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ARIZONA POWER AUTHORITY

1810 W. ADAMS STREET
PHOENIX, AZ 85007-2697
(602) 368-4265

WWW.POWERAUTHORITY.ORG

MINUTES OF THE ARIZONA POWER AUTHORITY (“APA”) COMMISSION (“Commission”) MEETING HELD JUNE 13, 2023

PRESENT: Philip C. Bashaw, Chairman
Russ Jones, Commissioner
Kim Owens, Commissioner
John Sullivan, Commissioner
Jim Sweeney, Vice Chairman

STAFF: Heather Cole, Executive Secretary to Commission
Jordy Fuentes, Executive Director
Gary Kern, Financial Administrator
Ben Norris, Attorney General’s Office
John Schutter, Senior Accountant
Sonseeahray Thayer, Chief Financial Analyst

OTHER: Elaine Brien, AEP
Dennis DeLaney, KR Saline & Associates
Darrin Francom, Central Arizona Project
Ed Gerak, Irrigation & Electrical Districts Association (IEDA)
Elston Grubaugh, Wellton Mohawk Irrigation District
Daniel Herder, Clark Hill
Taylor Howerter, Roosevelt Irrigation District
Leslie James, CREDA
Diego Leal, B3 Strategies
Derek McEachern, ED#4
Ron McEachern, ED#4
Kristin McMinimy, AEP
Doug Milligan, Salt River Project
Jason Moyes, Moyes, Sellers & Hendricks
Ken Robbins, Electrical District #2
Ken Saline, KR Saline & Associates
Scott Saline, KR Saline & Associates
Meghan Scott, Wellton Mohawk
Kent Simer, KR Saline & Associates
Russell Smoldon, AMPUA
Elizabeth Story

Sheryl Sweeney, ClarkHill
Lori Tatiano, SRP
Robert VanHofwegen, Electrical District #8
Brian Yerges, ED#3

CALL TO ORDER: The meeting was called to order at 10:04 a.m. by Chairman Phil Bashaw. Quorum was established.

➤ Commissioner Owens joined the meeting @ 10:06 a.m.

ROLL CALL: Commissioners Bashaw, Jones, Owens, Sullivan & Sweeney were present.

CHAIRMAN REQUEST FOR DECLARATION OF CONFLICT OF INTEREST BY ANY COMMISSIONER:

➤ Each Commissioner declared they had no conflict of interest on any matter as listed on the agenda for today's meeting.

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was recited.

APPROVAL OF MINUTES:

- **Motion:** To approve the minutes from the Regular Commission Meeting held on April 18, 2023 was made by Commissioner Jones and seconded by Commissioner Sullivan.
- **Vote:** Commissioners Bashaw, Jones, Owens, Sullivan & Sweeney approved the motion.
- **Resolved:** Approved as stated above and the written documents are entered into the Commission records.

REVIEW OF EXPENDITURES AND FINANCIAL REPORTS AND APPROVAL OF CLAIMS: Sonseeahray Thayer, Chief Financial Analyst provided the Expenditures & Financial Reports. Hoover Operations Fund Claims #13984 - #14097 and APA Fund #660 for the period April 1, 2023 through May 31, 2023 were presented.

- **Motion:** To approve Hoover Operations Fund Claims #13984 - #14097 and APA Fund #660 as presented was made by Commissioner Sullivan and seconded by Vice Chairman Sweeney.
- **Vote:** Commissioners Bashaw, Jones, Owens, Sullivan & Sweeney approved the motion.
- **Resolved:** Approved as stated above and the written documents are entered into the Commission records.

REVIEW OF DRAFT APA & HOOVER OPERATIONS FUND 2024 BUDGETS – Sonseeahray Thayer, Chief Financial Analyst, share the following information regarding the first round of FY2024 Budgets:

APA Budget

The Arizona Power Authority (APA) fund serves several purposes. It provides the credit agencies quasi debt service coverage, although ultimately the \$4.1 million in cash belongs to the customers. Secondly, for cash flow purposes, it is used for the sale and purchases of supplemental (or firming) power. Thirdly, the fund is utilized for capital purchases and then recaptured from the Hoover Operating Account (HOA) fund as the assets are depreciated. Finally, it is used as a pass through for Electrical District #4 expenses.

Firming activity is expected to be minimal in Operating Year 2024, primarily for the benefit of Current Insight customers. The depreciation expense for the APA is expected to be \$19,000 with claw back from the Hoover Operating Account (HOA) fund of \$12,000. We are expected to have capital purchases of \$5,000. The ED4 revenue is comprised of \$6,700, which is 60% of risk management premiums, and \$2,500 in APA administrative fees.

The appropriation for future projects is \$1 million and future projects are yet to be determined and are subject to commission approval.

HOA Budget The HOA budget is driven by three general categories of obligations and the APA's expected energy revenue; this is calculated based on the Master Schedule Energy report from the U.S. Department of Energy's Western Area Power Administration ("WAPA") portal, which was last updated 05/31/23. This number is volatile and will change all the way up to the final budget publication date in August, 2023. The three general categories of obligations are as follows:

- 1) The base charge provided by WAPA. This can be found in the Boulder Canyon Project Fiscal Year 2024 Public Information Forum (updated May 18, 2023). The APA is then assigned its percentage of 19.75% of capacity and 19.4013% of energy.
- 2) Debt Service.
- 3) Administrative & General ("A&G") Expenses.

The HOA budget also includes a \$400,000 planned margin for debt service coverage ratio purposes. Taking the three general categories of obligations together with the \$400,000 planned margin for debt service coverage ratio purposes, the APA's expenses breakout as follows:

- 1) Purchased power makes up 83% of the budget
- 2) Debt Service, 9%
- 3) A&G Expenses, 6%
- 4) Planned Margin, 2%

In other words, 94% of the budget is essentially out of control of the APA, as only the A&G expenses are really within the APA's control. The 6% for A&G Expenses comprises only \$1.2 million of the total budget of \$19.6 million. Further, the A&G costs have been significantly reduced over the past several budget years through the reduction of legal and outside services related to the post-2017 contracts, staff attrition, and transfer of information technology expenses and building operating expenses to the Arizona Department of Administration ("ADOA"). A&G is expected to decrease 2.6% (approximately \$33,000) in OY2024.

The preliminary OY2024 budget utilizes what the APA believes to be an overly optimistic estimate of the energy anticipated to be generated at Hoover Dam. Despite the anticipated decrease in the flow of the Colorado River incorporated in the current Drought Contingency Plan ("DCP"), WAPA is estimating an increase of power generated at Hoover Dam of 264,899 megawatt hours ("MWh") in OY2024 from the prior year. Using WAPA's assumptions, this would indicate an overall composite rate decrease of 6.8%.

WAPA's apparently over-optimistic estimates would make it appear as though the APA will be able to reduce rates by 7% in OY2024, which is unrealistic.

In considering the APA's likely rates going forward, the APA needs to consider several factors. First, the negotiated agreement between the seven states that put the Supplemental Environmental Impact

Statement (“SEIS”) on hold at the end of May, 2023 anticipates a reduction of approximately 1.5 million-acre feet of conservation at Hoover Dam. The APA is estimating that this will result in a 13% reduction in Hoover Dam hydropower. The possibility of this anticipated 13% reduction in Hoover Dam hydropower has not yet been acknowledged by the U.S. Bureau of Reclamation (“BOR”) or by WAPA. Second, the WAPA Master Schedule of March, 2023 estimated 2.9 million megawatt hours (MWh) for OY2024. In May, 2023, the WAPA Master Schedule was updated, showing an increase of 3.2 million MWh, which is a significant increase in the amount of power. At the moment, the APA anticipates that the amount of energy generated at the dam will be closer to the 2.9 million MWh, with the 13% reduction being calculated based on this figure. The APA is actively seeking information to determine the possible and most likely scenarios for OY 2024. The APA also continues to have conversations with WAPA about possibly adjusting the WAPA base rate and how that might happen.

By August, 2023, the APA hopes that there is more information available and that the APA then will be able to provide that information to its customers, so that the APA can make the best decisions possible for its customers.

REPORT ON POWER OPERATION MATTERS: Sonseeahray Thayer, APA Chief Financial Analyst, reported on the following:

- Monthly Precipitation – May precipitation was higher than the same time last year.
- Water Year Precipitation – When comparing this water year to date to the same time period last year, overall there has been much more precipitation.
- Upper Colorado River System – Precipitation to date in the Upper Colorado River system is at 120%, which is much higher than what it was at the same time last year.
- Lake Powell inflow -- Lake Powell inflow is forecast to be at 131% of normal for the year.
- Total System Contents – Total system contents have increased to 23.8 million-acre feet.
- Reservoir and System Capacity – Currently Lake Powell is at 36% capacity and Lake Mead is at 31% capacity.
- Lake Mead Elevation – By April of 2025 it is anticipated that the elevation at Lake Mead will be at the 1,060 foot mark.
- Glen Release – The Glen Canyon Dam release remains fairly consistent year over year.
- Hoover Release – The Hoover Dam release remains fairly consistent year over year.

Lastly, the climate forecast from the Colorado Basin River Forecast Center for Arizona is 33%-70% above normal temperatures, with an up to 50% chance of below normal precipitation over the next 3 months.

LEGAL UPDATE: Ben Norris, AG Office – Legal Counsel explained the U.S. Supreme Court’s recent decision in *Sackett v. EPA*, ___ U.S. ___ (2023). The issue in *Sackett* was whether the U.S. Environmental Protection Agency (“EPA”) had authority under the Clean Water Act (“CWA”) to order the Sacketts to remove backfill they had added to their wetlands property so that they could build a house on the property. While all nine justices found in the Sacketts’ favor, the justices had differing justifications for their unified conclusion and wrote four separate opinions:

Justice Alito wrote for a five-justice majority (including Justices Roberts, Thomas, Gorsuch, and Barrett), holding that the EPA lacked such authority because the water on the Sacketts’ property was not “adjacent” (as used by Congress in the CWA) to any “water of the United States” (“WOTUS”; which the majority defined as “only those relatively permanent, standing or continuously flowing

bodies of water forming geographical features that are described in ordinary parlance as streams, oceans, rivers and lakes”) because there was no “continuous surface connection” between the water on the Sacketts’ wetland property and any “bodies that are waters of the United States in their own right.” The majority did concede that a “continuous surface connection” would still exist even if there were “temporary interruptions in surface connection” because of “phenomena like low tide or dry spells.” The majority also stated that “a landowner cannot carve out wetlands from federal jurisdiction by illegally constructing a barrier on wetlands otherwise covered by the CWA.”

In a separate concurring opinion, Justice Thomas (joined by Justice Gorsuch) stated “I join the Court’s opinion in full” and then asserted a very limited scope for the U.S. Constitution’s Commerce Clause, the Constitutional clause used by Congress as authority for its enactment of the CWA: “The term commerce was consistently used [in “founding era sources”] to mean trade or exchange – not all economically gainful activity.” Justice Thomas may be using this opinion to signal that he (and Justice Gorsuch) believe that Congress’ authority under the Commerce Clause is far more limited – and not just in the circumstances presented in *Sackett* – than what more liberal decisions have held over the years.

In two separate concurrences, four justices rejected the majority’s “continuous surface connection” interpretation of the term “adjacent,” contending that Congress’ use of the word “adjacent” in the CWA must be read more broadly as including not just wetlands “adjoining” a WOTUS but those wetlands “separated from a covered water only by a man-made dyke or barrier, natural river berm, beach dune, or the like,” reasoning that “adjacent wetlands may affect downstream water quality and flood control in many of the same ways that adjoining wetlands can.”

In summary, the Supreme Court’s ruling in *Sackett* clearly limits the EPA’s authority under the CWA, but leaves room for future disputes over, for example, what constitutes a “continuous surface connection,” or a “dry spell.” And if Congress were to further amend the CWA, or if a change in the Supreme Court’s membership were to turn the current four-justice minority into a future five-justice majority, the rule announced by the current five-justice majority in *Sackett* could be set aside.

EXECUTIVE DIRECTOR REPORT

- APA Renewable Energy Credit (“REC”) Update – APA Executive Secretary Heather Cole reported to the Commission that the APA’s process of determining how APA’s customers want the APA to handle the RECs that the APA is now receiving (i.e., whether the customer in question wants to receive its share of the RECs, or whether the customer in question wants the APA to retain and sell that customer’s RECs, and then provide that customer with the customer’s pro-rata share of the sale proceeds) began in early April, 2023. Since that time, the APA has been collecting election forms from the APA’s customers. The APA now has all the customer election forms. For the 2022 year, it appears the APA will have 480,000 RECs to market and sell. For the first quarter of 2023, the APA already has 115,364 RECs to sell, with an anticipated additional approximately 91,800 RECs to come. The APA will collect the anticipated additional RECs as quickly as possible.

The APA has received information from REC brokers that there is a large amount of hydropower RECs already out on the market, which has somewhat depressed the market value of hydropower REC’s. Accordingly, the APA will have to see what the RECs the APA will be offering for sale can be sold for.

- WAPA Colorado River Storage Project (“CRSP”) update to the Southwest Power Pool (“SPP”) – The Federal Register Notice (FRN) came out in May, 2023. The 45-day comment period

ended June 12, 2023. There were many comments and the Arizona contingent of WAPA CRSP customers was very active in commenting. The APA itself made comments that the APA distributed to all APA customers. There is a lot of concern that centers around making sure that the WAPA CRSP Arizona customers are not impacted detrimentally by a WAPA CRSP move to SPP. The APA anticipates more conversations with its customers and hopefully some productive processes that can help put something in place to allow the upper basin entities, that truly benefit from going to SPP to be able to do that, and those that have the potential to not benefit to be able to receive their full benefit of their resource. The concern is that a technical solution that has been proposed is not being taken seriously.

- **Update - Empowering Rural America Grant Opportunity** – In speaking with the Arizona Electric Power Cooperative (“AEPCO”), APA Executive Director Fuentes learned of a grant opportunity through the U.S. Department of Agriculture (“USDA”). Through the USDA, the Inflation Reduction Act allocated \$9.7 billion to the Empowering Rural America (New ERA) program, to incentivize rural electrical cooperatives to move from fossil fuels to renewal energy sources by significantly reducing the cost of renewable energy projects. For the APA to participate in this program, the APA needs to become a member of the AEPCO electrical cooperative. If the APA becomes a member of AEPCO, the APA then would negotiate with AEPCO, in order to enter into a Power Purchase Agreement (“PPA”) with AEPCO. The APA would then wholesale this firming power to the APA customers. A.R.S. §§ 30-121 to 123 allow the APA to do this. The APA will be sending AEPCO a letter of interest, stating the APA’s interest in negotiating a PPA with AEPCO. In turn, AEPCO anticipates using the APA’s letter of interest in support of AEPCO’s letter of intent to the USDA, seeking a share of the available \$9.7 billion; AEPCO will need to deliver its letter of intent to the USDA prior to July 31, 2023. It is anticipated (but not certain) that the APA’s participation in AEPCO would enable the APA to offer AEPCO power to APA customers that otherwise would cost \$27 to \$30 per MWh for \$18 to \$20 per MWh. It also is anticipated that APA membership in AEPCO could enable the APA to offer battery storage to APA customers that otherwise would cost \$10.50 to \$12 per kilowatt per month for \$7 to \$8 per kilowatt per month. Awards made under the Empowering Rural America (New ERA) program may be in place in time to allow development of projects by March 1, 2024.

Elaine Brien from AEPCO discussed the different Membership Classes of AEPCO with the Commission. The APA anticipates requesting to be considered for membership as a Class B member of AEPCO; if this occurs, the APA would be the sole Class B member of AEPCO, which would enable the APA to unilaterally name a member to the AEPCO board.

- The July, 2023 APA Commission meeting will be held Tuesday, July 18, 2023, at Little America, Flagstaff, AZ, at 1:00 pm.

BUSINESS ITEMS:

- **APA Policy – APA-2023-001 Leave – Payment of annual leave to a non-separating employee**
 - **Motion:** To approve APA Policy – APA-2023-001 was made by Commissioner Sullivan and seconded by Commissioner Owens.
 - **Vote:** Commissioners Bashaw, Jones, Owens, Sullivan & Sweeney approved the motion.

- **Resolved:** Approved as stated above and the written documents are entered into the Commission records.
- APA Resolution 23-01 in appreciation of Gary Kern's service to the APA and retirement
 - **Motion:** To approve Resolution 23-01 was made by Commissioner Sullivan and seconded by Vice Chairman Sweeney.
 - **Vote:** Commissioners Bashaw, Jones, Owens, Sullivan & Sweeney approved the motion.
 - **Resolved:** Approved as stated above and the written documents are entered into the Commission records.
- Proposed Early Distribution of OY 2022 Customer Refunds of \$400,119.23
 - **Motion:** To approve early distribution of OY2022 Customer Refunds was made by Commissioner Jones and seconded by Vice Chairman Sweeney.
 - **Vote:** Commissioners Bashaw, Jones, Owens, Sullivan & Sweeney approved the motion.
 - **Resolved:** Approved as stated above and the written documents are entered into the Commission records.
- Interagency Service Agreement – Attorney General's Office Representation – FY2024 Amendment
 - **Motion:** To approve the Interagency Service Agreement for Attorney General's Office Representation was made by Commissioner Owens and seconded by Commissioner Jones.
 - **Vote:** Commissioners Bashaw, Jones, Owens, Sullivan & Sweeney approved the motion.
 - **Resolved:** Approved as stated above and the written documents are entered into the Commission records.

COMMISSIONER COMMENTS: N/A

CUSTOMER COMMENTS: Sheryl Sweeney thanked Gary Kern for his many years with the APA.

There being no further business to come before the Commission, Chairman Bashaw adjourned the meeting.

The meeting was adjourned at 12:04 p.m.

Phil Bashaw, Chairman

ATTEST:

Heather J. Cole, Executive Secretary to Commission