in both basins on an interim basis for the benefit of those who rely on the Colorado River System and are likely to benefit the System.
 - b. The Basin States desire federal legislation to implement the Upper and Lower Basin DCPs and will recommend consensus draft federal legislation.
 - c. The Upper and Lower Basin DCPs and operations implementing the DCPs will include provisions designed to:

- resolve any prospective claims or controversies through a consultative process; reserve rights and legal positions of all parties;
 - commit all parties to act in good faith;
 - allow for all parties to enforce the provisions of both the Upper and Lower Basin DCPs against any other party, including the Department of the Interior; and
 - include consultation provisions regarding the implementation and operation of both the Upper and Lower Basin DCPs including specific provisions regarding the potential development of a demand management storage program in the Upper Basin.
- B. Lower Basin Drought Contingency Plan Agreement (LBDCP):
- a. The LBDCP Agreement is the agreement through which the Lower Basin parties and the Secretary will agree to the terms of the Lower Basin Drought Contingency Operations (LBOPs) document, which is attached as an exhibit and incorporated by reference.
 - b. The LBDCP Agreement includes a commitment by the Secretary to take actions, subject to the availability of appropriations, to implement programs designed to generate 100,000 acre-feet per year of conserved water, as well as provisions amending the existing agreements for the creation and delivery of Intentionally Created Surplus (ICS), consistent with the terms of the LBOPs, and reservation of rights.
- C. Exhibit 1 - Lower Basin Drought Contingency Operations
- a. The LBOPs will serve as the guidance document that, in combination with the 2007 Interim Guidelines, will control operations in the Lower Basin. The LBOPs will include, among other things, the following provisions:
 - b. Each Lower Division State will conserve specified volumes of water (DCP Contributions) in Lake Mead at certain elevations. Arizona and Nevada begin making DCP Contributions when Lake Mead is at or below elevation 1,090'. California begins making DCP Contributions when Lake Mead is at or below elevation 1,045'.
 - c. A DCP Contribution may be created by converting ICS to "DCP ICS." DCP ICS may only be delivered when Lake Mead is at or above elevation 1,110', though there are provisions for short-term "borrowing" of DCP ICS.
 - d. New provisions will incentivize the creation and long-term storage of ICS in Lake Mead. In particular, ICS will be available for delivery when Lake Mead is above elevation 1,025'; ICS will be subject to a one-time, 10% evaporation assessment rather than a 5% system assessment and annual evaporation losses; each State's maximum ICS accumulation limit will increase; and all DCP ICS may be delivered through 2057.
 - e. A commitment by all parties to work together to protect elevation 1,020' in Lake Mead should lake levels continue to decline. This

would be implemented through an obligation to consult when Lake Mead is projected to fall below elevation 1,030' in any 24-month period – so that the parties can discuss what additional actions would be implemented.

- D. Upper Basin Drought Response Operations Agreement (Agreement for Drought Response Operations at the Initial Units of the Colorado River Storage Project Act):
 - a. The Drought Response Operations Agreement, to be signed by the Secretary and each Upper Division State through the Upper Colorado River Commission (UCRC), provides for the parties thereto to collaboratively develop a drought response operations plan for the management of the 1956 Colorado River Storage Project Act (CRSPA) Initial Units. The goal of the Drought Response Operations Agreement is to facilitate a process for the Upper Division States and Secretary to rely on available water supplies from the CRSPA Initial Units as needed to reduce the risk of Lake Powell dropping below elevation 3,525'. The Drought Response Operations Agreement effectively allows protection of the elevation in Lake Powell to be incorporated into the existing operations of the CRSPA Initial Units and incorporates provisions for recovery of storage at the CRSPA Initial Units, consistent with existing authorities when Lake Powell elevation 3,525' is no longer at risk. It also includes provisions for consultation with the Lower Division States throughout the development and implementation of a drought response operations plan.
- E. Upper Basin Demand Management Storage Agreement (Agreement Regarding Storage at Colorado River Storage Project Act Reservoirs Under an Upper Basin Demand Management Program):
 - a. The Demand Management Storage Agreement, to be signed by the Secretary and each Upper Division State, through the Upper Colorado River Commission (UCRC), authorizes storage of conserved water in the CRSPA Initial Units, without charge. By securing the storage authorization, the UCRC can effectively consider the feasibility of a demand management program in which water users in the Upper Basin could actively conserve water that would otherwise be put to beneficial use, for the purpose of helping to assure continued compliance with the Colorado River Compact.
 - b. The terms of the Demand Management Storage Agreement provide that if the UCRC determines that a Demand Management Program is feasible in the Upper Basin (as agreed to by each of the Upper Division States), then it may develop and agree to a demand management program in conjunction with the Secretary, and in consultation with the Lower Basin, in which water that has been previously put to beneficial consumptive use may be conserved and conveyed to a CRSPA Initial Unit (Powell, Aspinall, Navajo, Flaming Gorge). Any water stored prior to 2026, upon verification of the conservation and conveyance, will not be subject to release from Lake Powell through 2057 under

operational rules except as necessary for compact compliance purposes, and upon the request of the UCRC. After 2026, any demand management storage program would be informed by and considered as part of the renegotiation of the 2007 Interim Guidelines (set to begin in 2020).

F. DCP Contributions and ICS Space Accumulation Limits Sharing Agreement:

- a. In addition to these key agreements, Nevada, California, and Arizona have developed a DCP Contributions and ICS Space Accumulation Limits Sharing Agreement.
- b. This Agreement will implement provisions from the Lower Basin DCP Agreement and LBOs, whereby Nevada through the SNWA and CRCN, and California through the Metropolitan Water District (MWD) will each make up to 50,000 acre-feet of ICS accumulation space available to certain water contractors in the State of Arizona.
- c. The Agreement will also implement a provision from the LBOs whereby SNWA agrees to make available up to 300,000 acre-feet in DCP Contributions on behalf of Metropolitan Water District in California. This can only occur if MWD has a zero balance in their ICS Account and may not exceed 200,000 acre-feet through 2023 or 300,000 acre-feet through 2026.
- d. The DCP Contributions made by SNWA on behalf of MWD shall remain credited in SNWA's ICS Account, with a limitation on usage through 2026.
- e. After 2026 and through 2057, SNWA may cause MWD to satisfy any SNWA DCP Contribution repayment obligation (up to 50,000 acre-feet annually) for DCP Contributions borrowed by SNWA until SNWA is fully repaid for any DCP Contributions made on behalf of MWD.

G. The SNWA's ICS Exhibit to the 2007 Lower Colorado River Basin Intentionally created Surplus Forbearance Agreement:

Through the Southern Nevada Water Authority Municipal Conservation and Off Stream Storage Intentionally Created Surplus (ICS) Project ("Forbearance Exhibit"), SNWA is seeking approval of additional ICS from necessary Lower Basin entities.

The Southern Nevada Water Authority (SNWA) initiated an aggressive municipal conservation program in 2002. SNWA's consumptive use of Colorado River water peaked at over 326,000 acre-feet in 2002. Since that time, SNWA has reduced use by as much as 100,000 acre-feet annually. SNWA's investment in municipal conservation totaled over \$250,000,000 between 2000 and 2018. In addition to the funds expended by SNWA, SNWA's purveyor members have taken many actions to ensure the coordinated success of these conservation programs. The major programs are described in Attachment A to the proposal.

Similarly, SNWA has developed many options to store unused Colorado River resources in offstream storage accounts within California, Nevada, and the Las Vegas aquifer. In order to store approximately 600,000 acre-feet of water in Arizona, SNWA has invested over \$120 million. In addition, SNWA and its member agencies invest annually to maintain their well pumping capacity within the Las Vegas Valley.

Together, the investments in conservation and offstream storage capability have reduced SNWA's water use below its annual apportionment of Colorado River Water and created the ability to store this water offstream. By selectively creating ICS with this water in Lake Mead in lieu of storing the water offstream, it will help proactively manage reservoir elevations by increasing storage in Lake Mead.

III. PROCEDURE

- A. The Basin States seek to finalize the Upper and Lower Basin DCPs prior to the end of 2018 through these agreements, and the Basin States and entitlement holders have collectively agreed to seek federal legislation authorizing and directing the Secretary to implement the proposed operations in the Upper and Lower Basin DCPs.
- B. This would be accomplished by directing the Secretary to sign and implement the Companion Agreement, the Drought Response Operations Agreement, the Demand Management Storage Agreement, and the LB DCP Agreement upon the approval and execution by all other parties. It is anticipated that the Colorado River Basin States will propose very simple legislation through a Seven State letter to the Congressional delegations of each State, with each of the draft documents attached, seeking the delegations' active support for the federal legislation.
- C. The Lower Basin States will execute the Lower Basin DCP, which includes the Companion Agreement, the Lower Basin DCP Agreement, and any ICS exhibits consistent therewith formulated prior to execution of the DCP documents. The Lower Basin DCP Agreement has an attached guidance document, called the Lower Basin Drought Contingency Operations ("LBOps"). The LBOps describes the new operational rules and is designed to work in conjunction with current Lower Basin operational rules found in the '07 Guidelines.
- D. The Lower Basin must also execute an additional agreement to implement specific provisions of the Lower Basin DCP Agreement and the LBOps. This agreement is called the DCP Contributions and ICS Space Accumulation Limits Sharing Agreement.
- E. To implement the DCP, the Upper Basin States will execute Upper Basin DCP, which includes the Upper Basin Drought Response

Operations Agreement, the Upper Basin Demand Management Storage Agreement, and the Companion Agreement.

- F. Arizona: By executing the Companion Agreement and the LB DCP Agreement (with the attached LBOps), Arizona would be waiving certain rights and claims and consenting to modification of the Law of the River for a defined period. Pursuant to A.R.S. § 45-106, the Arizona Legislature must approve the agreements and authorize the signature of the Director of the Arizona Department of Water Resources. It is anticipated that Arizona's legislature would address this issue in early 2019.

Staff recommended that the Commission approve and authorize the Executive Director or Deputy Executive Director to execute, in substantially the same form as those attached hereto, the DCP agreements listed below, ICS exhibits to the 2007 Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement that are consistent with the DCP agreements and presented for approval on or before June 30, 2019:

- 1) the Agreement Concerning Colorado River Drought Contingency Management and Operations ("Companion Agreement");
- 2) the Lower Basin Drought Contingency Plan Agreement ("Lower Basin DCP Agreement") and Exhibit 1 thereto "Lower Basin Drought Contingency Operations";
- 3) the DCP Contributions and ICS Space Accumulation Limits Sharing Agreement; and
- 4) the SNWA's ICS Exhibit to the 2007 Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement ("Forbearance Exhibit")

Chairwoman Premsrirut thanked Mr. Entsminger and General Counsel Greg Walch for their hard work on the negotiations and presentation and asked if there were any questions.

Chairwoman Premsrirut asked about compliance failure; would any party to the contract be able to bring up charges against the non-complying entity under 43 USC 1551?

Mr. Walch answered that any state party to the agreement could take up the issue with the United States Supreme Court.

Vice Chairwoman Kelley asked about Lower Basin drought contingency operations referred to in section C subsection E; what would happen in the event of no agreement?

Mr. Entsminger answered that that was a common issue with jurisdiction with the Colorado River and such a problem would need to be answered by the Federal Government and most likely the United States Supreme Court.

Vice Chairwoman Kelley asked about subsection B; whether each entity can request its DCP ICS at the same time.

Mr. Entsminger answered in the affirmative, going on to explain that by state there are annual delivery maximums and there cannot be a so-called “run on the system” given the annual caps. Those delivery caps have not changed from the 2007 guidelines.

Commissioner Sisolak asked if any changes would be brought to Southern Nevada Water Authority Board.

Mr. Entsminger explained that any changes would indeed need to be agreed upon by each entity involved.

Commissioner Stewart motioned for approval of 1) the Agreement Concerning Colorado River Drought Contingency Management and Operations (“Companion Agreement”); 2) the Lower Basin Drought Contingency Plan Agreement (“Lower Basin DCP Agreement”); 3) the DCP Contributions and ICS Space Accumulation Limits Sharing Agreement and 4) SNWA’s ICS Exhibit to the 2007 Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement. The motion was seconded by Commissioner Winterton and approved by a unanimous vote.

A copy of the presentation was attached and made a part of the minutes. See Attachment A.

F. <i>For Information Only:</i> Update on the activities of the Financial and Audit Subcommittee.

Chief of Finance and Administration Doug Beatty explained that there had been no further meetings or updates on the Subcommittee. Staff anticipates the next update to the Comprehensive Annual Financial Report (CAFR) package would be presented to the Subcommittee in December 2018.

Vice Chairwoman Kelley verified with Staff that the audit was on schedule.

Mr. Beatty answered affirmatively, with exceptions to items outside of CRCNV Staff and auditor control.

Chairwoman Premsrirut asked if those items would be noted to avoid negative feedback.

Mr. Beatty answered yes, it would be noted to avoid negative feedback.

Vice Chairwoman Kelley reiterated for the record to Commission Staff and the auditing firm the importance of meeting all deadlines.

G. *For Information Only:* Update on pending legal matters, including Federal Energy Regulatory Commission or Public Utilities Commission of Nevada filings.

Special Counsel Christine Guerci gave an update on pending legal matters, including Federal Energy Regulatory Commission (FERC) or Public Utilities Commission of Nevada (PUCN) filings.

FERC Docket No. EL18-102

CRCNV intervened in May of 2018. This was the matter where FERC directed NV Energy to either (1) submit proposed revisions to their stated transmission rates to reflect the change in the federal corporate income tax rate and describe the method used for making those revisions, or (2) show cause why it should not be required to do so.

A FERC order is listed on the November 15, 2018 agenda related to this filing, so Special Counsel should be able to update the Commission next month on the outcome of this matter.

FERC Docket No. EL18-200

CRCNV recently filed a document less intervention in this matter.

In its Petition to FERC, Jacksonville Electric Authority (JEA) asks FERC to declare that it has “jurisdiction over its Purchase Power Agreement (and the transactions therein) under Section 201(b)(1) of the [Federal Power Act (FPA)], even though Municipal Electric Authority of Georgia and JEA are each exempt from regulation by FERC as ‘public utilities’.

Among other arguments, JEA asserts that FERC has exclusive jurisdiction over interstate transmission and wholesale sales of electricity, regardless of the entities involved. It also argues that FERC is required in this situation to exercise jurisdiction to avoid a “regulatory gap” relating to sales under the Purchase Power Agreement because the sales at issue are not regulated by the Georgia Public Service Commission.

While we believe that the filing was brought as a litigation tactic that will ultimately be withdrawn, the underlying request of the JEA to have FERC assert its jurisdiction over exempt public utilities due to a purported “regulatory gap”, could have far reaching impacts on other public utilities including the CRCNV. Numerous trade associations and public utilities have also intervened.

Chairwoman Premsrirut asked if the Commission is contending the issue of jurisdiction in the second case.

Ms. Guerci answered in the affirmative.

H. 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.)

Chairwoman Premsrirut asked if there were any comments from the public. There were none.

I. Comments and questions from the Commission members.

Chairwoman Premsrirut asked if there were any comments or questions from Commission members.

The Commission congratulated Commissioner Sisolak on becoming Governor-elect of Nevada.

J. Selection of next possible meeting date

The next meeting is tentatively scheduled for 1:30 p.m. on Tuesday, December 11, 2018, at the Clark County Government Center in the Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada.

K. Adjournment.

The meeting was adjourned at 2:17 pm.

Eric Witkoski, Deputy Executive Director

APPROVED:

Puoy Premsrirut, Chairwoman