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Minutes

Date: November 4, 2016
To: NCPA Legal Committee
From: Linda Stone
Subject: September 21, 2016 Annual (Regular) Legal Committee Meeting

1. ROLL CALL

The meeting was called to order by Chair Barry DeWalt on September 21, 2016 at 2:00 p.m. at the Resort at Squaw Creek, Emigrant Peak Room, 400 Squaw Creek Rd., Olympic Valley, CA, and at the teleconference locations listed on the agenda. The following Committee members were present which constituted a quorum:

Alan M. Cohen (Alameda); Marco Gomez* (BART); Anthony Galyean* (Gridley); Robin Donahue* (Healdsburg); Janice Magdich (Lodi); Joe Pannone* (Lompoc); Molly Stump (Palo Alto); Barry DeWalt (Redding); Joseph Mandell (Roseville); Richard E. "Ren" Nosky* (Santa Clara); and Michael Vergara* (Plumas-Sierra).

Also present were: Jessica Mullan* (Palo Alto); Jean Ricchi (Palo Alto); Debbie Lloyd* (Palo Alto); Jake Baldwin (Redding); Joyce Kinnear (Santa Clara); NCPA General Manager Randy Howard; NCPA Assistant General Managers Donna Stevener, Jane Cirrincione, and Dave Dockham; NCPA General Counsel Michael Dean, Assistant General Counsel Ruthann Ziegler, and Nick Norvell (Meyers Nave); David Ralston* and Frank Murray* (Foley & Lardner); Lisa Dowden, Katherine Mapes and Latif Nurani (Spiegel & McDiarmid); and Linda Stone* (NCPA).

Committee members from Biggs, Port of Oakland, Truckee Donner Public Utility District, and Ukiah were absent.

General Counsel Michael Dean announced that going forward Linda Stone, Administrative Assistant with NCPA, will provide support for the Legal Committee.

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

2. APPROVAL OF MINUTES

The minutes of the regular meeting held on September 30, 2015, and special meetings held on June 8, 2016, and June 16, 2016, were approved as presented upon motion by Molly Stump; second by Joseph Mandell; motion carried unanimously.

3. PUBLIC COMMENT

There was no public comment on items not on the agenda.

4. CLOSED SESSION

The Committee convened to closed session. All cases listed on the Agenda were discussed.

5. REPORT FROM CLOSED SESSION

General Counsel Michael Dean reported that there was no reportable action taken. The meeting reconvened to open session at 3:24 p.m.

6. AGENCY UPDATE

Michael Dean updated the Committee regarding the status of the City of Shasta Lake's application for membership in NCPA. Mike said that this is the first time in over ten years NCPA has considered adding a new member. In accordance with NCPA's New Member Policy, the City of Shasta Lake has been vetted by the NCPA Legislative and Regulatory Affairs Committee to confirm that its interests align with those of NCPA and its members. Mike noted also that NCPA's strategic plan prioritizes the importance of enhancing political reach and influence, providing needed services to other public power systems, and expanding the savings and benefits of joint action. Approval of Shasta Lake's membership in NCPA requires approval by all members of Supplement No. 1 to the Amended and Restated NCPA Joint Powers Agreement. Mike noted that a "supplement" to the JPA is being utilized as the mechanism for changing the existing agreement and said that he prefers to save the word "amendment" for a situation where a change to the terms is needed. NCPA members are in the process of taking Supplement No. 1 to the JPA to their governing bodies for approval.

Ruthann Ziegler updated the Committee regarding the Support Services Program Agreement (SSPA) which previously came through this committee for review and which was approved by the Commission on February 25, 2016. As background, the approved SSPA provides that signatory members will designate two representatives who jointly have authority to execute Confirmations for services to be provided pursuant to the agreement at a maximum not-to-exceed dollar amount for each requested service. The joint designees include the Utility Director/City Manager or other designee together with legal counsel. In order to facilitate the members' ability to conduct their business, NCPA legal counsel has approved two variations with regard to the designated representatives. The City of Lodi designated a two tier approach with its Utility Director and City Attorney authorized at one not-to-exceed dollar amount and City Manager and City Attorney authorized at a bit higher not-to-exceed dollar amount. Alameda designated its legal representatives as the AMP General Counsel instead of its City Attorney.

Ruthann further reported that six members have approved the SSPA (Redding, Port of Oakland, Santa Clara, Alameda, Biggs, and Lodi) and that Roseville is taking it to its Council for approval in early October. She advised also that two confirmations have been executed and a Purchase Order issued for services. To date, no confirmations have been executed pursuant to the Support Services Agreement (SSA) entered into between NCPA and the Southern California Public Power Authority (SCPPA).

Molly Stump said Palo Alto is interested in the various members' subscription levels and requested that a further update be given at the January Commission meeting, including the review of any exposure to risk.

7. LEGAL COMMITTEE FUNCTIONS

Mike Dean introduced this item asking the questions, "Who are we and what do we do?" Mike referenced the NCPA By-Laws and read the Legal Committee description: "The Legal Committee shall consist of the principal attorney of each Member (the city attorney or general counsel), or such other attorney as the principal attorney shall designate, to consider and report on such legal matters as are referred to it by the Commission, the Executive Committee, the General Manager, or the General Counsel. The Legal Committee shall be a standing, advisory committee and is subject to the Brown Act. The Legal Committee shall elect its Chairperson."

As noted, the Legal Committee is a Brown Act committee and as such, allows for meeting with NCPA's attorney in closed session on certain allowed subjects.

Comments from the members present were very favorable as to the Committee's structure. From an organizational standpoint, to address Molly Stump's comments about how members are kept apprised and who does what, Mike touched on what he called a well-developed committee structure at NCPA including the Finance, Facilities, and L&R committees, as well as the monthly meetings among the Utility Directors and NCPA General Manager. The committees are used to keep members informed and discuss potential risks and policies. Good recent examples are the new member policy and SSPA which were circulated, discussed, and in some cases, debated at length while going through the process. Molly agreed those are very good examples and appreciates the process. She noted it is very helpful to have contracts and agreements for review in advance of discussion. Mike Dean asked that the committee members please let NCPA or the Chair know if there are any changes members would like to see.

Donna Stevener shared that a one-page document has been created for the Finance Committee to serve as a tool for orientation of new members which includes the role of a committee member, the types of documents expected to see coming through the committee, significant agreements, and programs and risks. Joyce Kinnear said she likes the idea of a one-page explanatory document for the Legal Committee which would be very helpful. Ruthann Ziegler will prepare a draft of the document for review.

Janice Magdich requested that future meetings of the Legal Committee not conflict with other meetings such as is the case today with the L&R Committee meeting. Molly Stump seconded that suggestion and it was the consensus of those present that the annual Legal Committee meeting should start earlier. Mike Dean said the standard meeting time is 2:00 p.m. but that we can amend the time to begin earlier.

8. MEMBER ANNOUNCEMENTS

There were no member announcements.

9. ADJOURNMENT

Chair Barry DeWalt adjourned the meeting at 3:58 p.m.