

The Colorado River Commission of Nevada meeting was held at 1:30 p.m. on Tuesday, January 8, 2019 at the Clark County Government Center in the Commission Chambers, 500 S. Grand Central Parkway, Las Vegas, Nevada.

COMMISSIONERS IN ATTENDANCE

Chairwoman
Vice Chairwoman
Commissioner
Commissioner

Puoy Premsrut
Kara J. Kelley
Marilyn Kirkpatrick
Cody T. Winterton

COMMISSIONER(S) IN ATTENDANCE VIA TELEPHONE

Commissioner
Commissioner

John F. Marz
Dan H. Stewart

DEPUTY ATTORNEY(S) GENERAL

Special Counsel, Attorney General
Special Counsel, Attorney General

Christine Guerci
Jennifer Crandell

COMMISSION STAFF IN ATTENDANCE

Deputy Executive Director
Chief of Finance and Administration
Assistant Director of Engineering and Operations
Assistant Director of Energy Services
Manager, Hydropower Program
Natural Resource Analyst
Natural Resource Analyst
Office Manager
Administrative Assistant IV
Administrative Assistant III
Administrative Assistant II

Eric Witkoski
Douglas N. Beatty
Robert D. Reese
Gail Bates
Craig N. Pyper
Peggy Roefer
Warren Turkett, Ph. D.
Gina L. Goodman
Kira Bakke
Kristina Perry
Tamisha Randolph

OTHERS PRESENT; REPRESENTING

Borman Specialty Materials
College of Southern Nevada
NV Energy
Overton Power District No. 5
Overton Power District No. 5
Self

John Holmstrom
Tina Dobbs
Michael Hulin
MeLisa Garcia
Randall Ozaki
Sara Price

**COLORADO RIVER COMMISSION OF NEVADA
MEETING OF JANUARY 8, 2019**

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 November 13, 2018 meeting.	1
D.	<i>For Possible Action:</i> Selection of Vice Chair.	1
E.	<i>For Possible Action:</i> Consideration of and possible action to adjust and lower the amount of collateral the Commission's retail industrial customers are required to post for Calendar Year 2019 pursuant to their contracts with the Commission.	1
F.	<i>For Possible Action:</i> Consideration of and possible action to approve an increase in the Commission's hydropower administrative charge from \$.000707/kWh to \$.00122/kWh or such amount as the Commission finds appropriate.	3
G.	<i>For Information Only:</i> Update on the activities of the Financial and Audit Subcommittee.	7
H.	<i>For Information Only:</i> Update on pending legal matters, including Federal Energy Regulatory Commission or Public Utilities Commission of Nevada filings.	8
I.	<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.	8
J.	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.)	9

**COLORADO RIVER COMMISSION OF NEVADA
MEETING OF JANUARY 8, 2019**

(CONTINUED)

K.	Comments and questions from the Commission members.	9
L.	Selection of the next possible meeting date.	9
M.	Adjournment.	9

The Colorado River Commission of Nevada meeting was called to order by Chairwoman Premsrirut at 1:32 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. Mr. Witkoski noted a typo on the first page of the Agenda that was not material. Chairwoman Premsrirut asked counsel if the posting was still in compliance with the open meeting law. Ms. Christine Guerri-Nyhus, Special Counsel, Attorney General stated in the affirmative.

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 November 13, 2018 meeting.

Vice Chairwoman Kelley asked for the last sentence on page 9 to be modified to state, "Vice Chairwoman Kelley reiterated for the record to Commission Staff and the auditing firm the importance of meeting all deadlines".

Vice Chairwoman Kelley moved for approval of the minutes as amended. The motion was seconded by Commissioner Winterton and approved by a unanimous vote.

D. For Possible Action: Selection of Vice Chair.

NRS 538.111 provides that "At the first meeting of the Commission in each calendar year, the Commission shall elect the Vice Chair for the ensuing calendar year".

Commissioner Winterton moved to have Vice-Chairwoman Kelley appointed as the Vice Chair. The motion was seconded by Commissioner Kirkpatrick and approved by a unanimous vote.

E. For Possible Action: Consideration of and possible action to adjust and lower the amount of collateral the Commission's retail industrial customers are required to post for Calendar Year 2019 pursuant to their contracts with the Commission.

Ms. Gail Bates, Assistant Director of Energy Services, stated that each year, as required by statute and regulation, the Commission reviews the creditworthiness of each of its

industrial customers and the collateral level for the respective customers pursuant to NRS 538.181(2) and NAC 538.744. Based on that review, the Commission establishes the amount of collateral and prescribes the manner in which the customer is required to furnish the collateral pursuant to its contracts with the Commission.

Regarding the level of collateral, "the amount of collateral established by the Commission cannot be less than one-fourth of the contractor's gross annual purchases." NAC 538.744(3). Consistent with the regulation, Staff calculated the collateral required for each industrial customer, except for EMD Acquisition LLC, for Calendar Year 2019, based on 25 percent of that customer's Adjusted Gross Annual Purchases during the test period, October 1, 2017 through September 30, 2018. The calculation includes the actual purchases during the test period with adjustments for prior year reconciliations and adjustments, and interest to cash collateral. Staff also reviewed each customer's payment history and credit rating.

The amount of collateral required from EMD Acquisition LLC (EMD) for Calendar Year 2019 was set at \$750,000 during the September 2018 Commission meeting and memorialized in the Assignment, Assumption and Consent Agreement executed in October 2018 as part of the terms of the recent acquisition by EMD of the Tronox assets.

Based on its evaluation of the data, Staff recommends that the Commission adjust and lower the respective collateral amount required for each industrial customer as shown below:

	Adjusted Gross Annual Purchases ¹ October 1, 2017 through September 30, 2018	Proposed Collateral 25% of Previous Column	Present Collateral	Change from Present Collateral
Basic Water Company	\$768,654.85	\$192,163.71	\$206,700.91	(\$14,537.20)
Lhoist North America	\$75,533.98	\$18,883.50	\$23,097.28	(\$4,213.78)
EMD Acquisition LLC dba Borman Specialty Materials ²	\$2,273,309.13	\$750,000.00	\$750,000.00	\$0.00
Pioneer Americas LLC dba Olin Chlor Alkali Products	\$332,948.57	\$83,237.14	\$98,231.78	(\$14,994.64)
Titanium Metals Corporation	\$9,320,020.34	\$2,330,005.09	\$2,364,559.80	(\$34,554.71)

1. The "Adjusted Gross Annual Purchase" is based on the total Monthly Invoices plus the total Parker-Davis Advance Fund Invoices and adjusted for the following:

- a) Cash collateral adjustments and interest credits added back in.
- b) Adjusted for prior years reconciliations.

2. EMD's collateral remains at \$750,000.00 as approved at the September 11, 2018 Commission meeting, instead of 25% of adjusted gross annual purchases.

Chairwoman Premsrut asked if the reduction is based on a straight mathematical format.

Ms. Bates stated that yes, it is.

Chairwoman Premsrut clarified that setting the collateral is a function of using the customers' gross annual purchases, taking 25 percent of it, and compared to the present collateral, resulted in a reduction. It is not a discretionary function on the Commission's part.

Ms. Bates affirmed it is formula driven.

Staff recommended that the Commission set the amount of the required collateral for each retail industrial customer as shown in the chart above.

Vice Chairwoman Kelley moved to set the amount of the required collateral for each retail industrial customer as shown in the chart. The motion was seconded by Commissioner Kirkpatrick and approved by a unanimous vote.

F. For Possible Action: Consideration of and possible action to approve an increase in the Commission's hydropower administrative charge from \$.000707/kWh to \$.00122/kWh or such amount as the Commission finds appropriate.

Mr. Douglas Beatty, Chief of Finance and Administration stated that the Commission's hydropower contractors pay an administrative charge per kWh to recover the Commission's administrative costs related to hydropower, including labor and other operating costs. Per NAC 538.610, the administrative charge is based on a projection for 2 years of all costs for the Commission's operations relating to those hydropower contractors. The 2 year estimated costs are divided by the total estimated number of kilowatt-hours of all energy, including both hydroelectric and supplemental, to be delivered to contractors to arrive at a rate per kilowatt-hour.

The Commission's current hydropower administrative charge is \$.000707/kWh. In 2017, the administrative charge represented approximately 3% of the customer's total bill from the CRCNV. The proposed increased charge is \$.00122/kWh which represents approximately 5% of the customers' total bill from the CRCNV. The Commission has not increased the administrative charge since 2005.

Without the proposed increase, the Commission will not generate sufficient revenue to pay for its labor and administrative expenses. There are two factors driving the need for the increase. First, poor hydrology has reduced the Commission's kWh sales of hydropower to its customers. Second, a significant decrease in load at the Black Mountain Industrial (BMI) Complex occurred in FY 2017 which dramatically reduced the Commission's sales of supplemental power to the Complex.

Per NAC 538.610, the administrative charge may be increased or decreased after the Commission notifies the contractors of the grounds for the increase or decrease and the effective date of the increase or decrease, which must be not less than 90 days after the Commission notifies the contractors. Some of the Commission's resource contracts (SLCAIP and Parker-Davis) require a 6-month notice period to increase the administrative

charge. The BCP contracts do not require a 6-month period, but instead, require a 90-day notice period in accordance with NAC 538.610.

The Commission provided notice of the increase during its May 2, 2018 customer meeting and again during the October 15, 2018 customer meeting. Staff indicated in the October meeting that estimated reserves related to the Administrative Charge appeared to be adequate to cover expenses until the end of the current fiscal year (June 30, 2019). Current projections however indicate that the reserves will be very close to the minimum levels (approximately \$300,000), as early as June of 2019.

Staff recommended that the Commission approve the increase in the administrative charge effective July 1, 2019 as previously discussed with the customers. Staff also recommended that, if the CRCNV's reserves fall below \$300,000, that the administrative charge increase on the BCP contracts be instituted on May 1, 2019 or June 1, 2019 dependent upon the CRCNV's reserve levels. Staff will inform the customers if projections indicate that the increase will be implemented earlier than July 1, 2019.

The Staff is not aware of any objections to the increase.

Chairwoman Premsrirut stated that on page 12 of the PowerPoint presentation, attachment A, under the salaries portion for fiscal year 2021 all the way through 2024 the amount stayed the same. She asked if there is a reason for that amount remaining the same, since in previous years, salaries have escalated.

Mr. Beatty replied that the escalation from the previous years involved movement of personnel to the hydropower function, and the addition of personnel. At this point it is assumed that staffing is fairly stable. No additional personnel are required. Therefore, absent knowledge of what the Governor and Legislature will do in terms of salary increases, that line item was held steady. It is also unknown what the Governor and Legislature will do for a cost of living increase. Those budget decisions would be the only increases under the salary portions for fiscal years 2021 through 2024.

Chairwoman Premsrirut appreciated Staff's notification of all the customers and keeping them informed, as well as the Customers' participation in the process. She asked Staff if any feedback, comments, or any form of objections were presented at the customer meeting held on October 15, 2018.

Mr. Beatty stated there were several questions. The questions were similar to the Chairwoman's, particularly regarding salaries, and an unfilled position. It is not yet known if that position is still needed. If it is not, salary levels could be lower than projected. Staff talked about the need for the vacant position, and the Customers said it was fine to fill the position. The position so far has not been successfully filled.

There were a couple of other questions, but there were no objections. After the customer meeting, Staff spoke with several customers on the side. Those customers stated that they understood the situation. A few of the BMI Complex customers told Staff there is a problem

in covering fixed cost with a volumetric revenue source, and it should be reviewed to see if a solution can be found. Staff will be looking into that.

In terms of Energy Services (ES) and Power Delivery (PDP) employees, Mr. Beatty stated that ES and PDP do not have a volumetric rate. They pay a fixed rate that is adjusted every month. Staff will investigate that option for the hydropower customers, however; that would require a Regulation change.

Chairwoman Premsrut stated that the last time the Commission increased the rate was 2005, and 13 years have passed. She asked why this proposal is only for a 5-year period.

Mr. Beatty stated that the Regulations provide a 2 year look forward, but Staff generally tries to do a 5 year look forward. When the rate was increased in 2005, Staff did a 5 year look forward. At the time, the CRCNV was fully staffed, however; a few employees were lost. For the first few years, the Hydropower Department consisted of essentially 2 employees. Therefore, a reserve was built in excess of what was projected, which is why the rate lasted longer.

Chairwoman Premsrut asked whether today's approval item included the recommendation that if the reserves fall below \$300,000 there is the trigger to increase the rate earlier than July 1, 2019.

Mr. Beatty stated that was correct. Staff would let the customers know when projected reserves fall below \$300,000.

Commissioner Winterton asked about the decrease due to the BMI Complex incident. Is there a "take or pay" provision within the contracts?

Mr. Beatty stated, no there is not

Commissioner Winterton stated that that is part of what happened. He asked, going back to the volumetric challenge, could Staff fix the administrative side since the aforementioned incident is something that should be anticipated in the future.

Mr. Beatty stated that it is possible, which is why the problem of the volumetric calculation needs to be addressed.

Commissioner Kirkpatrick confirmed with Mr. Beatty that there is the required staff for the next five years.

Mr. Beatty stated at this point, yes.

Commissioner Kirkpatrick stated that if the State does any roll-ups, the State would account for that amount, and it would not come out of the Colorado River Commission of Nevada's initial cost.

Mr. Beatty stated that this is correct.

Commissioner Kirkpatrick feels it is important to know that with the initial downturn of the economy, every budget went backwards, and layoffs were a little over 1,000. Vacancies stayed open for a long time with the Colorado River Commission of Nevada. Stabilizing the budget will now allow for a longer plan for vision. In the past, filling positions needed to go through the legislature, and it was a difficult task. Now all of the necessary positions are filled, so there is latitude as long as it is maintained.

Mr. Beatty stated yes, that is correct. In the budget the Commission approved for Staff to present to the Legislature, Staff did not ask for any new positions. There are still a few vacancies which Staff asked to keep.

Commissioner Kirkpatrick stated that when the budget was presented to the Commission, they did ask as to why the vacancies needed to be left on the books. Staff stated that it was better to have the flexibility.

Commissioner Kirkpatrick believes that Nevada is starting to stabilize, and everyone has learned from the recession how to be better going forward. Even the customers have had to figure out how to handle rising costs, and certain things that are dropping. Every other utility has an automatic 3 percent increase every year, and since Staff has never planned that way, they are way below everyone else. Hats off to the Staff in planning for the future by stabilizing and flattening things out, and that this way, no matter what happens the CRCNV can sustain its employees.

Staff recommended that the Commission approve the increase in the administrative charge effective July 1, 2019 unless the CRCNV's reserves fall below \$300,000. Should reserves fall below \$300,000, Staff recommends that the administrative charge on the Boulder Canyon Project (BCP) contracts be instituted on May 1, 2019 or June 1, 2019 dependent upon the CRCNV's reserve levels. Staff will inform the customers if projections indicate that the increase will be implemented earlier than July 1, 2019.

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

Vice Chairwoman Kelley moved to approve the increase in the administrative charge from \$.000707/kWh to \$.00122/kWh effective July 1, 2019 unless the CRCNV's reserves fall below \$300,000. Should reserves fall below \$300,000, the administrative charge on the Boulder Canyon Project (BCP) contracts would be instituted on May 1, 2019 or June 1, 2019 dependent upon the CRCNV's reserve levels. The motion was seconded by Commissioner Winterton and approved by a unanimous vote.

G. For Information Only: Update on the activities of the Financial and Audit Subcommittee.

Mr. Beatty stated that, on December 11, 2018, the Financial and Audit Subcommittee met to review the final draft of the audit. The audit draft that was before the Commission had a clean opinion with no matter of emphasis paragraph. There was, however, a finding memo in the back of the Comprehensive Annual Financial Report (CAFR), similar to what was seen in 2017. The findings referenced the conversion of the cash basis books maintained by the State Controller to the Generally Accepted Accounting Principles (GAAP) basis of reporting, and there were a few major adjustments that were made after the trial balance was provided to the auditors. At the time of the audit subcommittee review of the draft CAFR, the write-up was not clear. The Financial and Audit Subcommittee requested that the auditors revise the memo and try to clarify the language that would go into the final CAFR. The auditors did revise and clarify the memo. Eide Bailly provided a new copy of their proposed findings memo, and it clarified that the adjustments dealt with a GAAP issue, not an operational or cash issue. Staff provided their response stating with the new CAFR production program and with strengthening of controls, specifically the creation of templates for the adjusting entries, the conversion process should be greatly improved. At the time of the Subcommittee meeting the audit was nearly complete with one issue still outstanding. That issue dealt with the amount reported as the Other Post-Employment Benefits (OPEB) liability on the balance sheet. The information provided to the State by the Nevada Public Employee Benefits Program (PEBP) program appeared to be flawed. PEBP re-ran the numbers, and the new numbers provided after the subcommittee meeting were not materially different from those in the draft CAFR reviewed. The auditors stated no change needed to be made. Management and Attorney representation letters are now finalized, as well as the other required items to finish the audit. Staff's understanding is the auditors are currently printing the financials, they will be available shortly. Staff anticipates bringing the CAFR to the Commission at the February 12, 2019 meeting. The final draft is available at the CRCNV's offices if anyone from the public or the CRCNVs customers would like to view them.

Commissioner Kirkpatrick said thank you to all sides, as the issue had been very contentious at this time last year, and Subcommittee Chairwoman Kelley has done a good job at steering the Financial and Audit Subcommittee. The Commission was able to bring some concerns to the auditors, set expectations, and for the auditors to work with Staff to correct issues. The CRCNV is headed in a good direction, and it is easy to see how intense it can be.

Mr. Beatty agreed, adding that Staff greatly appreciates the Financial and Audit Subcommittee, as it moved the CRCNV into a good place with the auditors. The Subcommittee members' relationship with the auditors has been a great help with the process, and the good relationship that has been cultivated with the auditors was of great benefit.

Chairwoman Premsrut thanked the Financial and Audit Subcommittee members for the time commitment and persevering; these are favorable results in addition to the favorable and enhanced relationship with the auditors. The Commission is indebted to the

Subcommittee for this accomplishment. When future subcommittees are formed, the other Commissioners may draw the straw to serve on that one.

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

Ms. Christine Guerri, Special Counsel, Attorney General stated there was nothing to report for the month of December 2018.

I. *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.

Dr. Warren Turkett, Natural Resource Analyst gave a status update on the hydrological conditions, drought, and climate of the Colorado River Basin, Nevada's consumptive use of Colorado River water, and other developments on the Colorado River.

- Summary of Lake Powell, Lake Mead, and Nevada Water Supply
- Water Use in Southern Nevada
- Precipitation and Temperature
- Unregulated Inflow, Current and Projected Reservoir Status

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

Vice Chairwoman Kelley directed the following question to Commissioner Kirkpatrick: are there opportunities for the CRCNV and Southern Nevada Water Authority (SNWA) to work together as the state sees an inevitable drought?

Commissioner Kirkpatrick stated that SNWA has been stepping up their conservation efforts. One area of concern is the older more lush commercial areas. SNWA has been trying to come up with new landscaping ideas in lieu of grass. The rebate now is \$3.00 per square foot to remove grass. They will try to include the CRCNV in the next meeting with SNWA's Public Works department in trying to figure out how to get the older areas to bring more native plants in, as opposed to grass. She is happy to coordinate and bring the CRCNV into the fold of the SNWA.

Vice Chairwoman Kelley stated it would take a big commitment, and the Commission sees it coming.

Commissioner Kirkpatrick stated the SNWA has had over 300,000 square feet of landscaping that they feel could make a huge difference very quickly.

Chairwoman Premsrut echoes the statements that anything the CRCNV can do to assist the SNWA, particularly the mindset of the community would be beneficial.

J. 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.

K. Comments and questions from the Commission members.

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

Vice Chairwoman Kelley congratulated Commissioner Kirkpatrick on her new leadership role in the County Commission and hopes it does not preclude her from participating on this Commission. Commissioner Kirkpatrick's perspective and knowledge of the budget system within the State has been invaluable to the agency.

L. Selection of next possible meeting date.

The next meeting is tentatively scheduled for 1:30 p.m. on Tuesday, February 12, 2019, at the Clark County Government Center, Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada.

M. Adjournment.

The meeting was adjourned at 2:21 p.m.



Eric Witkoski, Deputy Executive Director

APPROVED:



Puoy Premsrirut, Chairwoman