

The Colorado River Commission of Nevada meeting was held at 1:30 p.m. on Tuesday, May 8, 2018 at the Grant Sawyer State Office Building, 555 East Washington Avenue, Suite 4412, Las Vegas, Nevada.

COMMISSIONERS IN ATTENDANCE

Chairwoman
Vice Chairwoman
Commissioner
Commissioner
Commissioner
Commissioner

Puoy Premsrirut
Kara J. Kelley
Marilyn Kirkpatrick
Steve Sisolak
Cody T. Winterton
Dan H. Stewart

COMMISSIONER(S) NOT IN ATTENDANCE

Commissioner

John F. Marz

DEPUTY ATTORNEY(S) GENERAL

Special Counsel, Attorney General
Special Counsel, Attorney General

Christine Guerci
Jennifer Crandell

COMMISSION STAFF IN ATTENDANCE

Executive Director
Deputy Executive Director
Chief of Finance and Administration
Assistant Director of Engineering and Operations
Manager, Hydropower Program
Natural Resources Program Manager
Natural Resource Analyst
Senior Energy Accountant
Senior Energy Accountant
Assistant Director of Energy Information Systems
Systems Coordinator
Office Manager
Administrative Assistant IV
Administrative Assistant II

Jayne Harkins, P.E.
Eric Witkoski
Douglas N. Beatty
Robert D. Reese
Craig N. Pyper
Angela K. Slaughter
Peggy Roefer
Gail L. Benton
Richard M. Sanders
Kaleb Hall
Chris Smith
Gina L. Goodman
Kira Bakke
Kristina Perry

OTHERS PRESENT; REPRESENTING

Bureau of Reclamation
Eide Bailly
Litigation Services
NV Energy
Overton Power District No. 5
Overton Power District No. 5
Overton Power District No. 5
Southern Nevada Water Authority
Southern Nevada Water Authority

Eric Carty
Tamara Miramontes
Brittany Castrejon
Michael Hulin
MeLisa Garcia
Randall Ozol
Terry Romero
Jordan Bunker
Scott Krantz

**COLORADO RIVER COMMISSION
OF NEVADA
MEETING OF MAY 8, 2018**

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The Colorado River Commission of Nevada meeting was called to order by Chairwoman Premsrirut at 1:31 p.m. followed by the pledge of allegiance.

A. Conformance to Open Meeting Law.

Executive Director Jayne Harkins, P.E. 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: Adoption Hearing for LCB File No. R033-18. Hearing by the Commission to receive comments followed by consideration of and possible action, including adoption, revision or rejection, regarding the following proposed amendments and repeals to Nevada Administrative Code (NAC) chapter 538 which revise Procedures for the Allocation and/or Reallocation of Power; and the Publication of Power allocations.

A court reporter transcript of Agenda Item C is attached and made a part of the minutes. See Attachment A.

Executive Director Jayne Harkins read the proposed changes regulation. She recommended the adoption of LCB File No. R033-18 with one wording change on page 6.

On December 12, 2017, the Commission initiated the process to revise its regulations contained in Nevada Administrative Code (NAC) chapter 538. Staff held a workshop on the proposed amendments on January 24, 2018. After the Workshop, staff submitted the proposed changes to LCB for review. LCB returned its File No. R033-18 on March 23, 2018 (attached hereto). Due to the number of changes by LCB, staff held a second workshop on April 23, 2018. The required Informational Statement with minutes from both workshops are attached.

LCB File No. R033-18 contains amendments to NAC 538.455 - Procedures for the Reallocation of Power. The original regulation was added to the NRS in 2014 and provides a procedure for reallocating power when a contractor has lost or surrenders its allocation. The proposed amendments expand this procedure to apply to all allocation and reallocation proceedings. Currently, there is no process in the regulations for an allocation proceeding as opposed to a reallocation proceeding. These amendments would provide a mechanism that encompasses all power resource allocations and reallocations.

Further, the amendments make the process more transparent and open to the public. A:1) an additional public meeting is required at the start of the allocation process while the criteria and a timeline for that particular allocation are being developed, 2) a draft order can be revised by staff prior to presentation to the Commission based on comments received from applicants, and 3) the notice of hearing along with the proposed draft order must be provided to not only the applicants but the Commission's meeting service list at least 20 days prior to the date set for the hearing on the Order.

This file also contains the repeal of NAC 538.333 - Allocation of Schedule D Power, Commission to Develop Criteria, NAC 538.336 - Allocation of Schedule D Power, Application Process. NAC 538.333 and NAC 538.336 were added to the Commission's regulations in 2014 to provide a procedure for allocating Schedule D Hoover power to new allottees. The Schedule D Hoover allocations have been completed and contracts executed. The revisions to NAC 538.455 will provide a process for any reallocations or allocations of additional Schedule D that becomes available. NAC 538.333 and NAC 538.336 are no longer needed and will be removed to avoid confusion.

LCB also proposed repealing three additional regulations which also addressed the 2017 Schedule D allocation - NAC 538.397- Allocation of Schedule D power in accordance with chapter; NAC 538.413 - Requirements of electric utility seeking to contract with Commission for delivery of Schedule D power from Boulder Canyon Project on or after October 1, 2017 and NAC 538.416 - Requirements of applicant that is not electric utility seeking to contract with Commission for delivery of Schedule D power from Boulder Canyon Project on or after October 1, 2017.

The file further contains the repeal of NAC 538.450 – Reallocation of Power if Entity Fails to Enter into Contract with Commission. With the amendments to NAC 538.455, specifically subsection (8), this regulation becomes duplicative and unnecessary.

Additionally, the file contains the repeal of NAC 538.680 - Division of Resources into Pools, NAC 538.690 Pool 1: Applicable Resource; allocation, NAC 538.700 Pool 2: Applicable Resource; allocation, NAC 538.730 Pool 3: Applicable Resource; allocation and NAC 538.740 Pool 3: Sharing Increase or decrease in available power. These regulations were added in the 1980s as a way of documenting and publishing the allocations of the Commission's hydropower resources to the public. Today, with the length of time needed to go through the regulatory process these numbers are often incorrect. The public can access correct information immediately from the Commission's website or by calling the Commission and requesting it. These regulations do not affect the actual allocations held by our Contractors. Allocations are determined by the Commission and documented through executed contracts.

Finally, LCB provided changes to the following regulations which simply conform the numbering in those regulations to the revised numbering in NAC chapter 538

after the repeal of the sections discussed above. Those regulations are:

- a. NAC 538.075 Scope; power of Executive Director.
- b. NAC 538.330 Petition for adoption, filing, amendment or repeal of regulation
- c. NAC 538.395 Applicability
- d. NAC 538.500 Terms of contracts; expiration
- e. NAC 538.530 Establishment and maintenance of program for integrated resource planning or similar program
- f. NAC 538.550 Assignment or other transfer of rights
- g. NAC 538.746 Nonperformance: Notice; suspension of allocation of power; temporary reallocation of power; reinstatement of allocation of power; termination of allocation and reallocation of power.

Commission Staff proposed one change to NAC 538.455 contained in Section 4, Subparagraph 10, found on page 6 of the LCB file. Commissioners were provided with this individual page, and additional copies were available for the public.

Staff proposed that the phrase “the draft order” be revised to “the notice” because an objection would be filed to the published notice. Therefore, staff recommended that the commission adopt LCB File No. R033-18 with the change in wording on page 6.

Chairwoman Premsrirut opened the hearing for public comment. There were none.

Commissioner Winterton asked questions regarding the proposed staff change on page 6, seeking clarification on whether the objection is to the allocations or to the process.

Ms. Guerci explained that the objection is to the decision the Commission has made.

Chairwoman Premsrirut concurred with Commissioner’s Winterton’s concern. Commissioner Sisolak offered keeping the original “its decision on the applications” with the “the Notice” proposed by Staff.

Commissioner Kirkpatrick asked if an additional workshop would be required if an additional change is made by the Commission.

Ms. Guerci responded a material change would need an additional workshop, but she did not consider the proposed change as material, so no additional workshop would be needed.

Commissioner Winterton moved to Adopt LCB File No. R033-18 with the language revision contained in Section 10 on Page 6, adding “its decision on the applications or the Notice”, approving the proposed amendments and repealing various provisions in the Nevada Administrative Code (NAC) Chapter 538, which revise Procedures for the Allocation and/or Reallocation of Power and the Publication of Power allocations. The motion was seconded by Commissioner Kirkpatrick, and approved by unanimous vote.

D. *For Possible Action:* Approval of minutes of the March 13, 2018 meeting.

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

E. *For Information Only:* For Information Only: Presentation of the Colorado River Commission of Nevada’s (Commission’s) Annual Financial Report for the Fiscal Year Ended June 30, 2017.

Tamara Miramontes, representing Eide Bailly, gave a report on the Commission’s Annual Financial Report for Fiscal Year ending June 30, 2017. Ms. Miramontes stated: Eide Bailey performed the audit and it was performed in accordance with Generally Accepted Auditing Standards as well as Government Auditing Standards. Two reports were issued in relation to the financial statements. The first report is over the basic financial statements themselves and our opinion on that is unmodified, which means that the financial statements are materially correct as they have been presented and can be relied upon by users. The second report issued is a report over internal controls over financial reporting and noncompliance with other matters in accordance with government auditing standards. In this report, Eide Bailly issues a comment on internal controls if the audit identifies any deficiencies in internal controls, material weaknesses, or significant deficiencies. Additionally, if Eide Bailly finds any material noncompliance with laws and regulations they are reported as well.

Eide Bailly did not identify any material noncompliance with laws and regulations that were reported, but did identify one item as a material weakness in financial reporting and is identified as finding in 2017-A. The finding is in a financial close and reporting process and the condition was the Commission’s financial close and reporting process over the comprehensive annual financial report did not detect certain items that were identified during the audit process. During Eide Bailly’s testing of prepaid power and unearned revenue, the auditor noted instances in which the Commission’s accounting for recording these items was not consistently applied, resulting in material adjustments. Additionally, during the testing of customer advances and payables, Eide Bailly noted the Commission had not reversed the prior approval for these items in the current year.

The auditor also noted that the accrual for customer advances and payables as of June 30, 2017 had not been recorded. The recommendation is that management strengthen the financial close and reporting procedures over significant account balances at year end by adding the appropriation of reconciliations related to prepaid power, unearned revenue, and customer advances, payables and ensuring that all records related to significant account balances and reconciliations including year-end adjustments and calculations are maintained.

Eide Bailly issued a confidential document to the members of the body that required a waiver from the Executive Director before being introduced at a public meeting.

Commissioner Sisolak objected to the marking of the document as confidential and wanted it available to the public for full transparency. He suggested that all supporting materials for every agenda item be available to the public prior to each meeting on the Commission's website.

Special Counsel Christine Guerci responded that as Ms. Miramontes stated the letter is a confidential document to the Commission. There is an accountant-client privilege found in the Nevada Revised Statutes, making it confidential. However, the confidentiality can be waived. Until it is waived by the client however, it is a confidential document and communication.

Vice Chairwoman Kelley asked if the Executive Director could waive the privilege now, so that the public has access to it, and then the Commission will put it on the next agenda.

Chairwoman Premsrirut responded to the two issues of confidentiality and full transparency. Understanding the need for transparency and the ability to allow the public to see not only what the Commission is doing, but any critiques or communications to the Commission, she believes the Commission has an interest in, first having an opportunity to see what those confidential communications are before blanketly waiving them and disclosing them to the public

Commissioner Sisolak stated that in this particular matter which is, most of the Commissioner's matters, the documents should be readily available to the public, and that now that the Commission has reviewed it, the Commission has deemed it something where the confidentiality is waived.

Chairwoman Premsrirut stated the issue is more of a timing one; is it something we waive carte blanche all the time, so the Commission is not ever able to review confidential information. Her preference as a practicing attorney, is that here, while the privilege is owned by the client, the client does need an opportunity to review it. That does not mean that the Commission will not waive the privilege or not produce the document after review.

Chairwoman Premsrirut also discussed the other issue mentioned by Commissioner Sisolak concerning posting of supporting documents. The Commission has always posted in conformance with state law and requirements. Recognizing the point raised, she tasked Staff to look at possible procedural changes to modify posting of all supporting documents prior to Commission meeting to help reduce the additional burden on the public of requesting the documents prior to the Commission meeting. A report will be added to the agenda for the Commission's next scheduled meeting.

Ms. Harkins waived the Accountant/Client Privileged so that the confidential document could be discussed and shared with the public. Staff will research posting supporting documents on the Commission's website and add an action item for this change to the next meeting agenda.

Commissioner Winterton noted that the timing of this year's report was quite late and asked if Eide Bailly started the process in a timely manner.

Ms. Miramontes stated that identified errors, research, and resolutions added to the time it took to complete the audit.

Commissioner Kirkpatrick asked if there were any significant changes in GASB or the law that was causing the problems. She commented that she is a member of multiple boards and commissions and is seeing consistencies with some of the findings.

Ms. Miramontes stated there was a law change as far as GASB 82 and some of the PERS reporting and that is one very small piece to this that did require restatement prior paid adjustments, but the other piece is due to Eide Bailly's interpretation of Generally Accepted Accounting Principles.

Vice Chairwoman Kelley asked if this was the first material weakness in a year-end reporting for the Commission.

Mr. Beatty responded that yes this is the first material weakness reported on the Commission financial statements in his thirty years of service at the Commission.

The discussion between the Staff and Eide Bailly concerning GASB and the audit findings appeared to be on methodologies which led the Commission to request a neutral third-party evaluation.

An agenda item will be added for the next scheduled Commission meeting to discuss Eide Bailly, LLP's audit of Commission FY 2017 Financial Statements, including timeline and the Required Communications Letter, as well as discussion and possible decision to seek a contract for an independent review of all or part of the audit.

Chairwoman Premsrirut concluded that in order to get in front of this and to unequivocally prevent this from happening next year, the Commission wants to identify the process and the problems. It is rare that the Commission is confronted with contentious, challenging matters but are happy to have open debate around important issues.

F. For Possible Action: Consideration of and possible action on a five-year contract with Gray CPA Consulting for the implementation of a CAFR reporting system, related training, annual licensing costs and continued support as needed in the total amount of \$116,828.50.

Chief of Finance and Administration, Doug Beatty, explained with the completion of this year's annual audit and the accompanying CAFR the Commission's auditors have recommended that the agency strengthen the internal controls over the year-end financial reporting by maintaining complete reconciliations of material account balances and all supporting documents including calculations, schedules, and other items that tie to the final CAFR amounts.

As the audit was nearing completion and the results indicated that the auditors were going to report weaknesses in the reporting controls, Staff developed a plan to strengthen the reporting process by bringing all activities within the agency. The current processes include completion of significant portions of the CAFR by the external auditors which provides for the possibility of material adjustments made by the auditors and not recorded and account balance support being maintained outside of the agency. By bringing all CAFR production activities within the agency and centrally collected and maintained within a computer reporting system, all balances and schedules, including underlying support, documents will be readily obtainable and auditable. To accomplish this, staff reached out to various vendors and others to determine the best current practices for CAFR production. As staff reached out to the State Controller, it was discovered that the Controller and State Purchasing were currently completing an RFP for CAFR production software and support for the State's CAFR. Staff followed the effort and as the final vendors were determined, participated in its own face to face demonstrations with the final two vendors. The Controller's evaluation determined that the CaseWare package was the best CAFR production software and developed a contract with the implementation group Gray CPA Consulting PC. The contract provides for other state agencies that produce annual reports to piggyback on the RFP and also utilize the vendor and software.

After Staff completed its own demonstration, they agreed with the Controller's conclusions and requested a companion contract from State Purchasing. The resulting contract was attached for review and consideration.

The contract costs are detailed in the attached cost proposal information but basically consist of some one-time costs related to the development of the CAFR, training on the use of the software and implementation of the package in the amount of \$55,028.50, with ongoing annual licensing costs of \$7,960 and annual support (after the first year) in the amount of \$5,500. The contract anticipates a

five-year period. The total not-to-exceed amount for all parts of the contract is \$116,828.50.

Approval of the contract and implementation of the software package will allow for the complete in-house production of the CAFR including all required financial and narrative information, required schedules and supporting documents. In addition, as this is a part of the package purchased by the Controller, this will allow for complete access by the Controller to the CRCNV's CAFR as it is developed each year with instant importation into the State CAFR as needed. This will greatly reduce the effort expended by both Commission Staff and Controller Staff to accomplish the reporting for the state as a whole.

Staff recommended the Commission approve the contract and authorize the Executive Director to sign it on behalf of the Commission.

Commissioner Kirkpatrick moved for approval of the five-year contract with Gray CPA Consulting for the implementation of a CAFR reporting system, related training, annual licensing costs and continued support as needed in the total amount of \$116,828.50. The motion was seconded by Commissioner Stewart, and approved by a unanimous vote.

G. *For Possible Action:* Consideration of and possible action regarding the intervention and participation of the Commission in the Federal Energy Regulatory Commission (FERC) Docket No. EL18-102-000 which directs NV Energy (NVE) to propose revisions to its transmission rates or show why those rates should not be changed in response to the Tax Cuts and Jobs Act of 2017.

Deputy Executive Director Eric Witkoski provided a background presentation on the intervention and participation of the Commission in the Federal Energy Regulatory Commission (FERC) Docket No. EL18-102-000.

The Commission purchases transmission and ancillary services from NV Energy under its Open Access Transmission Tariff (OATT) on behalf of the Southern Nevada Water Authority (SNWA) and its member agencies for a portion of their water pumping and wastewater loads. Additionally, the Commission is a party to an ancillary service agreement (ASA) with NV Energy for the provision of ancillary services to the Black Mountain Industrial Complex and Basic Water Company which incorporates, by reference, NV Energy's OATT rates.

On December 22, 2017, the Tax Cuts and Jobs Act of 2017 (Tax Cuts and Jobs Act) was signed into law. The Tax Cuts and Jobs Act, among other things, lowered the federal corporate income tax rate from a maximum 35 percent to a flat 21 percent rate, effective January 1, 2018. This means that, beginning January 1, 2018, companies, including those subject to FERC's jurisdiction, will compute income taxes owed to the Internal Revenue Service based on a 21 percent tax rate. This tax rate reduction will result in lower income tax expense going forward and a reduction in accumulated deferred income taxes on the books of rate-regulated companies such as NV Energy.

The recovery of federal corporate income taxes is reflected in transmission rates. When tax expense decreases, so does the cost of service. FERC must ensure that the rates, terms, and conditions of jurisdictional services under the Federal Power Act are just, reasonable, and not unduly discriminatory or preferential. Accordingly, FERC directed NV Energy and certain other utilities to either (1) propose revisions to its stated transmission rate under the OATT to reflect the recent change in the federal corporate income tax rate and describe the methodology used for making those revisions, or (2) show cause why it should not be required to do so. NV Energy's response to FERC's Show Cause Order is due on May 14, 2018.

On April 3, 2018, Special Counsel Christine Guerci filed a document-less, no position Motion to Intervene to protect the Commission's ability to intervene and participate. No funds were expended in the filing. The filing can be withdrawn if the Commission decides against going forward.

As a transmission and ancillary service customer of NV Energy's, the Commission has a unique interest in the proceeding that can't be represented by any other Party.

Staff recommended that the Commission intervene and participate as necessary to protect its interest in Docket No. EL18-102-000.

Commissioner Kirkpatrick motioned to approve intervention and participation of the Commission in FERC Docket No. EL18-102-000 which directs NVE to propose revisions to its transmission rates or show why those rates should not be changed in response to the Tax Cuts and Jobs Act of 2017. The motion was seconded by Commissioner Stewart, and approved by a unanimous vote.

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.

Natural Resources Program Manager Angela Slaughter gave a 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.

- Water Use in Southern Nevada
- Precipitation and Temperature
- Upper Basin Snowpack Accumulation
- Unregulated Inflow, Current and Projected Reservoir Status
- Summary

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

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.)

Chairwoman Premsrirut asked if there were any comments or questions from the public.

There were none.

J. Comments and questions from the Commission members.

Chairwoman Premsrirut asked if there were any other comments or questions from the commission members.

There were none.

K. Selection of next possible meeting date.

The next meeting is tentatively scheduled for 1:30 p.m. on Tuesday, June 12, 2018, at the Grant Sawyer State Office Building, 555 East Washington Avenue, Room 4412, Las Vegas, Nevada.

L. Adjournment.

The meeting was adjourned at 2:59 pm.

Jayne Harkins, P.E., Executive Director

APPROVED:

Puoy Premsrirut, Chairwoman