
AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between
**CONFEDERATED SALISH AND KOOTENAI TRIBES OF
THE FLATHEAD RESERVATION,**
Claimant
and
PPL MONTANA, LLC,
Respondent

PARTIAL AWARD

The panel has unanimously determined to issue a Partial Award at this time.

By far the largest issue in dispute relates to certain environmental mitigation costs (“EMCs”) that PPL Montana, LLC (“PPLM”) has included in its calculation of the Conveyance Price, and which is challenged by the Confederated Salish and Kootenai Tribes of the Flathead Reservation (“CSKT”).

The panel believes it would be helpful if the parties concentrated on this issue in their post-hearing briefing and argument. Accordingly, the panel is now issuing a Partial Award resolving all issues other than those related to the EMCs.

After consideration of the evidence and argument presented by the parties, the panel has determined that the following items and amounts shall be included in the “Estimated Conveyance Price,” as that term is defined in Ordering Paragraphs (C)(2) and (C)(3)(a) of the 1985 FERC Order (*The Montana Power Company, Confederated Salish and Kootenai Tribes of the Flathead Reservation*, 32 FERC ¶ 61,070 (July 17, 1985)), as the term “Conveyance Price” is modified by Ordering Paragraph (B) of the 2000 FERC Order (*PPL Montana, LLC, Confederated Salish and Kootenai Tribes of the Flathead Nation*, 93 FERC ¶ 62,198 (December 14, 2000)).

A. Communications Equipment -- \$15,250

Both parties agree that this item should be included in the Conveyance Price.

B. Tangible Plant -- \$16,562,540

PPLM calculated Tangible Plant as \$16,562,540. (Warner Direct Testimony, p. 4.) CSKT asserts that the proper Tangible Plant figure is \$14,659,178 – a difference of \$1,903,362. (See CSKT Pre-Hearing Brief, p. 24.). The difference relates to calculation of depreciation on Tangible Plant. PPLM is correct on this issue.

The definition of Conveyance Price states, in pertinent part:

the actual original cost of the project (including any additions and improvements thereto) less accumulated depreciation, as reflected in MPC's FERC accounts (as those accounts are maintained in accordance with routine Commission audit and compliance procedures), as of the [C]onveyance Date

There does not seem to be any material disagreement about “original cost”; the disagreement relates to depreciation methods. CSKT has presented the testimony of Nancy Heller Hughes, who has challenged PPLM’s depreciation calculations in a number of respects. Without going too deeply into technicalities, the principal challenges are:

- PPLM has not conducted a full depreciation study of its tangible assets. The last full depreciation study of the Kerr Project assets was by MPC in 1995. Depreciation studies should be conducted every 4-6 years. (Hughes Direct Testimony, p. 22.)
- New tangible assets were depreciated assuming a retirement date of 2049. The Kerr Project license expires in 2035. The retirement date should not extend beyond the date upon which the license expires. (Hughes Direct Testimony, p. 12.)
- When there are new plant additions to an account, the depreciation rate for the entire account must be modified to reflect the new additions. PPLM did not do that. (Hughes Direct Testimony, pp. 17-21.)

PPLM disputes all of these challenges. While conceding that it might be a good idea to conduct a full depreciation study, CSKT has no basis for adjusting the depreciation calculations on this basis because CSKT also did not conduct a full depreciation study. (Warner Rebuttal Testimony, p. 28.) PPLM disputes CSKT’s contention that asset retirement dates should not go beyond the license expiration term, noting that FERC routinely renews licenses. (Eberhardt Rebuttal Testimony, p. 14.) With respect to CSKT’s contention that the depreciation rate must be changed whenever a new tangible plant item is added, PPLM responds that no utility does this. (Warner Rebuttal Testimony, p. 27.)

CSKT raises some legitimate criticisms of PPLM’s depreciation methods, but there is no indication that PPLM’s depreciation methods are improper or unreasonable under FERC accounting procedures. Accordingly, PPLM’s Tangible Plant number should be accepted.

C. Flooding Rights -- \$0

The definition of Conveyance Price includes:

the original cost of any flooding rights or other interests in realty outside the project boundary which interests, at the Conveyance Date, are used and useful in the operation of the project, remain effective at least until the termination of this joint license, and are assignable to the Tribes

PPLM has included \$987,300 of actual and anticipated legal costs allegedly associated with defending flooding rights at Flathead Lake. The costs relate to a lawsuit (the *Mattson* action) that has been pending for years in Montana state court. The *Mattson* action is a class action on behalf of owners of property adjoining Flathead Lake seeking damages for flooding of their property caused by PPLM’s operation of the Kerr Project. PPLM asserts that the defense costs in that action are included within the definition of Conveyance Price because PPLM is defending its flooding rights. PPLM contends that the FERC license specifically requires PPLM to defend its flooding rights.

CSKT relies upon the express language of the definition, which only includes “the **original cost** of any flooding rights” in the Conveyance Price. (emphasis added.) Expenses

incurred in a subsequent lawsuit seeking damages are not “original costs” of obtaining flooding rights. Rather, they are period costs that should be charged to expense as incurred.

CSKT is correct. The *Mattson* action does not challenge PPLM’s flooding rights. Rather, the complaints in the *Mattson* action (CSKT Exh. 38) allege that PPLM engaged in flooding beyond that authorized by any easements or regulatory authorizations. Since the *Mattson* action does not challenge the existence or validity of any lawfully obtained flooding rights, PPLM’s defense of the *Mattson* action does not involve “defending” the flooding rights.

D. Severance Compensation -- \$0

PPLM’s calculation of the Conveyance Price includes \$102,700 for employee severance costs, calculated as three months wages and benefits for three employees. (Exhibit PPL-011, p 14.) The definition of Conveyance Price does not include any such element. PPLM has never explained why it included this item or how it comes within the Conveyance Price definition. Moreover, this contention now appears to have been withdrawn by PPLM. Accordingly, this item should be rejected.

ORDER

IT IS HEREBY ORDERED:

1. The following items in the following amounts shall be included in the Estimated Conveyance Price:
 - (a) Communications Equipment: \$15,250;
 - (b) Tangible Plant: \$16,562,540;
 - (c) Flooding Rights: \$0;
 - (d) Severance Compensation: \$0.
2. This Partial Award shall be incorporated into the Final Award at such time as the Final Award is issued by the panel.

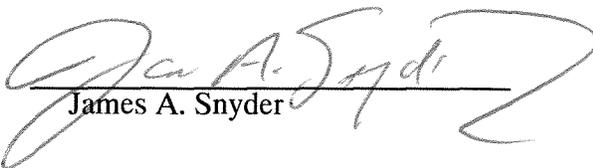
Dated: January 29, 2014



Layn R. Phillips
Chairman



David B. Raskin



James A. Snyder

