

*Subject to approval at
the June 13, 2017
Utilities Board Meeting*

CITY OF LA JUNTA)
COUNTY OF OTERO) SS
STATE OF COLORADO)

A Regular Meeting of the Board of Utilities Commissioners of the City of La Junta, Colorado, was called to order by Chairman Lorenz Sutherland on Tuesday, May 9, 2017, at 4:00 p.m. in the Power Board Room of the Municipal Building.

Roll was called and the following Board Members were present:

Present Mike Bourget, Commissioner
 Lynn Horner, Mayor
 Frank McKenzie, Vice-Chairman
 Scott Monarco, Commissioner
 P. Lorenz Sutherland, Chairman

Absent: None

Also present: Rick Klein, City Manager
 Bill Jackson, Asst. City Manager
 Phil Malouff, City Attorney
 Melanie Scofield, City Clerk
 Joe Kelley, Director of Water & Wastewater
 Tom Seaba, Water/WW Quality Tech.
 Darren Adame, Director of Engineering
 Gary Cranson, ARPA Representative
 Edward Vela, Council Member
 Kathy Del Rio, La Junta
 Bette McFarren, Tribune-Democrat

MINUTES OF PREVIOUS MEETINGS

Chairman Sutherland asked if there were any corrections to the minutes of the Regular Meeting of April 11, 2017. Hearing none, he declared the minutes approved as published.

CITIZEN PARTICIPATION

Edward Vela: I would like to reiterate what I said last meeting concerning the \$623,000 that we can use for cost over-runs on the new Wastewater Treatment Plant and also to have the ARPA members vote when the finality on the BMW is consummated that they petition the ARPA Board to divide those funds up between the member cities like they did the \$623,000 and use these funds to also go towards the Wastewater over-run.

City Attorney Malouff: On the BMW issue, the money would be payable back to ARPA. We don't have any direct claim. We could make a request, but we wouldn't want to force them to turn over any shares of those funds. It's possible, that they may choose to do that. The second part of that, arguably, if those funds came back, they come back to the Electric Fund and to use it for Wastewater or any other fund would cause some trouble. It never hurts to ask, but we have no leverage. It's technically not our money.

Chairman Sutherland: With the settlement with Syncora, each of the municipalities, with the exception of Lamar, received the \$623,000 plus in the settlement. This Board, at that point in time, agreed to use that money, as far as our balance sheet, to stabilize the Electric Fund.

REPORTS

A. Water & Wastewater Treatment. Tom Seaba gave the following report:

1. R.O. Plant
 - Repairing roof leaks on well houses.
 - Continued work on control valve on #8 well.
 - Tree and weed control at R.O. Plant, well fields and water tanks.
2. Distribution
 - Repaired main break on Best Avenue.
 - Repaired several service leaks.
 - Assisted with the 2017 Mudsport.
 - Assisted with tree removal after heavy snowfall.
3. Wastewater
 - Contractor continues to clean, cut, and camera system west of Colorado.
 - Our collection crew is performing yearly jetting on system east of Colorado.
 - Repaired 3" gas line in digester building.
4. All Departments
 - Initiating an apprenticeship program this summer.
 - Seven employees scheduled for a class at OJC on May 18th.
 - Continuing preventive maintenance programs and repairs as time and usage allow.

Joe Kelley: I would like to provide some basic information on the new Wastewater Treatment Plant. We did get the bids in and are in the process of awarding the bid to Moltz Construction out of Salida. It's the same company that built our Water Treatment Plant. The price was \$15.7 million and a few dollars. We have a little over \$13.3 million available on our original loan. We applied for a direct loan from Water and Power Authority for \$2.5 million and that's been approved. We have to have the money available before we can award the contract, which means we have to show the State Regulators that we have \$15.7 million plus available in the project in order to award the project and start construction. The issue is we did have three qualified contractors bid on the project. If we fail to award this bid in a timely fashion, I'm concerned if we could even get a contractor to do the job. They're already busy and need to know if we are actually going to go ahead with this project because if we don't, they've got other places to go and other jobs to do. We should be able to get this started by early summer; hopefully, no later than July 1st.

B. Power Plant & Distribution. Rick Klein gave the following report for Reuben DeLeon:

1. Electric Line Crew
 - Finished upgrade at Otero Junior College wrestling building and energized transformer.
 - Replaced several poles and retired a few that were damaged in the wind storm.
 - Crew had approximately 60 calls of secondary lines that were down that Saturday, by day's end, all homes had power.
 - On Sunday, we had seven calls of tree branches on power line and all were taken care of with no outages.
 - On Monday through Thursday, we had about 40 calls of tree branches on secondary power lines and meter mast down.
 - Line crew finished the temporary work at the Wastewater Treatment Plant retiring some primary overhead line to get ready for the contractors to start construction of the new facility.
2. Power Plant Maintenance Crews
 - Mopped floors daily.
 - Sprayed for weeds around plant yard.
 - Picked up trash after wind storms.
 - Filled dry cooling towers (radiators) for engines #6, #7 and #8.
 - Repairing cooling tower air check valves.
 - Cleaned up various pumps and other equipment around plant.
 - Cut & fertilized grass around plant.
 - Removed tarps & plywood on various fans around plant.

3. Electricians Helpers
 - Replaced lamps in MPR for Senior Center.
 - Replaced fixture globe blown off during wind storm.
 - Helped change out light fixture and added switch in Fire Department's secretary's closet.
 - Helped remove canopy light at City Hall.
 - Replaced ballast in downstairs fixture at Plant.
4. Operators
 - Because of Claude Rickman's absence due to health issues, the operator assigned to help the maintenance man instead put time in covering Rickman's daytime shift.
 - Helped repair air check valves.
 - Processed around 60 underground locates during the month.
5. City Electrician
 - Changed out light fixture to LED type and added switch in Fire Department's secretary's closet.
 - Checked for no power in basement of St. Pat's Office Suites, found tripped breaker.
 - Replaced speaker fuses at Tippy Martinez ball field.
 - Checked for no power at announcer's booth at LJ racetrack, found no power coming from transformer.
 - Checked RV outlets at LJ racetrack, ordered repair parts.
 - Replaced one underwater fixture lamp (south end of pool).
 - Tried to replace fixture & cable with no luck on west side of pool (conduit must have been broken due to concrete slabs shifting).
 - Ordered replacement parts for gazebo electrical at police range.
 - Installed outlet for camera on north pole at range for Police.
 - Checked electric gate opener at training site for Fire.
 - Re-crimped and tightened all terminals on contactor for electric gate at training site for Fire.
 - Checked electric gate at Warehouse, reset motor, went over results with Ray Martinez.
 - Went over work required on genesets at Fire Station #2 and 800 mhz tower with Western Power Group.
 - Requested purchasing call out A/C serviceman for 311 Burshears (CareConnect pilot's house) after received text from CareConnect.
 - Removed light fixture from City Hall canopy, researched & ordered replacement LED strips.
 - Installed outlet for Police trailer at St. Pat's.
 - Installed new LED light fixtures in museum at Airport.
6. Power Plant Manager
 - Picked up Spill Plan from Reuben, sent to ATWELL with request for quote to update.
 - Worked on EOM reports.
 - Sent DR-0525 to Reuben for signature, need copy back to submit to PUC.
 - Contacted SECOM to update feature on plant phone system.
 - Contacted Cooling Tower Services for possible evaluation of dry cooling tower for engine #9.
 - Attended webinar on possible dispatching program for plant, sent info to Mr. Klein and Reuben.
 - Started using electronic requisition program through ADG.
 - Worked with ATWELL on getting screenshots from current SCADA system (unable to log into Windows).
 - Hand delivered DR-0525 form to Reuben & Aliza for their signatures.
 - E-filed Annual Report, DR-0525, Outside sales and Electric financials for 2016 to CO-PUC.
 - Re-filed Outside sales & DR-0525 filings with CO-PUC due to error in BILLSUM report.
 - E-filed DOE reports, EIA-860, 861 & 923.
 - Filed blueprints in storage boxes.

- Researched wiring and drawings for Trip/Close controls for ATWELL.

Rick Klein: We did have a citizen talking to some of the Council people and Utilities Board about a house that has been without electricity for over a year and they want the power just turned on. According to Ron Juul, State Electrical Inspector, he says that after one year of your structure not having electricity, you will need it inspected by the State Inspector before the City can turn that power back on. No exceptions.

Rick Klein: Now as far as the power plant, you all tell me, are we going to demo this building. Can we leave the power plant building? (Utilities Board Commissioners consensus is yes.) Can we leave the engines? (Utilities Board Commissioners consensus is yes.) Thank you. I needed those two items answered for clarity in moving forward and getting the plant de-commissioned.

MOTION NOT TO DEMOLITION THE POWER PLANT BUILDING, AT THIS TIME: Bourget

SECOND: Horner

DISCUSSION: There was no further discussion.

VOTE: The motion carries 5-0

MOTION TO DECOMMISSION THE ENGINES IN PLACE, AT THIS TIME: Horner

SECOND: Bourget

DISCUSSION: There was no further discussion.

VOTE: The motion carries 5-0

C. Sanitation. Darren Adame gave the following report:

1. Year-to-date numbers are as follows:
 - Special pickups up by 6
 - 40-yard boxes down by 7
 - 20-yard boxes down by 10
 - Containers from the shop down by 11
 - Compactor Box Service down by 6
 - New dumpster remained the same
 - New 40-yard box rents down by 4
 - New 20-yard box rents remained the same
2. The new sanitation rates for 20 and 40 yard boxes will be in force beginning June 1st.
3. Everything is going well with OCLI.

NEW BUSINESS

A. A Resolution of the Utilities Board of the City of La Junta, Colorado Approving the Settlement of Certain Litigation Between the City of Lamar and the Arkansas River Power Authority.

Resolution No. RUB-3-2017 was presented for the Board's consideration as follows:

WHEREAS, the City of La Junta is a party to that certain Organic Contract Creating and Establishing the Arkansas River Power Authority ("ARPA") as a Separate Governmental Entity dated October 24, 1979 (the "Organic Contract"). Pursuant to the Organic Contract, the City has appointed two representatives to serve on the Board of Directors of ARPA.

WHEREAS, the City of La Junta is also a party to that certain Agreement for the Supply of Electric Power and Energy to

BOARD OF UTILITIES COMMISSIONERS – May 9, 2017

Municipal Members of the Arkansas River Power Authority dated December 13, 1983 ("Power Supply Agreement"), which requires all of the Member Municipalities of ARPA to purchase all of their wholesale electricity requirements from ARPA, over and above certain specified member-owned generation.

WHEREAS, in 2004, ARPA and the City of Lamar ("Lamar"), a Member Municipality of ARPA, executed a Joint Operating Agreement between the City of Lamar, Colorado, the Lamar Utilities Board, and the Arkansas River Power Authority for the Development of the Lamar Repowering Project and Operations and Maintenance in Support of the Lamar Repowering Project, executed November 23, 2004 (the "Joint Operating Agreement") for the purpose of jointly repowering Lamar's 25 MW natural-gas fired steam electric generation station known as "Unit 6", by the addition of a new coal-fired boiler, and additional steam turbine and generator and other equipment to increase its capacity to 44 MW, which was known as the "Lamar Repowering Project" ("LRP"). Pursuant to the Joint Operating Agreement, Lamar agreed to dedicate certain equipment from Unit 6, including the 25 MW steam turbine, electric generator, and associated equipment, to the LRP.

WHEREAS, also in 2004, Lamar and ARPA entered into a Lease Agreement Between the City of Lamar, Colorado and the Arkansas River Power Authority in Support of the Lamar Repowering Project executed December 13, 2004 (the "Lease Agreement"), pursuant to which ARPA leased certain land from Lamar for the construction of coal storage domes and coal handling equipment for use in connection with the LRP. ARPA subsequently constructed concrete domes, conveyors, dust collectors and other coal handling materials and equipment on the property subject to the Lease Agreement.

WHEREAS, in order to facilitate the permitting of the LRP, Lamar, through its electric utility, Lamar Utilities Board d/b/a Lamar Light and Power, voluntarily surrendered the air permit for Unit 6. As a result, Unit 6 was rendered inoperable.

WHEREAS, the LRP has failed due to the inability of the boiler to meet emissions requirements under the terms of its air permit. As a result, ARPA has elected to pursue the sale of the LRP equipment to third parties, and ARPA does not intend to operate the LRP again in the future.

WHEREAS, in light of the failure of the LRP, Lamar no longer has an operating power plant, and has been deprived of

the jobs previously provided by the existence of an operating power plant in its community.

WHEREAS, on or about July 14, 2014, Lamar commenced an action against ARPA in the Prowers County, Colorado District Court, case number 2014-CV-00031, asserting various breaches of contract against ARPA under the Organic Contract, Power Supply Agreement, Joint Operating Agreement and Lease Agreement (the "Litigation"), in which Lamar sought to terminate its relationship with ARPA and to recover damages for the loss of its Unit 6 power plant facilities.

WHEREAS, the loss of Lamar's participation in ARPA would have devastating consequences on the remaining ARPA communities, who would bear the additional debt service for the bonds issued to finance the LRP, which would be included in ARPA's wholesale electric rate.

WHEREAS, on February 22, 2017, ARPA and Lamar participated in mediation in Pueblo Colorado in an effort to resolve all disputes related to the LRP, including all claims that were asserted or could have been asserted in the Litigation. The parties reached a settlement in principle during that mediation, pursuant to which, among other things, Lamar agreed to continue to purchase its electric power and energy requirements from ARPA and ARPA agreed to pay Lamar the sum of One Million Dollars (\$1,000,000.00) together with monthly compensation for the loss of Unit 6 in the sum of Thirty-Three Thousand, Three Hundred Thirty- Three and 33/100 Dollars (\$33,333.33) per month for 26 years from the effective date of the settlement, in exchange for a dismissal with prejudice of the Litigation, each party to bear its own costs and attorneys fees.

WHEREAS, ARPA is concurrently seeking to refund or refinance the bonds issued for the construction of the LRP, which refunding or refinancing is expected to more than offset the anticipated payments to Lamar under the settlement. However, such refunding or refinancing is unlikely to be possible unless the Litigation is promptly dismissed.

WHEREAS, continued litigation of the dispute with Lamar will cost the ratepayers of the City of La Junta, a significant amount, as these legal fees and expenses would be passed along to the ARPA Member Municipalities as party of ARPA's wholesale electricity rate. Further, litigation of the dispute with Lamar would entail risk of an adverse result, as success cannot be guaranteed in any litigation.

WHEREAS, ARPA has requested that the City of La Junta give its approval of the proposed settlement with Lamar.

WHEREAS, the settlement between ARPA and Lamar will not be effective unless all of the ARPA Member Municipalities approve said settlement.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF UTILITIES COMMISSIONERS THAT:

1. The Board of Utilities Commissioners of the City of La Junta, having reviewed the proposed settlement terms and being fully informed of the premises and reasons upon which settlement is based, hereby determines that the settlement is in the best interests of the electric ratepayers of the City of La Junta.
2. The Board of Utilities Commissioners of the City of La Junta recommends to the City Council of the City of La Junta that the settlement agreement be approved.

City Attorney Malouff: ARPA had prepared a standardized resolution that they wanted the various elected Boards to consider. I have made a few adjustments to make it friendly to the Board. Not every community is set up the way we are. If you adopt this resolution you are approving the mediation stipulations that the parties have agreed to. The towns that have approved it now are all but La Junta and Trinidad. You have three choices: you can adopt it, you can reject it, or you can table it. The ultimate decision making; however, would not rest with this Board, it will rest with the City of La Junta City Council.

Chairman Sutherland: We need to be mindful and respectful that a motion and a second merely imply that the business item or the motion should come before the Board for consideration. It does not necessarily favor the motion. So with that, I will entertain a motion.

MOTION TO REJECT RESOLUTION NO. RUB-3-2017 APPROVING THE SETTLEMENT OF CERTAIN LITIGATION BETWEEN THE CITY OF LAMAR AND THE ARKANSAS RIVER POWER AUTHORITY: Bourget

SECOND: McKenzie

DISCUSSION:

Mayor Horner: The thing that really concerns me about this is that no where do we see how Lamar came up with this figure. This would be very different if I saw a breakdown about that power plant, how old it is and its running efficiency, then based on that came up with the number as to what the compensation should be for its remaining years of life. This doesn't show any of that logic or determination. I wish it had more of a factual component so I could have made been able to make an easier decision.

Vice Chairman McKenzie: Personally, I don't like being pushed around. There's no guarantee that we're going to save all the money that we think we're going to save in refinancing bonds. I would just as soon spend the money on attorneys and be told by a judge that this is what we have to pay rather than going out an volunteering payment.

Utilities Commissioner Bourget: That being said, we don't want those attorneys, we have dopey at the last meeting. We've had a couple of witnesses that watched the new replacement attorney sleeping. So here's a guy taking over for a man retiring and he can't pay attention long enough to stay awake. The history for this litigator is not very positive.

City Attorney Malouff: The decision as to who, ARPA as an entity, decides to hire will rest in two places. One is with ARPA but more importantly is their insurance company, if they have one.

After continued lengthy discussion, Chairman Sutherland called for the question.

VOTE: Those voting YES: Bourget, Horner, McKenzie, Monarco

Those voting NO: Sutherland

The motion carries 4-1 to REJECT the resolution as it stands.

B. City Manager's Comments.

1. Its springtime, weather and winds, we're always busy.

C. City Attorney's Comments.

1. No comments.

D. Governing Body's Comments.

1. Chairman Sutherland recognized Joe Kelley for speaking at the Arkansas River Basin Forum held last week. Joe did an outstanding job!

There being no further business, the meeting adjourned at 5:36 p.m.

CITY OF LA JUNTA

ATTEST:

P. Lorenz Sutherland, Chairman

Melanie R. Scofield, City Clerk