CCA Governance Issues

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Governance Issues

- Joint Powers Authority vs. single entity
- JPA advantage – can form separate legal entity with finances that are wholly separate from participating jurisdictions
  - Under California law, can immunize JPA member jurisdictions from any liability for JPA debts and liabilities
  - Means no risk to general fund from CCA program
Governance Issues

- Joint Powers Authority vs. single entity
- Single entity advantage – can start up CCA program on its own, without needing to “convince” other jurisdictions at outset
- Don’t have JPA liability protection but other means exist to shield general fund
- Can limit recovery of obligations under contract to revenues of CCA enterprise, as is typical for revenue bonds
The JPA “Triple Firewall”

- Sonoma County cities very concerned about possible threat to general fund from CCA
- Came up with “triple firewall”:
  - Liability protection of joint powers authority
  - Promise to put “no city liability” in all contracts
  - Cities not required to be formal members of joint powers authority
    - But by participating, cities got representation on Board of Directors
Governance Issues

- If JPA selected, biggest political issue likely to be governance/board structure – who is in control?
- Problem harder when there are large differences in sizes of participating jurisdictions
  - Makes one-member, one-vote board untenable to large jurisdictions and pure “weighted” voting method untenable to smaller jurisdictions
Governance Options

- One director, one vote
- “Pure” weighted voting (based upon load served in each jurisdiction)
- “Double majority” requirement (action requires majority of board plus majority of weighted vote)
  - Many possible permutations
- Special protections for small jurisdictions for certain specific matters
How SCPA Addressed Governance Issues

○ SCPA has large differences among size of jurisdictions (currently Sonoma County and Santa Rosa account for 88% of load served)
○ Smaller jurisdictions worried about not having a significant say in Board decisions
○ Larger jurisdictions wanted to make sure that larger size counted for something
○ Through negotiations, created protections for both smaller and larger jurisdictions
SCPA JPA Voting Rules

- Basic Rule – One member, one vote
  - This has been followed to date on all votes

- Option to call for weighted vote
  - Any director can call for weighted vote on any issues
  - If called, action requires both majority of members and majority of weighted votes

- Promotes compromise and consensus
SCPA JPA Voting Rules

- Special vote requirements
  - For amendments to JPA or involuntary termination of members, vote is on “weighted” basis and requires 2/3 majority
    - But – If member having more than 33% of voting shares votes “no,” then at least one other member must vote “no” to block action
    - Keeps one large member from solely blocking an action
Lessons re. Governance

- Be prepared to negotiate and to accept conditions necessary to assuage fears of smaller jurisdictions
- Keep “default” vote method as one member, one vote if possible
- Remember governance issue is a very big deal during creation but not really an issue during operation
  - Make sure you arrive at something practical
Lessons re. Governance

- SCPA JPA created two standing subcommittees
  - Ratepayer Advisory Committee
  - Business Operations Committee
- RAC responded to public comment that ratepayers needed separate institutional position; BOC seen as a way to let JPA Board devolve authority to a group with more expertise
- In practice, difficult to incorporate subcommittees, especially in start-up phase
- Advice: Refrain from setting up subcommittees in JPA; let Board form them or form Board subcommittees to take on these roles if necessary
The Brown Act and Power Contracting Issues

- Contracting for energy creates two issues vis-à-vis the public meeting requirements of the Brown Act:
  - Counterparties expect sensitive commercial terms (like price) to be kept confidential for a period of time
  - Pricing changes hour-to-hour – not possible to negotiate contract and have Board approve 72 hours later
The Brown Act and Power Contracting Issues

- Number of ways to deal with Brown Act / Contracting issues in JP Agreement:
  - Delegate power to contract to CEO/GM
  - Delegate power to contract to CEO/GM under specified conditions
    - Procedural (i.e., concurrence of Chair, GC)
    - Substantive (contract in pre-approved form; terms of agreement within risk management policy)
- Best to address these issues up front
Miscellaneous Local Government
Start-Up Issues

- Resolution to allow for appointment and hiring
- Employee policies
  - Salaries – Note some will be much higher than is normal in public sector due to need for specialized employees
  - Benefits – Retirement
- Insurance (Liability, Workers Comp, O&D)
- Conflict-of-Interest Code
- Registration of JPA with Sec. of State
Questions?