

Comments of Gary Newman on GVEA G&T Bylaws draft of Sept. 25, 2006

October 2, 2006

Submitted through Cory Borgeson, counsel of record for the GVEA Board of Directors.

I received the Sept. 25, 2006 bylaws from Cory late this afternoon and was asked to make comments available before tomorrow's 1:30 pm meeting, so my comments are not as thorough and organized as they might have been with more notice.

The GVEA G&T Articles of Incorporation aren't on the table with the proposed draft of Sept. 25, 2006, but need to be, particularly to raise the bar in changing the bylaws. However, since changing the bylaws is done by a majority vote of the "member(s)", of which there is only one, it gets kind of moot to argue over bylaw provisions. I realize that Article 16.01 of the bylaws says they must be made by a unanimous vote of its members. Now doesn't this mean that, with one member (GVEA), a majority of the board can vote to change the bylaws and the bylaws become essentially immediately effective? And this is subject to the Articles of Incorporation. Both Articles and Bylaws need to be addressed in the GVEA board review.

For example, in the draft bylaws, Article 9 Disposition of Property:

There is nothing that gives the GVEA members the right to say yes or no with respect to disposition of property. It all rests with the member(s) of G&T. So if GVEA (as the sole member of G&T) wants to sell the power plants in NP to Chugach (not that that would happen), they could. Or sell the GVEA interest in Bradley Lake to Homer, where the power is closer (more likely, though it would impact the Green Pledge).

It all gets real complicated as structured. It's not that we the members of GVEA shouldn't trust GVEA board members to do the right thing, it just gives away the members' control of generation and transmission assets and for redress.

If the GVEA Board IS the G&T Board (Article 4), what happens if there is another member?

Article 5.02

"Members shall have the right to attend subject to same rules and provisions of executive sessions" Where is their right to address the board?

Article 5.07 (Presence of Others)

"shall not be allowed to speak unless authorized" - Maybe this is how it is now with GVEA board, but the rights of employees to address its board ought to be written in stone.

Another question which might have already been addressed: Do SNAP participants sell to G&T or to GVEA?

I'm sure some have already asked why the G&T follows the laws of Illinois in Section 15.01. Do we like their laws better than the laws of Alaska?

There are still some tortuous grammaticals spread throughout, no doubt exacerbated by trying to marry several concepts such as a very different definition applying to members of GVEA and member(s) of the G&T. Both are used simultaneously in the same document and the challenge of differentiating the two is quite evident. A more simple grammatical is Section 1.04 A. where the word "distribution" is out of place.

As I read through this and try to visualize the implementation, I see so many inconsistencies and opportunities for confusion. A lot of it is because of the structure to allow for more than one member. And why would any other group want to be a member when they had no say at anything other than a member meeting, as the Board of Directors is defined as ONLY GVEA directors (Section 4.01). If this is the case, scrap the other member clauses, which will clean it up substantially.

I stress that the Articles of Incorporation MUST be incorporated and considered in these modifications. To reiterate, as currently written, the G&T board (representing the "G&T member" can make any bylaw changes it wants without any say by GVEA members. All this discussion over bylaws can be rendered moot at a single G&T meeting. Bylaws are not supposed to be casual changes and Articles of Incorporation even less so, yet the G&T organizational documents only take a majority vote of the GVEA board members.

I don't know how Homer Electric or any other organization structured their G&T, but this one is remains quite confusing to the reader and will prove to be confusing and subject to substantive interpretation in future implementation. It also cuts the GVEA members out of any control or say in what happens to the generation and transmission assets, should the membership vote to transfer those assets to the G&T. GVEA members should be well educated on this aspect prior to a vote.

It has been stated that there will be no essential increase in costs, though there are obvious needs for differentiation of accounting systems. I think that is a bit naïve, but one can minimize those costs and all the confusing language of the bylaws by retaining the same organizational structure of GVEA for the G&T. If GVEA and G&T follow the same rules, it will be less confusing.

You can mandate that the board of GVEA will be the board of the G&T, but all other applicable bylaws remain the same. Have the annual meeting at the same time. Since there will be legally two different organizations, there will have to be two annual reports anyway. If the G&T wants to sell to or buy from others, it still can. Keep the GVEA members involved as members of the G&T.

Of course, any changes to either the Articles of Incorporation and/or the Bylaws of GVEA G&T can't be accomplished by the GVEA Board of Directors. They must be made by the legally constituted board of the G&T. I know that GVEA indicated in the Ruralite it would be having town meetings in the fall to explain the G&T proposal. Wide notice to GVEA members of any such meeting that the GVEA G&T board has particularly with respect to major changes to bylaws might a good first step to explain the purpose and direction of this initiative.

This is a one evening take on the Sept. 25, 2006 draft. I hope this is of some help.