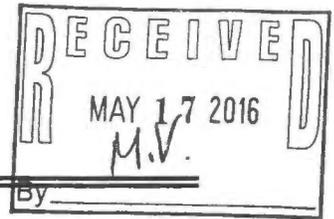


## OFFICE OF PUBLIC ACCOUNTABILITY



Date: May 16, 2016

Council File No. 16-0093

To: Honorable Members of the Rules, Elections, Intergovernmental Relations,  
and Neighborhoods Committee

From: Frederick H. Pickel, Ph.D., Executive Director/Ratepayer Advocate

Subject: Recommendations of the OPA on Select Governance Questions for the  
Department of Power and Water (Fuentes-Wesson-O'Farrell; C.F. 16-0093)

This report addresses three topics: 1) strengthening the Office of Public Accountability (OPA), 2) improving the Department of Water and Power's (DWP's) agility in contracting, and 3) greater consistency in rate reviews. More rapid technology developments, environmental change, and evolving competitive pressures within the utility sector drive the need for improved contracting agility and revenue consistency. DWP also needs more agility in hiring, but that topic is not addressed in this report.

### 1. OPA Resources and Access

OPA could use additional resources to perform the functions of its Charter and enabling ordinance in the form of a higher, minimum budget floor and staff that are exempt. Improved access to the books and records of DWP is also needed, so that OPA can have business records during business hours on business premises, in the few or infrequent instances when no mutually agreed scope and timing can be arranged with reasonable effort. The details of these requests will be expanded upon in a joint report with the CAO and CLA.

### 2. Contracting

OPA recommends that the City Council delegate to the Department of Water & Power (DWP) authorization levels for the Board and General Manager as follows:

#### (a) up to \$5 million

- Conditions to be established from time to time by the DWP Board by resolution of the Board, and then submitted to the City Council for its consideration.
- The Board could choose any parameters it finds appropriate, and change them as conditions merit. For example, it could exempt or include any type

of contracting, require any type of internal audit or monitoring, or set as a condition that the item was budgeted or within budget contingency levels it monitors more actively. It could decide what limits to place on individual organizational units or vendors it was comfortable with, and adjust parameters after it has more-productivity information from the next stage of benchmarking.

**(b) up to \$10 million**

- For expenditures in an approved annual budget, after notice (not action) to the DWP Board and public on regular agendas.
- Notice provides due process to vendors who can then inform the Board about the competitive process. The Board can thus take an individual contract under advisement before it is signed, and be ensured of gathering all the relevant information before a commitment is made.

**(c) up to \$15 million**

- For materials expenditures in an approved annual budget with five or more responsive and responsible bidders taking no exceptions, provided installation or training services are less than half the total contract amount. Even this level is low based on DWP's size relative to other publicly owned and investor owned utilities.
- This higher level provides an inherent incentive to work toward this goal with those procurements that might meet this standard over time.

The absence of appropriate delegation to the Department level has, in OPA's opinion, the following negative consequences:

1. The imbalance between speed and oversight represents an ongoing and cumulative risk to reliable operations. The organizational culture is not allowed to use a more customary matrix of expenditure authorization, which has the potential to increase internal accountability and better talent. It depends too heavily on a single individual, which is a frail mechanism for a utility of this size.
2. It creates an imbalance in labor-management relations that impairs efficient trade-offs between resource options and slows the pace of utility capital deployment; and
3. It shifts management and board attention and impairs their roles, making it challenging to set generally applicable procurement policy, monitor gaps in industry practices, or invest adequately in a more up to date utility supply chain that is better prepared for the future.

These recommended contract levels should not be viewed in isolation from other recommendations OPA made with respect to governance issues in its July 1, 2015 report on the billing system. In particular, pairing these changes with an ability to hire within six months is critical to achieving a cohesive functionality. DWP's "fault lines", revealed by the billing system, show a utility that is falling further from rapidly changing industry standards, and needs help to restore its agility and responsiveness.

### **3. Regular Rate Reviews Needed**

OPA recommends that the Department of Water & Power (DWP) should have a regular review of the costs of service and revenues every third year. A four year rate cycle is acceptable if there is a review and adjustment after two years.

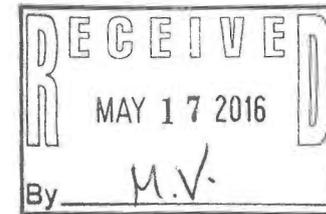
Before initiating a rate review, DWP should at a minimum publish publicly and provide to OPA: (1) budgets with job numbers, (2) a corresponding financial model, (3) the calculations that transfer the model's identified line items into revenue collection mechanisms (e.g., base rates, surcharges), (4) a cost of service study, (5) a schedule for each class of customer with each rate component, by year and season, and (6) operative Ordinance draft language implementing its intended and proposed request. This recommended minimum starting point for a rate review can be changed by adding items, either before or during a review. Starting a rate review without publication of proposed rates is a worst practice, and it would help make the review more amenable to a schedule if all interested stakeholders start with the same disclosure.

A regular review, with observable rate changes at the end of the process, will improve public trust. A cycle that is not discretionary, but regular, will enhance financial stability, and minimize the tendency to obscure DWP's cash position or capital performance. Without regular rate reviews, management is required to make sub-optimal decisions that build negative consequences on top of each other, compounded by the passage of years and turnover in management. Making one "less bad" decision at a time, the utility can drift into a state of backlogged work and deferred maintenance, which will make for larger rate impacts in the long run.

cc: The Honorable Los Angeles City Council  
The Honorable Eric Garcetti, Mayor  
The Board of Water and Power Commissioners  
Marcie Edwards, General Manager, Department of Water and Power  
Sharon Tso, Chief Legislative Analyst  
Miguel Santana, City Administrative Officer  
Holly L. Wolcott, City Clerk

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# DWP GOVERNANCE REFORM Presentation



Presented by:

*Miguel A. Santana*  
*City Administrative Officer*

*Sharon Tso*  
*Chief Legislative Analyst*

May 17, 2016

# City Hall Oversight

What level of oversight should the Council retain over DWP matters?

- DWP governance involves DWP Board, Council and Mayor
- Research indicates challenges of the current DWP governance structure.
  
- Reform Options:
  - Continue Council oversight with no change
  - Remove Council's oversight of DWP
  - Limit Council oversight to DWP matters with direct impacts to the City
  - Remove the Council's oversight of DWP operations AND restrict Mayor and Council oversight to DWP policies and budget
  - Establish DWP as a Council, non-proprietary department and remove the DWP Board of Commissioners

# City Hall Oversight – Charter Section 245

What type of Council jurisdiction should be provided in Charter Section 245 for DWP matters?

- Charter Section 245:
  - Permits Council to assert jurisdiction over a matter approved by the DWP Board and veto Board's decision; vetoed proposal returned to the Board for review/action.
  
- Reform Options:
  - No change
  - Enhance the authority of Charter Section 245 to allow City Council to veto and act on DWP matters with the same authority as originally held by the Board.

# City Hall Oversight – Rate Setting

What level of oversight should the Council retain over the adoption of new water and power rates?

- Water and electricity rates are set by the Board and approved by the Council per Charter.
- Studies state that rate reviews are inconsistent and timing is unclear.
- Reform Options:
  - Grant DWP Board sole authority for rate setting
  - Eliminate Council approval of rates while continuing oversight authority with Charter Section 245
  - Eliminate Council approval of rates while adopting new oversight authority with an enhanced version of Charter Section 245
  - Provide City Council approval of strategic planning documents which will guide rate changes

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# Hiring and Civil Service – Internal Rules and Practices

How should internal rules and practices be handled by DWP?

- Seniority Based Bid Plan
- Effective Rule of One
- Joint Selection Process
  
- Reform Options:
  - Maintain current processes
  - Negotiate removal of internal rules and practices regarding seniority based bid plans, effective rule of one and the joint selection process to increase flexibility in hiring

# Hiring and Civil Service – Charter

Should the Charter be amended to provide hiring flexibility to DWP?

- Section 1001 – exemptions
- Section 1009 – promotions
- Section 1010 – three whole scores
- Section 1011 – probationary period
- Section 1015 – three departments
  
- Reform Options:
  - Maintain existing provisions
  - Amend Charter Sections 1001, 1009, 1010 and /or 1015 addressing exemptions, promotion, certification, probation and layoffs to increase flexibility in hiring

# Hiring and Civil Service – Civil Service Rule on Seniority

Should Civil Service Rule 4.10(b) regarding seniority credits in examinations be amended?

- Civil Service Rule 4.10(b) – seniority credit
- Reform options:
  - Maintain existing provision
  - Amend Rule 4.10(b) to eliminate seniority credit
  - Amend Rule 4.10(b) to cap or reduce seniority credit similar to management classifications

## Hiring and Civil Service – Personnel Operations

Should the Charter be amended to remove Personnel from DWP classification and examination process and place all human resource functions under the control of the Department?

- Personnel handles examinations and classification functions for DWP.
- CAO is the chief labor negotiator for DWP.
- Reform options:
  - Maintain the existing structure
  - Amend Charter to place all human resource functions under the control of the DWP Board

# Hiring and Civil Service – Civil Service

Should the Charter be amended to enable the new governance structure to have the option to eliminate Civil Service and implement a new employment system in its place?

- The Motion identified the elimination of Civil Service as an option.
- Civil Service changes require additional time to develop alternatives and complete discussions with labor partners.
- Reform Option:
  - No action
  - Adopt a new Charter Section that would authorize the new salary setting authority (Mayor/Council or DWP Board) to waive civil service and establish a new employment structure by MOU.

# Contracts

Should the procurement process be modified for DWP?

- Studies report procurement challenges slow down capital investments and infrastructure repairs
- DWP proposed modifications:
  - Increase the contracting authority of the General Manager from \$150,000 to a maximum of \$5 million and five years
  - Modify/Eliminate ED 4 requirement for minor on-going operational contracts
  - Adjust RFP/Competitive Negotiation requirements for the purchase of specialized equipment
  - Eliminate the ordinance requirement for design-build contracts
  - Eliminate ordinance requirement for power contracts

# Board Structure

Should the Charter be amended to provide a full-time Board for the DWP?

How many members should a modified DWP Board include?

- Current DWP Board structure consists of five part-time members, appointed by Mayor, confirmed by Council.
- Part-time or Full-time Reform options:
  - No change, maintain part-time/volunteer board
  - Full-time board
- Number of Commissioners Reform options:
  - No change, five members
  - Seven members
  - Nine members

## Board Structure – Qualifications

Should the City Council modify qualifications to serve on the Board?

- Charter provides that appointed commissioners be registered voters of the City.
  
- Reform options:
  - No change
  - Existing qualifications AND
    - City Ethics Commissioner qualifications model and/or
    - Utility-oriented expertise in water and power and/or
    - Diversified utility expertise including water, power, environmental, labor relations, business/finance, community relations/organizations

## Board Structure – Term & Term Limits

What terms shall the Council pursue for the DWP Board members?

Shall the Council pursue term limits for the DWP Board members?

- DWP Board members serve 5 year staggered terms.
- Term Reform Options:
  - No change
  - Change term to four years
  - Change term to three years
- Currently, the Board is not subject to term limits.
- Term Limit Reform Options:
  - No change
  - Implement term limits

# Board Structure – Selection & Removal

How should the DWP Board Members be selected and removed?

- Board members are selected by the Mayor, subject to Council approval; removed by Mayor, Council approval is *not* required.
  
- Selection Reform Options:
  - No change
  - Council appoints all members, with no Mayoral approval
  - Shared appointment authority by Mayor and Council
  - Elected by registered voters (at large or regionally)
  
- Removal Reform Options:
  - No change
  - Allow removed member to appeal to Council
  - Removal by Mayor with majority vote by Council
  - Removal by 2/3 vote of Council for neglect of duties or gross misconduct
  - Recall process for elected members

# General Manager – Appointment & Removal

How should the DWP General Manager be appointed and removed?

- Board appoints GM with confirmation by the Mayor and Council; may remove the GM with confirmation from the Mayor, GM may appeal to Council.
- Appointment Reform Options :
  - No Change
  - Vest the Board with sole appointment authority
  - Vest Board with appointment authority. Council will retain Charter Section 245 power
  - Vest Board with appointment authority subject to the Mayor's confirmation
- Removal Reform Options:
  - No change
  - Vest the Board with sole removal authority
  - Vest the Board with removal authority; Council will retain Charter Section 245 power
  - Vest Board with removal authority subject to the Mayor's confirmation.

## General Manager – Compensation

Should the Charter be amended to grant the DWP Board sole authority to set the General Manager's compensation?

- Pursuant to the Charter, the Board sets the GM's compensation within guidelines established by the City Council, per the recommendation of the CAO.
- Reform Options:
  - No change
  - Vest the Board with sole compensation setting authority
  - Vest the Board with compensation setting authority
  - Council will retain Charter Section 245 power
  - Vest Board with compensation setting authority subject to Mayor's confirmation

## Board Support

What type of analytical, administrative, and research support should be provided to the DWP Board of Commissioners?

- DWP Board receives clerical staff support for administrative tasks and analytical support from division managers.
  
- Reform options:
  - No change
  - Provide the DWP Board with authority to hire analytical staff (similar to CAO) as described by the Motion
  - Provide the DWP Board with authority to instruct the OPA

## Office of Public Accountability

Should the CAO and CLA be instructed to report on viable options for strengthening the OPA, including its role in the rate setting process?

- OPA provides “public independent analysis of department actions as they relate to water and electricity rates.”
- Various entities have identified challenges facing the OPA
- Reform Options:
  - No change, maintain existing role of OPA
  - Instruct CAO/CLA and OPA to report back on options for strengthening the OPA

## City Attorney

Who should represent DWP with respect to all legal matters?

- Charter and Administrative Code provide authority to the City Attorney to serve as legal adviser to the City, including all boards.
  
- Reform options:
  - No change
  - Direct CAO/CLA to report back on options to strengthen Board's authority over litigation
  - Amend Charter and Administrative Code to empower Board to conduct procurement and retain legal counsel independent of City Attorney

# Revenue Transfer

- Charter provides that Council may direct that a transfer be made to the Reserve Fund from surplus money in the Power Revenue Fund with the consent of the Board
- Amount of Revenue Transfer is set by ordinance and contains additional limitations to protect the financial health of the DWP
- In recent years, the Revenue Transfer has equaled eight percent of the DWP's power system gross operating revenue:
  - \$253 million in FY 2013-14
  - \$266 million in FY 2014-15
- Power Revenue transfer is the subject of litigation.

# Proposed Ballot Schedules

<u>Election Date</u>	<u>Last Day for Committee Action</u>	<u>Last Day for Council to Request City Attorney to Prepare Election Resolutions</u>	<u>Last Day for Council to Adopt Election Resolutions</u>
A. November 8, 2016 (State General)	June 17, 2016*	June 29, 2016***	July 1, 2016***
B. March 7, 2017 (City Primary)	October 21, 2016*	November 2, 2016	November 16, 2016
C. May 16, 2017 (City General)	December 9, 2016**	January 11, 2017	January 25, 2017

\*Last Regular scheduled Rules Committee meeting by which the Committee should act.

\*\*Date shown is a Special meeting, due to Council recess in December 2016.

\*\*\*Date shown is due to scheduled Council recess in July 2016.

## DWP Governance Reform Information

Information available at following websites:

<http://dwpreform.lacity.org/>

<http://www.7thdistrict.net/dwpreform>

<http://cao.lacity.org/DWP/index.htm>