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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?

