

EMPIRE ELECTRIC ASSOCIATION, INC.
MINUTES OF THE REGULAR MEETING
OF THE BOARD OF DIRECTORS
May 12, 2017

Regular meeting of the board of directors of Empire Electric Association, Inc. was held Friday, May 12, 2017 with the following directors present: Bill Bauer, Jerry Fetterman, Sue McWilliams, William Mollenkopf, John Porter and David Sitton. Others present: General Manager Josh Dellinger, Attorney Shay Denning, Operations Manager Ken Tarr, System Engineer Clint Rapier, Corporate Operations Manager Mary Thiesing, and Executive Secretary Denise Rosenbaugh. Directors Absent: J. Kent Lindsay

Others Present: Anne Bowler, Reid & Heidi Brugger and Betty Ann Kolner

President Bauer called the meeting to order at 8:30 a.m.

Approve Consent Agenda:

Action Item: President Bauer called for approval of the consent agenda. Sitton mentioned the monthly safety summary and said he felt like three personal injuries seem high for this early in the year and any time we have more than 0 there is an issue. He just wanted to bring it up and reminded all to keep our focus. Suggestion to make the actual report read a bit better regarding loss time accidents so that it is clear and easy to understand. Discussion held regarding the use of gloves particularly due to the injury noted on the report. It was noted to have the Tri-State Strategic Priority Survey held in executive session. Motion by McWilliams to approve the consent items. Motion seconded by Sitton and carried.

Membership Input:

Anne Bowler informed the board that she is thankful for our cooperative but was asking for more renewable energy. She asked the board to consider that in all its decisions so we can leave a better world for our children and grandchildren. She is willing to pay more for renewables. Dellinger informed Bowler that Empire has a green energy program where the consumer can buy green energy in 100 kWh hour blocks for \$0.09 cents per block, meaning that the average customer would pay \$0.54 extra on each bill. It was noted that Empire recently conducted a membership survey and the feedback received was that a vast majority said they are in favor of renewable energy but they do not want to pay for it. Members Heidi and Reid Brugger said they are part of a group called Resource and Environmental Advocacy in southwest Colorado. They also want the board to keep renewable energy in mind and they believe renewables will be cheaper than buying power from Tri-State. Mollenkopf noted that Tri-State already has a sizable renewable energy portfolio. Brugger expressed his opinion that burning coal is "criminal." Brugger also noted his displeasure with being told that he would have to pay for a transformer upgrade if he added more load to his house. Rapier explained Empire's practice of having the member who triggers an upgrade pay for the upgrade. Fetterman also noted that if someone does pay for an upgrade and later someone else uses the upgrade, then the later user will reimburse the first user for a portion of the upgrade cost. Betty Ann Kohlner mentioned she is also part of the group that is interested in renewables. She said she had lived off the grid but now is tied to the grid. She noted that she

has lost power several times since being on the grid. After discussion, it was determined that she was probably experiencing blinks and she was encouraged to call Empire when the blinks occur so that Empire can address them.

The board thanked all three for attending the board meeting and reminded each that Empire does take renewables seriously. Brugger noted that he would like for his group to present to the board during its July or August meeting. The board responded that he can work with Dellinger and Rosenbaugh to get on the agenda.

Correspondence:

Thank you from:

- Energy Outreach for Empire's matching donation to their program
- Kylee Rose and Aurora McClure for the scholarship awarded to them
- Teresa Berger who is a former recipient of the continuing education scholarship and who is graduating from CSU
- Aurora McClure scholarship

Other correspondence:

- Received informal complaint from the Utah Division of Public Utilities where the person was making payments but not the full amount and had been sent out for disconnect. Empire offered energy audit and payment arrangements and the Division considered the matter closed.
- NRECA member resolutions and if board wants to make suggestions to those resolutions, let Dellinger know.

Donation Requests: none

Policy Review/Action:

Policy 4 – Withdrawal of funds from Checking accounts was discussed. Staff recommended removing engineer and operations manager from the list of those authorized to draw funds from checking accounts and there were a few minor edits also suggested. Motion by Sitton to approve Policy 4 as amended. Motion seconded by McWilliams and carried.

Policy 5: Short Term Investments was discussed. Dellinger noted there were a couple of typos that were corrected, and staff recommends increasing the amount Empire can invest in the RUS Cushion of Credit program. The current policy says three years of debt service and staff recommends upping it to at least five years and maybe up to ten. Also under section D of the current policy, it outlines how investments will be reported to the board and implies that all transactions need to be reported to the board. We are currently showing the board by pie graph the total amount invested in each account but not each individual transaction. Consensus of the board that they are content with how things are being reported. After discussion, motion by Porter to approve Policy 5 as amended with a five-year debt service limit and changes to section D to accurately reflect how investments are being reported. Mollenkopf amended the motion to a seven-year debt service limit. Porter agreed and motion and amended motion were seconded by McWilliams. Motion carried.

A copy of both policies is attached to and made part of these minutes.

General Manager Report:

Action Item: Dellinger directed the board to Resolution 1-2017 included in the board packet, which authorizes the amendment and restatement of the NRECA 401K plan. A copy of those changes is also included in the board packet. Motion by Mollenkopf to adopt the following resolution:

**RESOLUTION 1-2017
AUTHORIZING THE AMENDMENT & RESTATEMENT OF THE
NRECA 401(k) PENSION PLAN
For Empire Electric Association, Inc.
RUS# 06033-001**

WHEREAS, Empire Electric Association, Inc. is a participating employer in the NRECA-sponsored 401(k) Pension (401(k)) Plan; and

WHEREAS, the Board of Directors (Board) of Empire Electric Association, Inc. is aware that the Plan must periodically be amended to comply with new or changed regulations, rulings, legislation and plan operations, and that this restatement will be effective July 1, 2017.

THEREFORE, BE IT RESOLVED, that this Board authorizes the July 1, 2017 amendment, restatement and continuance of the Plan to conform in its entirety with all the provisions of the governing plan document of the Plan, through the execution of the Adoption Agreement, which includes all of the provisions of the Cooperative's most recently executed Adoption Agreement and any compliance clarifications needed to conform with plan operations; and

BE IT FURTHER RESOLVED, in the event that the timing of the restatement does not correspond with regularly scheduled meetings of the Board of Directors, the Board does hereby authorize and direct Josh Dellinger, General Manager, to execute all necessary documents and to take any and all further actions necessary to carry out the July 1, 2017 amendment and restatement of the Plan.

Motion seconded by Sitton and carried.

Dellinger directed the board to the Pole attachment agreement as included in the packet. Attorney and staff have been working through this to develop an updated and consistent agreement for all attachments. We have different terms and conditions for our agreements and are trying to get all attachers on the same agreement. We have made a lot of headway, but one area that still needs attention is our Utah attachments. We have to file our agreement with the UT PSC before we can use the agreement for the UT attachers. Before we submit to the UT PSC, the agreement needs to be approved by the board. It was also noted that we are still working through pole attachment issues with the Ute Mountain Ute Tribe and CenturyLink. Motion by Sitton to approve pole attachment agreement. Motion seconded by Fetterman and carried.

Dellinger also included in the board packet the 2018 pole attachment fees. These have to be approved by the board and also filed with the Utah PSC. As noted in the packet, Empire's current pole permit fee is \$25 per pole which is charged when someone attaches to the pole and is meant to recover Empire's administrative costs of dealing with attachment requests. The current unauthorized attachment fee is \$100 per pole and current annual rental charge is \$14.10 per pole. The proposal is to increase the rental charge to \$16.06 based on previous years cost. We use the FCC rental rate formula and add in direct expenses to calculate this charge. It will be updated each year using data from the previous year. Motion by Sitton to approve these fees. Motion seconded by McWilliams and carried.

Thiesing reviewed the Form 990 as included in the board packet.

Thiesing reported on the financials. Bottom line margins are ahead of budget. Both revenue and purchase power are over budget causing gross margins to be under budget. This is largely due to additional Kinder Morgan usage. Transmission expenses are over budget due to invoices from Tri-State for work completed in 2016. This work was on the CO2 loop, so these costs will have offsetting revenue when we true-up the Kinder Morgan expenses. Distribution Operations is over budget and Distribution Maintenance is under budget. Labor and metering expenses are driving this overage. Overall our labor is in line with budget with expensed labor being over budget and capitalized labor under budget.

Dellinger reported that the public meeting Empire is required to hold regarding the meter tampering fee and meter reading fees was Monday and that no one showed up. This is one of the exemptions Empire is seeking from the PSC so that we don't have to hold public meetings that will likely be unattended. Dellinger also noted that other exemptions that are being requested are in the written report.

Dellinger reported that the asset transfer to Tri-State is moving along. Acknowledgements have been received and we have agreed upon net book value for assets. Tri-State has done their due diligence – just dealing with bit of easement work and we are waiting on Tri-State to draft us a lien release to be submitted to RUS, CoBank and CFC. We hope that the first closing will be in August and will include the retail system plus Cahone to Anasazi. We then hope a second closing will occur in December for the KM loop assets.

Dellinger reported that conversations are still happening with Tri-State on the Nuchu Sub and each has a position. We will work with it.

We have signed buy/sell contracts for both Totten Lake properties – survey is done for east side property. It will go before the county soon and we will work on the lien release process for both properties.

Member Services has completed a video in energy efficiency as part of our external communication strategic goal. There will be three more videos this year.

Everything is in place for the AMI change outs and the starting date will be May 24.

Dellinger mentioned that CFC has partnered with National Cooperative Bank to provide members of cooperatives the ability to obtain financing for solar systems. We would only pass this information along to our members and then the member would establish the relationship with the lender. Consensus of the board was that we should offer this to our members.

Roundtable:

CREA meeting will be held here May 25th and an agenda will be emailed to the board once it's final.

Mollenkopf mentioned that he had a conversation with both Joel and Jennifer from Tri-State regarding their attendance at the board meeting last month and that both expressed appreciation for attentiveness and questions that were asked by the board.

Attorney:

Denning reported that the firm worked on the Totten Lake property sales and the MVI resolution for the lakeside property. The firm also worked on the PPA for the Totten solar project and CDOT issues. Still waiting on the decision from FERC regarding the Tri-State PURPA question. Reviewed the 115-kV transfer Facilities Management Agreement. Also dealt with old warehouse questions. Tarr gave an update on the old warehouse subdivision. We are waiting for signatures on the plat. After those are obtained, we should be able to record it and move forward with selling it. Discussion held regarding the Totten solar project. Tri-State recently updated its Board Policy 115, so the pricing is not near as attractive as it was under the old policy. If we cannot get the solar project in under the old policy, then the project will likely not be built. The new policy will go into effect in August, but for a project to lock in pricing under the old policy, it must be approved at the July Tri-State board meeting, and to get on the agenda for July materials have to be submitted by mid-June. Empire staff is working to gather all the application information to submit by the deadline.

Tri-State:

Mollenkopf reported on finance and audit committee, the SEC report, the audit plan, and capital projects. He noted that the year-end margin was good. The Montrose-Nucla-Cahone project is scheduled to begin soon and will hopefully be complete in 2019. Next month's meeting will include a two-day strategic planning session.

McWilliams reported on the contract committee – focused on capital credits and renewables. McWilliams discussed the information previously sent to the board by email. She asked the board what they would like to see and consensus of the board was to stay with the FIFO method. When asked about the 5%-member generation limit, Dellinger said he would like to see the limit removed and the issue addressed in a rate design where they are being made whole for poles and wires through fixed charges and energy charges reflect only the variable costs associated with producing energy.

CREA:

Porter updated the board on the CREA meeting as outlined in the information sent to the board by email. The governor appointed a new executive director of Colorado broadband office. Excel wanted legislation to allow them to provide economic development rate but that did not pass. The

eight board members that attended the legislative conference thought it was one of the better conferences. There was discussion on how legalization of marijuana is affecting utilities. CREA doubled the burn fund to \$2,000 for injured coop employees.

Western United:

McWilliams noted that Western United is now selling drones for utilities for GIS purposes as well as mosquito repellent, sunscreen and wipes for our crews. It is a record year for sales. The board voted to expand into Utah and will set up in St George and Salt Lake.

Utah Rural Electric Cooperative Association: no report

Committees: building committee: Regarding the old warehouse, all should be signed by next week and recorded – will now need to figure out how to move forward. This will be an agenda item at next board meeting.

Executive Session:

Motion by Mollenkopf to go into executive session to discuss MVI Resolution. Motion seconded by Porter and carried. The board went into executive session at 11:45 a.m. The board came out of executive session at 11:50 p.m.

Action Item: Motion by Sitton to approve the following resolution:

RESOLUTION 02 - 2017

Termination of Certain Rights Granted in Agreement with Montezuma Valley Irrigation Company Signed August 20, 1965

WHEREAS, Empire entered into an agreement with Montezuma Valley Irrigation Company (“MVI”) on August 20, 1965 and recorded under reception #250217 at Book 362, Pages 298 and 299, with the Montezuma Clerk and Recorder (“Agreement”); and

WHEREAS, said Agreement allows MVI to enter certain Empire property (“Property”) for the purpose of removing dirt and gravel to construct Totten reservoir and dam; and

WHEREAS, construction of Totten reservoir and dam has completed; and

WHEREAS, said Agreement also allows Property to be open to the public as a recreation area, but only so long as the Property is not needed by Empire in the fulfillment of its corporate purposes; and

WHEREAS, the determination of such need rests solely with the Board and their determination thereof shall be final and binding upon the public and MVI; and

WHEREAS, the Board has determined that the Property is now needed by Empire to further the fulfillment of its corporate purposes.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby terminates any rights of the public to enter said Property conveyed under said Agreement; and

BE IT FURTHER RESOLVED, that the Board considers MVI's rights to enter Property for removing dirt and gravel conveyed under said Agreement to have terminated when construction of Totten reservoir and dam was completed; and

BE IT FURTHER RESOLVED, that the Board considers this resolution binding upon MVI and any successors who may have assumed the rights conveyed to MVI under said Agreement.

Motion seconded by McWilliams and carried.

Executive Session: Motion by Mollenkopf to go into executive session to discuss the Tri-State Survey. Motion seconded by McWilliams and carried. The board went into executive session at 11:55 a.m. The board came out of executive session at 1:25 p.m.

FastTrack:
No report

Adjournment:
Meeting adjourned at 1:26 p.m.

Bill Bauer, President

Jerry Fetterman, Secretary/Treasurer