



NORTHERN CALIFORNIA POWER AGENCY LEGAL COMMITTEE

MINUTES OF ANNUAL (REGULAR) MEETING OF SEPTEMBER 25, 2013

1. ROLL CALL—The meeting was called to order at 2:05 p.m. at the Resort at Squaw Creek, 400 Squaw Valley Road, Olympic Valley, CA and at the teleconference locations listed on the agenda. The following members were present:

Janet Kern (Alameda); Mary Richardson (Port)*; Barry DeWalt (Redding/Vice Chairman) Marco Gomez (BART)*; Brant Bordsen (Gridley)*; Stephen Schwabauer (Lodi/Chairman); Molly Stump (Palo Alto); Mike Vergara (Plumas); and Joe Mandell (Roseville)*

Also attending were: General Counsel Michael Dean (Meyers Nave); Assist. General Counsel Ruthann Ziegler (Meyers Nave); General Manager Jim Pope; Assist. General Manager Dave Dockham; Assist. General Manager Donna Stevener; Industry Restructuring & Interconnection Affairs Mgr. Tony Zimmer; Mike Brozo (Plumas); Lisa Dowden (Spiegel McDiarmid); Latif Nurani (Spiegel McDiarmid); Katherine Mapes (Spiegel McDiarmid); Peter Scanlon (Duncan Weinberg/Santa Clara); and Lisa Gast (Duncan Weinberg/Santa Clara).

Persons attending via teleconference are designated by an asterisk ().

2. APPROVAL OF MINUTES. The minutes of the meeting of September 21, 2012 and the informal meeting of December 7, 2012 were approved as presented. (Motion: Schwabauer/DeWalt adopted unanimously.)

3. PUBLIC COMMENT. There was no public comment.

4. ADOPTION OF REGULAR MEETING SCHEDULE. The Legal Committee formally adopted 2 p.m. of the Wednesday prior to the NCPA Commission's Annual Meeting (September) as the regular meeting of the Legal Committee for Brown Act purposes. (Motion: Stump/Kern adopted unanimously.)

5. DISCUSSION AND OVERVIEW OF PROPOSED POWER MANAGEMENT CONTRACTS. Tony Zimmer provided a historical view of power management contracts and lead a discussion regarding the proposed Power Management & Administrative Services, Amended and Restated Facilities, Second Amended and Restated Pooling, and Amended and Restated Scheduling Coordination Program agreements.

Particular policy issues covered included:

a. Governance and voting provisions. Mike Brozo expressed a preference that PMSA 5.4.2 provide for some type of supermajority vote (by number of members) when the Commission deals with changes to power management cost allocations (now covered by the Nexant Study). Pete Scanlon (Santa Clara) expressed a preference for a weighted vote by amount of power management costs incurred in the prior year (as shown in the then current draft). Mike Dean suggested that the PMSA could provide that a change in cost allocation could require both thereby protecting both smaller members against a small number of larger members (Plumas' concern) and the larger members against a group of smaller members shifting costs to them (Santa Clara's concern). Consensus was not reached on this issue, but the Legal Committee suggested that NCPA staff provide a written list of potential methods for consideration by the Commission.

b. Withdrawal requirements. The two year withdrawal requirement was discussed and noted as rooted in the JPA requirement for two years of notice to withdraw from any programs or services. (JPA sec. IV(3)(c).

c. Structure of agreements. The proposed structure of the 4 agreements was discussed. A general consensus was that common terms and definitions should be moved "up" to the PMSA rather than being repeated in each applicable agreement, and that definitions should be moved "up" from schedules to the applicable agreement where possible to prevent substantive amendment without the consent of the participants. Otherwise, the structure was acceptable, albeit acknowledged as complex.

d. Addition of obligations on project participants beyond those imposed by the applicable third phase agreements. Some question was raised by the UDs and referred to the Legal Committee as to whether these agreements were attempting to impose new obligations on project participants in light of NCPA's obligations under the third phase agreements. The Legal Committee did not believe this to be the case, but did indicate a desire to change the language in the PMSA sec. 7.2 (at page 20). Use of the word "satisfies" implies that merely entering into the agreements discharges NCPA's duties; rather it should reflect the concept that if NCPA does what the agreements require, then it is deemed to have discharged those duties.

e. Binding arbitration. The Legal Committee by consensus agreed that binding arbitration (rather than civil litigation) is an appropriate means to resolve disputes where the parties are in a long term relationship as are NCPA and its members.

f. Attorneys fees. The Legal Committee by consensus was of the view that having the prevailing party in arbitration be paid its attorney's fees by the non-prevailing party ("loser pays") was inappropriate, and that all parties should bear their own costs in this type of long-term relationship. The Committee acknowledged that NCPA costs would in effect be power management costs and allocated back to the participants (including the prevailing participants).

g. Single Member Projects. The Legal Committee by consensus recommends that NCPA continue to entertain requests by individual members for power management services. The real question is the cross member risk from any given request, and this should be looked at and considered on a case by case basis.

6. CLOSED SESSION – CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (pursuant to Government Code sec. 54956.9(a).) The Legal Committee met in closed session to discuss pending litigation as listed on the agenda.

7. REPORT FROM CLOSED SESSION. General Counsel Michael Dean reported that there was no reportable action taken in closed session.

8. REPORTS FROM MEMBERS. There were no reports.

9. ADJOURNMENT. The meeting was adjourned at 4:36 p.m.



NORTHERN CALIFORNIA POWER AGENCY LEGAL COMMITTEE

MINUTES OF SPECIAL MEETING OF OCTOBER 8, 2013

1. ROLL CALL—The meeting was called to order at NCPA Headquarters, 651 Commerce Drive, Roseville, CA and at the teleconference locations listed on the agenda. The following members were present:

Janet Kern (Alameda)*; Greg Einhorn (Biggs)*; Marco Gomez (BART)*; Steve Schwabauer (Lodi)*; Don Choy and Mary Richardson (Port)*; Mike Vergara (Plumas)*; Dave Rapport (Ukiah)*; Joe Mandell (Roseville)*; and Lindsey Beavers (Santa Clara).*

Also attending (among others) were: General Counsel Michael Dean (Meyers Nave); Assist. General Manager Dave Dockham; Assist. General Manager Donna Stevener; Assist. General Manager Ken Speer; Industry Restructuring & Interconnection Affairs Mgr. Tony Zimmer; Shannon McCann (Roseville); Bob Marshall (Plumas)*; Terry Crowley* and Gary Plass (Healdsburg)*; Monica Padilla (Palo Alto)*; and Girish Balachandran (Alameda)*.

Persons attending via teleconference are designated by an asterisk ().

2. PUBLIC COMMENT on items not on the agenda. There was no public comment.

3. CONTINUED DISCUSSION AND OVERVIEW OF PROPOSED POWER MANAGEMENT CONTRACTS and review of proposed Power Management and Administrative Services Agreement, Amended and Restated Facilities Agreement, Amended and Restated Scheduling Coordination Program Agreement, and Second Amended and Restated Pooling Agreement .

- The Committee consensus was to approve voting mechanisms designated in the materials as scenario #4, involving a requirement for both a majority of the participants by numeric vote and a supermajority by weighted vote when changing power management cost allocations or the provisions of what constitutes power management costs (PMASA schedules 3 and 4).

- Palo Alto staff (Monica) expressed the view that there should also be weighted voting for the changing of pool cost allocations in the Pooling Agreement. NCPA staff agreed to convene a separate meeting of Pooling Agreement participants to consider this recommendation.

- Roseville staff (Shannon) continued to express concern that upon withdrawal from the PMASA that there be an alternative means of obtaining power management by negotiation, otherwise in their view the member's ownership rights in a project under a third phase agreement are



compromised. NCPA staff indicated that the references to negotiated provisions are adequate, and do not believe more detail (such as specifying that withdrawing parties are entitled to either the “LEC deal” or the “TID deal” is wise.

- Roseville staff (Shannon) indicated a continued concern that some defaults at some point become non-curable. NCPA staff indicated this was intentional, and that it does not occur until after the time for performance of the obligation has passed, and NCPA has provided a notice of default, and the participant has still failed to cure within 30 days. This is commercially standard and reasonable. NCPA and Roseville staffs will continue to discuss this; Roseville is to provide an example of the fact pattern that concerns it.

- Roseville staff (Shannon) indicated that it would prefer to see a statement in the PMASA laying out the order of precedence between that agreement, the Service Agreements, third phase agreements and other agreements. NCPA staff indicated the lack of this is intentional. The 3rd phase agreements are stated to (and under bond indentures, must) govern over these agreements. But while the PMASA indicates it governs over the Service Agreements, there is no ability to indicate which of all the other agreements governs over the others.

NCPA staff is still attempting to move all definitions and common terms “up” to the PMASA from the Service Agreements, but has not yet accomplished this. This would be in the next round of draft agreements.

4. ADJOURNMENT—The meeting adjourned at approximately 12:10 p.m.



NORTHERN CALIFORNIA POWER AGENCY LEGAL COMMITTEE

MINUTES OF SPECIAL MEETING OF July 21, 2014

1. ROLL CALL—The meeting was called to order at 9:00 a.m. at NCPA Headquarters, 651 Commerce Drive, Roseville, CA and at the teleconference locations listed on the agenda. The following members were present:

Janet Kern and Andrico Penick (Alameda)*; Greg Einhorn (Biggs)*; Brant Bordsen (Gridley)*; Janice Magdich (Lodi)*; Jessica Mullen (Palo Alto)*; Don Choy (Port)*; Mike Vergara (Plumas); Barry DeWalt (Redding)*; Joe Mandell (Roseville)*; and Ren Nosky (Santa Clara)*.

Also attending were: NCPA General Counsel Michael Dean (Meyers Nave); NCPA Assistant General Counsel Ruthann Ziegler (Meyers Nave)*; NCPA Assist. General Manager Jane Cirrincione*; NCPA Western Consultant Jerry Toenyes*; NCPA Federal Govt. Relations Representative Brent ten Pas; NCPA Special Counsel Lisa Dowden (Spiegel & McDiarmid)*; JPA Manager Joyce Kinnear (Santa Clara)*; and David Ralston and Dennis Cardozo (Foley & Lardner)*.

Persons attending via teleconference are designated by an asterisk ().

2. PUBLIC COMMENT on items not on the agenda. There was no public comment.

3. CLOSED SESSION- CONFERENCE WITH LEGAL COUNSEL- Anticipated Litigation
Consideration of initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code section 54956.9: One Case

The Legal Committee returned to open session and General Counsel Mike Dean reported that there was no reportable action taken in closed session.

4. ADJOURNMENT—The meeting adjourned at approximately 11:00 a.m.