

The meeting was held at 1:00 p.m. on Tuesday, November 13, 2012 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 Chairwoman	Marybel Batjer
Commissioner	Bob Coffin
Commissioner	Tom Collins
Commissioner	J. Brin Gibson
Commissioner	Duncan R. McCoy

#### **COMMISSIONERS NOT IN ATTENDANCE**

Commissioner	Berlyn D. Miller
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#### **DEPUTY ATTORNEYS GENERAL**

Senior Deputy Attorney General	Jennifer T. Crandell
Senior Deputy Attorney General	Ann C. Pongracz

#### **COMMISSION STAFF IN ATTENDANCE**

Executive Director	Jayne Harkins, P.E.
Deputy Executive Director	James D. Salo
Chief of Finance and Administration	Douglas N. Beatty
Manager, Energy Services	Gail A. Bates
Manager, Hydropower Program	Craig N. Pyper
Manager, Natural Resources Group	McClain L. Peterson
Hydropower Program Specialist	Michael S. Harris
Natural Resource Analyst	Jason Thiriot
Natural Resource Analyst	Kimberly E. Maloy
Senior Energy Accountant	Richard M. Sanders
Office Manager	Judy K. Atwood
Administrative Assistant III	Carol L. Perone
Administrative Assistant II	Melissa Dibert

#### **OTHERS PRESENT; REPRESENTING**

Consultant	Sara A. Price, Esq.
Fairchild Consulting Group, Inc.	Sandra Fairchild
Overton Power District No. 5	Mendis Cooper
Overton Power District No. 5	Delmar Leatham
Southern Nevada Water Authority	Scott Krantz

**COLORADO RIVER COMMISSION  
OF NEVADA  
MEETING OF NOVEMBER 13, 2012**

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The Colorado River Commission meeting was called to order by Chairman Ogilvie at 1:01 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 and questions 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.)**

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

**C. *For Possible Action:* Approval of minutes of the September 11, 2012 meeting.**

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

**D. *For Possible Action:* Consideration of and possible action to approve a contract for services of independent contractor between Fairchild Consulting Group, Inc. and the Colorado River Commission of Nevada (Commission) for Administrative Support Services for Certain Regulatory Proceedings relating to the Commission's Hoover-Post 2017 Allocation Activity.**

Craig N. Pyper, Manager of the Hydropower Program, gave a summary of the Fairchild Consulting Group, Inc. contract.

The passage of the Hoover Power Allocation Act of 2011 created a mandate for the Commission to allocate 11.5 megawatts of contingent capacity and associated firm energy to new customers in Nevada. This allocation will entail detailed regulatory and public processes which the Commission has not recently experienced and for which the Commission is not staffed. Staff's review of the personnel required to continue to provide normal services to our existing Hydropower customers as well as fulfill our statutory trust duties in the new allocation process, determined that additional staff resource is needed. However, the need for this additional staff resource is temporary, because the Commission's Hoover allocation processes are for a limited time that will end with new contracts executed by the end of 2016. Therefore, Staff recommends that the necessary additional staff resource be obtained under a limited term contract rather than seeking to hire additional staff whose duties would end in 2016.

In June of 2012 the Commission prepared a Request for Proposal (RFP) for Administrative Support Services for Certain Regulatory Proceedings and advertised the RFP. The Commission Staff received four responses to the RFP, evaluated all responses,

ranked the submissions to determine whom to interview, conducted interviews with the top two candidates, and selected Fairchild Consultant Group, Inc. (Fairchild) as the most qualified bidder to provide the required services. All four Commission interviewers concurred that Fairchild was ranked highest overall in their individual assessments.

Fairchild will provide administrative support services for the Commission's Hoover proceedings as directed by Staff, at a rate of \$95.00 per hour, with a not-to-exceed total of \$125,000.00 for the term of the contract.

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

Mr. Pyper asked if there were any questions. There were none.

Chairman Ogilvie asked if any of the Commission's current customers in attendance had any questions regarding this contract. There were none.

**Vice Chairwoman Batjer moved for approval of the contract with Fairchild Consulting Group, Inc. for administrative support services. The motion was seconded by Commissioner Collins and approved by a unanimous vote.**

<p><b>E. <i>For Possible Action:</i> Consideration of and possible action to set the amount of collateral the Commission's retail industrial customers are required to post for calendar year 2013.</b></p>
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Hydropower Program Specialist Michael Harris stated that Staff was presenting and seeking approval for the Commission's retail industrial customers' collateral requirements for the calendar year of 2013. 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.

Staff has reviewed the Commission customers' gross annual purchases for fiscal year 2012 as well as their future requirements for 2013 and has determined that collateral requirements for calendar year 2013 should collectively be \$5.2 million. This represents a \$28,000.00 increase from calendar year 2012's collateral requirements of \$5.179 million. The main reasons for the increases were the additions in customer loads and the additions in power prices for fiscal year 2012 as compared to 2011.

The calculations are as follows:

	Adjusted Gross	Proposed Collateral	Present	Increase or Decrease
Customer	Annual Purchases*	25%	Collateral	Of Present Collateral
	10/1/11 through 9/30/12	of previous column		
<b>American Pacific Corporation*</b>	\$2,383,713.20	\$595,928.30	\$649,989.84	<b>(\$54,061.54)</b>
<b>Basic Water Company*</b>	\$652,035.04	\$163,008.76	\$173,867.51	<b>(\$10,858.75)</b>
<b>Chemical Lime Company of Arizona*</b>	\$56,758.17	\$14,189.54	\$13,571.57	<b>\$617.97</b>
<b>Tronox, LLC*</b>	\$1,779,758.52	\$444,939.63	\$440,232.49	<b>\$4,707.14</b>
<b>Olin Chlor Alkaline Products*</b>	\$7,021,848.20	\$1,755,462.05	\$2,217,085.87	<b>(\$461,623.82)</b>
<b>Titanium Metals Corporation*</b>	\$8,936,214.46	\$2,234,053.62	\$1,684,321.19	<b>\$549,732.43</b>
<b>Total</b>	<b>\$20,830,327.59</b>	<b>\$5,207,581.90</b>	<b>\$5,179,068.47</b>	<b>(\$28,513.43)</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.

To determine the collateral required of each industrial customer for Operating Year 2013, Staff calculated 25 percent of that customer's Adjusted Gross Annual Purchases during the test period, October 1, 2011 through September 30, 2012, reflecting actual purchases during the test period, with adjustments for those customers who estimate significantly higher load for the Operating Year.

Mr. Harris asked if there were any questions.

Chairman Ogilvie asked if there were any comments or questions from the Commissioners.

Commissioner Coffin asked if any of the customers were 60 or 90 days over-due.

Mr. Harris said that no customers were over-due.

Commissioner Coffin asked if the statute specified how much collateral each customer needed.

Mr. Harris stated that 25% of the customers yearly purchases is required as collateral.

Commissioner Coffin asked what happens to the interest accrued due to the collateral fund.

Mr. Harris stated that all money is re-paid to the company that had paid it.

Commissioner Coffin stated that he believes the amounts may be too high, and asked if the amounts have been reviewed since the statute was put into place.

Ms. Harkins stated that, for clarification, the amounts are set by the agency regulations and not by state statute. The amounts could be changed, but the Commission would need to go through a public process to change the regulations previously adopted by the Commission.

Commissioner Gibson stated for the record that his law firm represents some of the companies covered by this agenda item. He does not personally represent any of these clients and therefore believes he is free to vote on this item with no impartiality issues arising.

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

**Commissioner McCoy moved for approval of the recommended 2013 collateral requirements for the Commission's retail industrial customers. The motion was seconded by Commissioner Collins and approved by a unanimous vote.**

**F. *For Possible Action:* Consideration of and possible action to approve an amendatory and restating electric power supply services contract between Pioneer Americas LLC d.b.a. Olin Chlor Alkali Products and the Commission.**

Mr. Pyper gave a summary of the Pioneer Americas LLC contract.

The Commission originally entered into a power supply contract with Pioneer Americas LLC d.b.a. Olin Chlor Alkali Products (Olin) on January 1, 2003 and the contract has been extended and amended as conditions required. The term of the present contract ends December 31, 2012.

Commission Staff and Olin have made detailed revisions to the Contract to reflect how we are operating today. Revisions include a comprehensive list of definitions; changes to include Contractor supply of certain ancillary services (such as energy imbalance) if the Contractor desires to do so; changes to the reporting dates for provision of data and reports by Staff and Contractor; changes to allow the Contractor to supply one-third of its collateral requirement in cash rather than a flat amount of \$3,000,000.00; and changes to procedures for purchasing deficiency power resources and laying off of surplus power resources to reflect current operations. The Parties desire to amend and restate the Contract as presented for a period of ten years, terminating on December 31, 2022.

Staff recommended that the Commission approve the contract and authorize the Chairman to sign it on behalf of the Commission and present it to the Governor for signature, after the contract has been approved and executed by Pioneer Americas LLC.

Mr. Pyper asked if there were any questions.

Chairman Ogilvie asked for clarification based on the collateral guidelines set forth in Agenda Item E. Based on the amount listed in Item E, if one-third of Olin's collateral needed to be cash, the amount would roughly be \$600,000.00 in cash and the remaining \$1,200,000.00 as a letter of credit. Would the one-third amount in cash be up to the \$3,000,000.00 mentioned in the briefing, or would it be based on the collateral required per year.

Mr. Pyper stated that the \$600,000.00 in cash estimate is correct for the next calendar year. There is no limit for the one-third cash payment but rather that it is based on the overall collateral needed for any calendar year.

Ms. Harkins stated that the \$3,000,000.00 mentioned in the briefing was the amount of the previous contract and that the correct amount for the next calendar year is listed in Item E of the meeting's agenda.

Chairman Ogilvie asked if there were any representatives from Olin with comments or questions. There were none.

Commissioner Collins asked if the Commission joins the Silver State Energy Association (SSEA), would the Scheduling Coordinator listed in Exhibit 2 of the contract, currently Nevada Power Company (NV Energy), be changed to the SSEA without needing to amend the contract contained here.

Mr. Pyper stated that the Commission currently uses NV Energy for load balancing, but the contract has an exhibit included that could be used to make the transition to SSEA, without a need for a contract amendment.

Commissioner Gibson stated for the record that his law firm represents the company covered by this agenda item. He does not personally represent this client and therefore believes he is free to vote on this item with no impartiality issues arising.

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

**Commissioner Collins moved for approval of the contract between Pioneer Americas LLC and the Commission. The motion was seconded by Vice Chairwoman Batjer and approved by a unanimous vote.**



**G. *For Possible Action:* Consideration of and possible action to approve a novation agreement among the Commission, the Silver State Energy Association (SSEA), and each counterparty with whom the Commission has entered into power purchase and sale transactions and/or parental guarantee agreements, assigning the Commission's interest in those transactions and agreements to SSEA.**

Gail A. Bates, Manager of Energy Services, gave a summary of the novation agreement.

In the agenda item Staff asked the Commission to approve a novation agreement under which the Commission's interest in various power purchase and sale contracts with its suppliers will be transferred to the SSEA. These purchase and sale contracts are forward contracts that were entered into under the Western Systems Power Pool master agreement which is a widely used master agreement in the power industry. The terms of the individual transactions vary in length but do not extend beyond 2015.

The agenda item does not change the Commission's statutory authority in any way, or affect the power purchase agreements the Commission enters into on a monthly basis for the Basic Industrial Complex which is not an SSEA member.

The core mission of the Commission since 1935 has been to act as a trustee for water and hydropower resources along the Colorado River. With regard to non-hydropower energy, the Commission's statutes enable us to provide non-hydropower energy to our wholesale customers as a service to those customers if they request it and are able to pay for it. However, those customers are not obligated to purchase energy from the Commission. Therefore, the Commission's role as a supplier of non-hydropower has changed from time to time to better meet our customers' changing needs and desires.

The agenda item proposed to assign to the SSEA the Commission's interest in various power purchase and sale contracts for the SSEA members. This change is consistent with a series of steps the Commission has taken since 2007, when it entered into a cooperative agreement under the Interlocal Cooperation Act to form the SSEA. The members of the SSEA include the Commission, the Southern Nevada Water Authority (SNWA), City of Boulder City (Boulder City), Overton Power District No. 5, and Lincoln County Power District No. 1.

The SSEA was formed for the purpose of jointly planning, developing, owning, and operating energy resources. There are many example of this type of joint action agency throughout the U.S. Joint action agencies form primarily because there are economies of scale that can be gained from smaller utilities joining forces to develop and operate facilities and purchase power.

In 2009, all of the SSEA members except for the Commission took a second step of executing a project agreement for Power Supply Management Services. The execution of this agreement enabled the SSEA to become a full service energy provider for the project participants. The intent behind the project is for a single entity, the SSEA, to supply all energy to the project members as well as any other products and services that are needed

to supplement the members' hydropower resources available to them through contracts with the Commission or directly with the federal government.

In June of 2011, the SSEA took the third step of taking on the responsibility of acting as the full-service energy provider for Boulder City and supplying all power from the market that is needed to supplement Boulder City's hydropower resources.

The next step in the SSEA's development is for the Commission to transition out of its role as energy supplier for the majority of the SNWA's load. When the transition is complete, the SSEA will become the full service energy provider for approximately 85% of the SNWA's total electrical load. The Commission will continue to insure that its customers' needs are met through its membership in the SSEA. Moreover, if the SSEA were to cease to function, the Commission could resume providing service to its customers in the same way it does so today assuming no modification of our authority by the state legislature.

Staff recommended that the Commission approve the novation agreements and authorize the Executive Director to sign them on behalf of the Commission.

Ms. Bates asked if there were any questions.

Commissioner Collins asked if all legal issues were resolved with NV Energy or if they needed to be solved before approving this agreement.

Ms. Bates stated that the legal issues referenced are regarding the 15% of the SNWA loads that are remaining inside of NV Energy's transmission and distribution network. NV Energy is requiring that the Commission remain as the supplier of those loads for the time being.

Chairman Ogilvie asked if there were any further questions or comments.

Commissioner Gibson stated for the record that his law firm represents some of the companies covered by this agenda item. He does not personally represent any of these clients and therefore believes he is free to vote on this item with no impartiality issues arising.

**Commissioner McCoy moved for approval of the novation agreement between the Silver State Energy Association, the Commission and all counterparties. The motion was seconded by Commissioner Collins and approved by a unanimous vote.**

**H. *For Information Only:* Status update on the Commission's efforts to implement the provisions in the Hoover Allocation Act of 2011 (H.R. 470) passed by Congress.**

Mr. Pyper gave a summary of the current efforts by the Commission.

On October 30, 2012, the Commission held a public workshop for all eligible entities looking for further information and guidance on the procedures required to apply for power under the Hoover Allocation Act of 2011.

The workshop covered the Western Area Power Administration's (Western) proceedings and requirements for this Act. The Commission was pleased to be able to pass along information to many interested applicants that attended the workshop in person and by telephone.

Prior to the workshop Western released a Federal Register Notice that listed proposed criteria for the application process. The Commission was able to pass this information along to interested parties who attended the workshop, and to other eligible entities in the area.

Public Information Forums have been scheduled for the end of November that Commission Staff will be attending. Staff will not only gather information on the process for interested parties in Nevada, but also share with Western comments and concerns from the Commission.

Mr. Pyper asked if there were any questions.

Chairman Ogilvie asked when the anticipated time frame for Western to make its allocations will be.

Mr. Pyper stated that the current activity timeline shows that, starting in summer of 2013, Western will set the criteria for eligible entities. These criteria will be grouped in four separate priority groups. At the end of that process, they will begin to accept applications from entities eligible for an allocation. The application process should begin in the fall of 2013 and end by the close of that year.

Chairman Ogilvie asked if the process has been outlined enough yet to know the time frame for the allocations to be announced.

Mr. Pyper stated that the process should allow for announcement of the allocations at the end of 2013 or the beginning of 2014, however, no specific date has been set.

Chairman Ogilvie asked how this compares to the anticipated timeline previously outlined.

Mr. Pyper stated that this matches closely with what was anticipated.

Chairman Ogilvie asked if there were any other questions or comments.

Vice Chairwoman Batjer asked if the Commissioners would have access to the comments submitted to Western.

Mr. Pyper stated that the Commission will provide the comments to the Commissioners following submission to Western.

**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.**

Kimberly Maloy, the Commission's Natural Resources Analyst, provided a report on the following:

- Unregulated Inflow into Lake Powell
- Storage Conditions
- Storage Condition Comparison
- Lake Powell Unregulated Inflow
- Lake Powell & Lake Mead Operational Tiers
- Precipitation – Colorado River Basin
- Lake Powell End of Month Elevations
- Lake Mead End of Month Elevation Projections
- Monthly Precipitation for October 2012
- Seasonal Precipitation, October 2011 – September 2012
- Las Vegas, NV January – October Total Precipitation
- U.S. Drought Monitor
- U.S. Seasonal Drought Outlook
- Water Use in Southern Nevada
- Nevada's Consumptive Use of Colorado River Water (2011 and 2012)

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

Ms. Harkins noted that Ms. Maloy is leaving the Commission. The Commission expressed their thanks to Ms. Maloy for her public service.

**J. Comments and questions 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.)**

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

**K. Comments and questions from the Commission members.**

Chairman Ogilvie asked if there were any comments or questions from the Commission members.

Commissioner Coffin provided a suggestion that the Commission should revisit the amounts of the collateral deposits made by customers. A review of each customer could be completed to determine if 25% of yearly purchases are needed as future deposits.

Chairman Ogilvie asked Ms. Harkins and Mr. Pyper to consider this as an agenda item at a future meeting.

Chairman Ogilvie asked if there were any other questions or comments. There were none.

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

A Special Joint Meeting with the Southern Nevada Water Authority Board of Directors is scheduled on Thursday, November 15, 2012, beginning at 9:00 a.m. at the Molasky Corporate Center, SNWA Board Chambers, 100 City Parkway, Seventh Floor, Las Vegas, Nevada.

The December Commission Meeting is scheduled on Tuesday, December 11, 2012 at the Grant Sawyer State Office Building, Room 4412 beginning at 1:00 p.m.

**M. Adjournment.**

The meeting adjourned at 1:38 p.m.

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Jayne Harkins, P.E., Executive Director

APPROVED:

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George F. Ogilvie III, Chairman