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December 29, 2008

The Honorable City Council
Office of the City Clerk
Room 395, City Hall
Mail Stop 160

Attention: Councilmember Jan Perry
Chairperson, Energy and Environment Committee

Councilmember Jose Huizar,
Chairperson, Audit and Government Efficiency Committee

Honorable Members:

Subject: Council File No. 08-1967
Independent Ombudsperson/Ratepayer Advocate Position

This is in response to the subject referenced Council file that requests the Los Angeles Department of Water and Power (LADWP) establish a ratepayer advocate/ombudsperson position to provide analysis on future proposals for rate increases and rate restructurings, as well as to track initiatives to increase the number of participants in the Department's discount programs.

The Division of Ratepayer Advocates (DRA) plays an essential part in the business and regulatory model of the Investor Owned Utilities (IOUs) which operate under the jurisdiction of the California Public Utilities Commission (CPUC). However, this concept cannot simply be transported and super imposed on a publicly owned utility such as LADWP, which operates under the oversight of the Board of Water and Power Commissioners (Board), the Mayor, the City Council, the City Controller, and under the scrutiny of the Neighborhood Councils and other groups.

In the Investor Owned Utility model, there is an undeniable conflict between the interests of the shareholders (who naturally desire the highest possible return on their investment) and those of the ratepayers (who understandably wish to pay as little as possible for the service they receive). This conflict necessitated the establishment of the DRA to protect ratepayer interests. This conflict is absent in the publicly owned utility model and may be one factor explaining the fact that LADWP's residential rates are 30 percent – 40 percent lower than those of IOUs. Given this discrepancy in rates, the difference in business models and the already extensive supervision and control to which LADWP is subject, it is difficult to see the argument for the creation of yet another oversight bureaucracy, imposing an even greater monetary burden on ratepayers.

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The timing of this proposal is also questionable. LADWP's current business plan does not contemplate base rate increases for at least another two years. Additionally, in each of the last two cases when a rate increase has been sought, the City Council has appointed an independent third party to question and verify the need for the requested increase. Let us remember also that the Department undergoes a thorough review every five years under the auspices of the City Controller.

LADWP customers do not need a ratepayer advocate since:

- ♦ LADWP customers have reliable service.
- ♦ LADWP customers enjoy the lowest cost of service in Southern California.
- ♦ LADWP has already numerous levels of oversight, supervision and control.
- ♦ LADWP's Executive Management Team continues to share information and create opportunities for dialogue to increase transparency and education.
- ♦ The Mayor, Los Angeles City Council, Controller, and the Board already perform the role of protecting the ratepayers, including the low income and lifeline customers.
- ♦ The costs to establish a ratepayer advocate position/division at LADWP are unknown; however, investigating a similar program at the State level revealed that the costs may be substantial.
- ♦ After hearing public testimony and fully considering the matter, the Board recommended LADWP not create a ratepayer advocate position.

Reliable Low Cost Service and Rate Protection

Investor Owned Utilities in California are under the jurisdiction of the CPUC. The CPUC serves the public interest by protecting consumers and ensuring the provision of safe, reliable utility service and infrastructure at reasonable rates. The CPUC has a DRA whose mission is to obtain the lowest possible rate for service consistent with reliable and safe service levels. The State's DRA also advocates for customers of IOUs. As previously mentioned, customers of IOUs need the DRA, inasmuch as IOUs while providing a service are also profit driven and beholden to their stockholders. Conversely, LADWP customers, historically and currently, enjoy rates 30 percent – 40 percent lower than IOU customers and may communicate any concern they have directly to a number of entities that play a role in protecting them against high rates and unreliable service. These include the Mayor, the City Council (and some of its committees), the Neighborhood Councils (including the DWP MOU Oversight Committee), and other groups that function as ombudsperson/ratepayer advocates and serve the public interest by protecting consumers and ensuring the provision of safe, reliable utility service and infrastructure at reasonable rates.

LADWP Oversight

It is difficult to imagine any agency having more layers of oversight than LADWP. The first line of ratepayer protection is the Board and its committees that ensure the Department provides safe, reliable and economically priced water and power services. The Board's oversight is accomplished via the matters the Board must review and approve (i.e., contracts for materials and other resources). A second line of protection would be the Council and its committees, the Mayor, and the City Controller where again the Department's policy, procedures and contracts are vetted.

It has been said that the Board and the elected officials that provide oversight to LADWP are not utility experts; however, the Board and elected officials have the benefit of independent, knowledgeable analysts to assist in their decision making. The City's Office of the Chief Legislative Analyst as well as the City Administrative Office provides insight and analysis of LADWP programs, contracts, procedures and policies to arm decision makers with the best information and insight necessary to make the best decision for the ratepayers.

In addition to LADWP and city staff resources, prior to any rate increase a third party analyzes LADWP and provides a report back to the Council with information relative to whether or not they should approve a rate action and why. Also, at least once every five years the Controller, Council and Mayor jointly select an independent qualified industrial engineer or organization specializing in surveys to conduct a survey of the Department to ensure it is operating in the most cost efficient and economical manner possible (Industrial, Economic and Administrative Survey – IEA). A copy of the final report is transmitted to the Mayor, City Council, the Board and the public.

Transparency and Education

In an effort to ensure LADWP customers are informed, LADWP has taken a number of steps to open lines of communication and provide information for genuine public participation. For example, historically LADWP's budget had been approved in a matter of hours/minutes; however, the budgets of the last three fiscal years took at least six eight hour days of inquiries, explanations and amendments prior to their approval. The Board went over the 07/08 and 08/09 proposed budgets in open session, line by line, posed questions and had staff rethink some of their proposals. This process and in-depth dialogue identified efficiencies and also proved to be an exercise in protecting the ratepayer while allowing any interested stakeholder the opportunity to closely examine LADWP's finances, policies and programs, then comment and make suggestions. This is a very transparent process.

Again, in an effort to enhance communication and education, in the case of any proposed rate actions, LADWP must notify Neighborhood Councils and therefore the public at large, 120 days in advance of asking the Board to consider a multi-year proposal and 90 days in advance of a single year proposal. In addition, an analysis is conducted by an independent consultant at the request of the Council prior to any rate action being taken. LADWP also conducts outreach to ensure that anyone who is interested in the proposed rate action has an opportunity to participate in the discussion. Similar to LADWP providing information and insight to stakeholders regarding proposed rate increases, the independent third party analysis conducted per Council instruction is also available for scrutiny by any interested stakeholder prior to an action being taken by the Board or the Council.

Advocating and Protecting LADWP Customers

The function of a ratepayer advocate is currently and vigorously performed by the Mayor, City elected officials, Board, LADWP and City staff, citizens, independent consultants and Neighborhood Councils whose focus is to protect LADWP customers. Indeed, it is notoriously difficult to secure rate increases in the City of Los Angeles, as evidenced by the fact that the recent increase in power rates was the first base rate increase in 15 years, a fact noted by LADWP's rating agencies.

In addition to the foregoing, there is a veritable plethora of entities/committees that actually actively have jurisdiction over the LADWP including the Board's PRP/WIP Oversight Committee (ensures projects and associated funding for infrastructure and reliable service remain on target), Citizen's Infrastructure Oversight Committee, and the Board and Citizen's Low Income/Lifeline Program Oversight Committees (created to ensure that those qualified residents are informed and take advantage of the program offerings). To introduce yet another layer in the form of a ratepayer advocate office would be redundant and would create yet another layer of bureaucracy within a bureaucracy. Adding such a layer will inevitably come at an additional unnecessary cost to our ratepayers.

Costs of a Ratepayer Advocate

The State's DRA is composed of professional engineers, auditors, economists, and financial and policy analysts. For the fiscal year 2007/08, the State's DRA reported a total staff of 133 and this fiscal year 2008/09 the division has a total budget of over \$25,000,000. The staff of the State's DRA participates in proceedings and files pleadings on behalf of ratepayers. The State's DRA has been divided into four branches: Communications Policy (16 staff), Water (32 staff), Administrative (11 staff) and three energy branches: Energy Cost of Service & Natural Gas (35 staff), Electricity Planning & Policy (20 staff) and Electricity Pricing & Customer Programs (20 staff). Due to the process, which can be either legislative or litigious, to invoke change the State's DRA also consumes a great deal amount of time. Conversely, when the Council suggested LADWP take a look at increasing its low income subsidy to protect qualifying households in Los Angeles, not only was the matter looked into but action protecting and assisting qualifying residents was done immediately.

Creating a ratepayer advocate at LADWP would entail more than one position/person but potentially a division or group of employees which could grow to be similar to the State's DRA. Considering the engineers, auditors, financial and policy analysts who are currently tasked with ensuring LADWP provides economically priced reliable water and power services and that eligible customers' benefit from our low income programs, creating a Division of Ratepayer Advocate at LADWP would be superfluous and wasteful.

Board Recommendation

On October 21, 2008 the Ad Hoc Ratepayer Advocate Committee (Committee) composed of Commissioner Ramirez (Chair) and Commissioner Knox as well as the Board considered the Council's motion as well as the then Board President's request for a ratepayer advocate at LADWP. Though not voted on October 21, the Ad Hoc Committee's recommendation to the Board was that the Department not create a Ratepayer Advocate position for two primary reasons:

- 1) The model of a public utility is substantially distinct from an IOU where there's tension and inherent conflict between ratepayer and shareholder. In that context the Committee believed that it does make sense for there to be a separate ratepayer advocate. However, as it relates to LADWP, the Committee views the Board as charged with being vigilant and assuring the public that the rights of ratepayers are being protected inasmuch as LADWP does not have shareholders and therefore the inherent tension.

The Committee felt that the Board is charged with the responsibility of protecting the ratepayer and expressed concern that developing a position of the ratepayer advocate would undermine that public charge.

2) The City Attorney provided an explanation describing what authority the Board has in terms of being authorized to direct the appointment of positions. In that respect, the Committee viewed that creating a ratepayer advocate position within the context of the Department does not accomplish the objective of creating someone who is independent and can provide, objectively, an analysis of what is taking place within the Department. Specifically, if such a position were created, that position would be funded by the Department and would report to the General Manager. This arrangement may well cast doubt on the independence of the ratepayer advocate, while needlessly creating another costly layer of bureaucracy. In addition, it would also likely entail, not simply the hiring of one person, but rather some additional unknown number of staff which would cause a significant cost to ratepayers. The committee noted that the work that would be done would likely be redundant of work already being performed by the Financial Services Organization and other staff members of the Department.

City Charter

Though we have been using the term ratepayer advocate and ombudsperson, synonymously there is a difference. A true "ombudsperson" is a government official appointed to investigate complaints of individuals against abuses or capricious acts of government officials.

Under the City Charter Sec. 676 as presently constituted, utility rates are fixed by the Board and approved by the Council by ordinance. Each of those functions is an affirmative, non-delegable duty. The rates set through that process are presumptively valid. Without changing the City Charter which requires a vote of the people at a regular election, the LADWP's General Manager could create a position to advise the Board on the ratemaking process and inform them of ratepayer concerns/issues. However, under civil service requirements that person must report to an appointing authority: here the General Manager. The Board does not have appointing authority over such a position under the Charter.

Conclusion

It is unnecessary for customers of LADWP to incur the additional costs of establishing an ombudsperson/ratepayer advocate to provide analysis on future proposals for rate increases and rate restructurings, as well as track initiatives to increase the number of participants in the Department's low income and lifeline programs.

Since LADWP is a publicly owned utility there are no stockholders and LADWP is only beholden to its customers and the City it serves. LADWP's purpose and focus is to deliver safe, reliable and economically priced water and power services to our customers. The fact that residential rates in the City of Los Angeles are 30 percent – 40 percent lower than those of customers who are served by neighboring IOUs is proof that LADWP continues to fulfill its purpose.

LADWP customers also currently benefit from the oversight of a number of different entities who are concerned and/or charged with ensuring that the customers of this utility are protected. The

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combined efforts of those concerned with rates and outreach at LADWP, which by the way ranges from independent consultants to elected officials as well as members of the community, ensure protection of LADWP customers.

The ombudsperson/ratepayer advocate position would not be the addition of one staff member to the LADWP. To truly accomplish what has been envisioned, an entire division would have to be created. The creation of such would be an inefficient use of ratepayer funds since the tasks that would be performed by this division are currently being performed by staff at LADWP, the Board, independent consultants, elected officials and members of the communities we serve.

In addition, the Board sees itself as being the entity that needs to be constantly on guard on behalf of the ratepayer, and developing this position/division may well undermine that public charge. In addition, as stated above, the independence of such a position/division is truly questionable.

LADWP will continue to operate in an open and visible manner and provide educational opportunities to our customers. An informed customer base may assuage the concerns that have resulted in the call for this position / division to be created. In addition, LADWP is forging ahead with new programs and relationships to assist in the necessary outreach to its customers to ensure that those who qualify for various programs are aware and take advantage of such opportunities.

If you have any questions or if further information is required, please call me at (213) 367-1338, or have your staff contact Ms. Winifred J. Yancy, Manager, Government and Neighborhood Relations at (213) 367-0025.

Sincerely,



H. David Nahai
Chief Executive Officer
and General Manager

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c: City Council President Eric Garcetti, Vice-Chair Energy and Environment
Committee

Councilmember Richard Alarcon, Member Energy and Environment Committee

Councilmember Tony Cardenas, Member Energy and Environment Committee

Councilmember Wendy Greuel, Member Energy and Environment Committee

Councilmember Bernard C. Parks

Councilmember Greig Smith

Ms. Winifred J. Yancy