California Housing Partnership Corporation
California's Experts on Affordable Housing Finance, Advocacy & Policy

NRDC

SCANPH
SOUTHERN CALIFORNIA ASSOCIATION OF NONPROFIT HOUSING

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Councilmember Herb Wesson, Chair
Rules, Elections & Intergovernmental Relations Committee Los Angeles City Council
200 North Spring Street, Room 340
Los Angeles, California 90012

CC: Mayor Eric Garcetti
Los Angeles City Council City Controller Ron Galperin

SUBSJECT: DEPARTMENT OF WATER AND POWER - GOVERNANCE REFORM (FUENTES - WESSON - O'FARRELL; C.F. 16-0093)

Dear Committee Members:

Thank you for the opportunity to comment on Councilmember Fuentes' motion to restructure the Los Angeles Department of Water and Power's (DWP) governance. On behalf of low-income renters and nonprofits operating low-income apartments in the city of Los Angeles, the California Housing Partnership Corporation (CHPC), the Natural Resources Defense Council (NRDC)[1], and the Southern California Association of Non-Profit Housing (SCANPH) support aspects of the charter reform effort that would increase DWP's operational efficiency. However, we ask Mayor Garcetti, the City Council, the DWP Commissioners, and the DWP General Manager commit to institutionalize changes that would provide equitable access to DWP's services to lower income customers by the end of 2016.

BACKGROUND

Despite its size, the city's low-income apartment rental (subsidized and unsubsidized) market segment is extremely underserved. Los Angeles contains over 39,000 apartment buildings that house low-income residents[2] and over 64,000 apartment units where the city and state have made an investment to provide and maintain affordable rents. Unfortunately, low-income renters and owners of the publically-regulated properties in which they reside do not have equal access to DWP energy efficiency and solar PV resources and are adversely affected by other policy barriers. The primary reason for the inequity is DWP's historic lack of leadership in this market segment, which has resulted in the absence of trained staff and programs designed to address the unique

[1] CHPC and NRDC are co-leaders of Energy Efficiency For All (EEFA), a national initiative dedicated to improving energy efficiency in low-income multifamily housing.

[2] American Community Survey 2013 5-Year Estimates. Low income is defined as buildings with more than 5 apartments where 40% of the residents make less than 200% of the federal poverty guidelines.

needs of low-income renters living in larger apartment buildings (5+ apartments), property owners whose rents are regulated by the City, and renters and nonprofit landlords living and operating in disadvantaged communities.

PROPOSAL

Ensure that low-income renters living in larger apartment buildings (5+ apartments), property owners whose rents are regulated by the City, and renters and nonprofit landlords living and operating in disadvantaged communities have equitable access to DWP's resources by:

1. **Creating a Chief Low Income Officer position to ensure that the interests of this extremely underserved market segment are addressed across all DWP programs. The Chief Low Income Officer would:**
   - Partner with the Housing and Community Investment Department (HCID) and a broad coalition of stakeholder to inform DWP's understanding of the low-income renter market segment and its unique set of challenges.
   - Lead efforts to expand services to all low-income market segments
   - Champion low-income renters' interests on all matters impacting this market segment, including program design for energy efficiency and solar PV incentives, low-income discount rate programs, compliance with the proposed Existing Buildings Energy and Water Efficiency Program, and IT systems beyond billing (ex. whole building data for MF sector compliance with AB 802 and customer relationship management data) as well as the need for metrics/transparency mechanisms.
   - Oversee targeted initiatives to the city's homeless shelter facilities.
   - Address equity issues in how energy efficiency and solar PV incentive programs treat low-income renters and city/state-regulated apartment owners.
   - Report directly to the General Manager as matters impacting low-income customers cut across various departments.
2. **Creating a Low Income Oversight Board (LIOB) to advise DWP and increase accountability:**
   - 40-50% of board to represent the interests of low-income renters and rent-regulated property owners
   - Participation from a minimum of two DWP board members
   - Provides input to the General Manager regarding her direction of the OAE and assessment of the OAE's performance
   - Includes power to influence budgets and make decision on DWP working policies to expand access to underserved low income market segments
   - Track and report on Equity Indicators
   - The Chief Low Income Officer reports to the LIOB at monthly public meetings

Failure to take these actions is likely to have the following negative consequences:

- Continued inequitable treatment of low-income renter customers compared with DWP's treatment of homeowner and commercial customers.

- Missed opportunity to achieve energy and climate goals by not capturing significant savings opportunities in this large market segment.
- Missed opportunity to leverage millions of state dollars in energy efficiency and renewables by aligning DWP's efficiency and solar PV resources with California's new cap-and-trade program for existing low-income apartment buildings.
- Deepening of the Green Divide between rich and poor Angelinos in terms of their relative ability to benefit from lower utility bills.
- Continued need for a framework to achieve the Sustainable City Plan's equity objectives and to respond proactively to the city's housing crisis.

CHPC, NRDC, SCANPH and our partners and allies will follow reform discussions closely and are available to provide additional information. We stand ready to work with the Mayor, the City Council, and DWP leadership to make DWP work better for Los Angeles' lowest income residents and the property owners who serve them.

Sincerely,

California Housing Partnership Corporation
CHPC is California's expert on affordable housing financing, advocacy, and policy. Since 1988, CHPC has helped more than 19 Los Angeles-based nonprofits as well as HACLA and HCID leverage millions of dollars to finance the construction and preservation of more than 115 developments and 7,000 affordable rental homes in the city of Los Angeles. As co-leader of the Energy Efficiency For All (EEFA) coalition, CHPC works closely with SCANPH and its member organizations to compile feedback on various policy and programmatic barriers building owners face when attempting to access DWP's efficiency and renewable programs.

Natural Resources Defense Council
NRDC is a non-profit membership organization with nearly 80,000 California members who have an interest in receiving affordable energy services while reducing the environmental impact of California's energy consumption. NRDC is a co-leader of the EEFA coalition, a national, multi-year effort to address barriers to increasing energy efficiency investments in affordable multifamily housing. Through the EEFA project, NRDC is currently engaged in an affordable multifamily market characterization study in Los Angeles, to be completed Summer 2016.

Southern California Association of NonProfit Housing
SCANPH is a member association that supports and advocates for the development of affordable housing. SCANPH represents 200 member nonprofit affordable housing developer/owners in DWP service area. SCANPH convenes a Property and Asset Management working group comprised of Los Angeles-based asset managers operating affordable rental buildings in the city.

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SUBSJECT: DEPARTMENT OF WATER AND POWER - GOVERNANCE REFORM (FUENTES - WESSON - O'FARRELL; C.F. 16-0093)

Dear Committee Members:

We are writing to respond to a question raised at the May 27, 2016 Rules Committee Special Meeting regarding barriers facing lower income renters. This letter represents Part II of our written comments dated May 27, 2016 submitted to the Rules Committee in reference to C.F. 16-0093.

Deputy Mayor for City Services, Barbara Romero, asked the Rules Committee panel about specific barriers preventing access to energy efficiency and solar PV programs by lower income renters. The California Housing Partnership Corporation (CHPC), the Natural Resources Defense Council (NRDC)[1], and the Southern California Association of Non-Profit Housing (SCANPH) would like to take this opportunity to provide the Rules Committee with specific policy and programmatic barriers and solutions we have identified. These issues are informed by owners and renters of affordable rental housing in the Los Angeles Department of Water and Power (DWP) service area.[2]

I. BARRIERS TO ACCESSING ENERGY EFFICINCY PROGRAMS
There are five (5) main issues affecting the delivery of energy efficiency services to affordable multifamily housing properties and low-income renters. SCANPH summited the below five (5) items to DWP on April 20, 2016 as part of a stakeholder meeting discussing the affordable multifamily market segment.

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[1] In California, CHPC and NRDC are co-leaders of Energy Efficiency For All (EEFA), a national initiative dedicated to improving energy efficiency in low-income multifamily housing.
[2] By "affordable housing" we mean housing that is affordable to lower income households because rents are regulated at approximately 30% of household income due to the presence of capital and or rent subsidies.

1) DWP's Approximately 16 Separate Fragmented Programs Place an Undue Administrative Burden on Affordable Multifamily Owners

Recommendations:

- Simplify customer engagement by adopting a Single Point of Contact approach for multifamily owners to help them understand their property's energy efficiency potential and to make available integrated resources based on owners' specific building types and conditions.
- Support seamless implementation of energy and water efficiency programs through a single point of contact.
- Improve program design and performance iteratively by tracking affordable multifamily program participation, including initial inquiries, applications received, applications approved, and projects completed.

2) DWP Does Not Have a Program Category for Multifamily and Does Not Offer a Whole-Building Multifamily Incentive Program to Target Deep Energy Savings

Recommendations:

- Offer a whole-building multifamily incentive program that covers at least 75% of improvement costs, similar to what is offered under the DWP Custom Performance Program for commercial properties.
- Allocate a program budget that reflects the multifamily sector need, especially in light of the City's proposed ordinance for the Existing Buildings Energy and Water Efficiency Program requirements and the opportunity to leverage new cap-and-trade funds. See item three (3) in this section and footnote three (3) for more information.

3) DWP's Efficiency Programs Are Not Aligned to Help Affordable Multifamily Owners Leverage Cap-and-Trade Investments for Existing Multifamily Housing

Recommendations:

- Align multifamily resources to help eligible properties achieve 25% energy savings by leveraging incentives for energy efficiency, solar thermal, and solar PV from the new California Low-Income Weatherization Program (LIWP) for large multifamily buildings.
- Partner with the LIWP service provider and SoCal Gas to jointly fund whole-building retrofits that will lower utility costs for low-income renters and nonprofit owners.
- Inspire confidence within the affordable housing sector by committing resources and providing owners clarity on incentives DWP will bring to LIWP retrofit projects.

4) DWP's Direct-Install Programs Have Resulted In Customer Concerns Around Quality and Shifts Liability for the Contractor's Work to the Multifamily Owner

Recommendations:

- Establish a more comprehensive QA/QC process that includes owner input for all programs and improves responses to customer concerns. Require contractors to return to properties to address quality issues and enhance customer satisfaction.

- Provide owners a choice of pre-qualified vendors and contractors, but do not require owners to use specific contractors. Alternatively, DWP or its approved vendors/contractors should assume project liability associated with contractor performance.

5) DWP Lacks A Holistic And Transparent Approach For Energy Program Improvements

Recommendations:

- Adopt a public comment process for efficiency programs to seek feedback from affordable multifamily owners and other stakeholders at least 30 days prior to requesting DWP board approvals.
- Create a public annual report on performance metrics for multifamily buildings, including:
  - total amount invested in rental multifamily for the past two years
  - savings achieved in rental multifamily buildings (estimated or actual if available)
  - budget for a performance-based multifamily program
  - breakdown of participation by programs available to rental multifamily
  - total rental multifamily whole-building retrofits completed and in progress
  - percentage of affordable multifamily owner uptake from energy audit to completed retrofit
  - short- and long-term plan to increase participation by affordable multifamily owners
- Designate a specific person that is accountable for reporting to the affordable multifamily sector and communicate progress made in addressing the policy issues raised by SCANPH on behalf of its members.

II. BARRIERS TO ACCESS SOLAR IN DWP SERVICE AREA

There are three (3) main issues affecting the delivery of solar PV services to affordable multifamily housing properties and low-income renters. CHPC has presented these issues to DWP's Solar Programs Manager and the Mayor's Office. Discussions are ongoing and we have been informed that these matters are under serious consideration.

1) DWP's Solar Incentive Program Excludes LIHTC Properties from Accessing the Enhanced Incentive

Unlike other solar incentive programs in California, the DWP affordable housing Solar Incentive Program requires the system owner to be a tax-exempt entity, which does not comport with the fact that nearly all large low-income rental properties built since 1990 in California have used the Low Income Housing Tax Credit (LIHTC) program. By federal tax law, the program requires that ownership be in the form of taxable entities such as a limited partnership or limited liability corporation, even when they are controlled by a nonprofit tax-exempt general partner. In recognition of this practical requirement, all other solar incentive programs in California including Multifamily Affordable Solar Homes (MASH) funded through the California Solar Initiative (CSI), the New Solar Homes Partnership (NSHP), and the brand new Low-Income Weatherization (LIWP) for Large MultiFamily (LMF) program allow participation by LIHTC owners as long as they are controlled by a non-profit tax-exempt general partner or managing member. This practice by DWP's Solar Incentive Program effectively excludes all 761 LIHTC properties in the city of Los Angeles (containing more than 41,000 affordable rental homes) from applying for the higher solar incentive offered to nonprofit owners.

Recommendation: *DWP should adopt the approach currently used by Investor Owner Utilities for the MASH program and make eligibility determinations based on whether there is a deed restriction or regulatory agreement placing affordability restrictions on the multifamily property. Additionally, if the intent is to restrict the program to non-profit owners, DWP should request and accept documentation that either the general partner OR managing member of the LIHTC property is a tax-exempt non-profit entity.*

2) DWP Constrains Solar Financing Options for Non Profit Housing Providers

Property owners frequently make use of Third-Party Ownership (TPO) structures to finance solar installations to avoid first cost barriers and leverage federal investment tax credits. Over 75% of multifamily installations under the MASH program use TPOs. Power Purchase Agreement (PPAs) is the most commonly used TPO approach.

DWP guidelines allow 3rd party ownership of solar systems under a **lease structure** but do not permit the use of PPAs in its service territory. However, the Internal Revenue Code (IRC) does not allow leases for nonprofits wishing to offset the cost using tax credits. Section 48 of the IRC denies tax credits when the relevant solar energy property is "leased" by a tax-exempt entity. The inconsistency between DWP policy and federal tax code prevents non-profit affordable housing providers in DWP's service territory from monetizing federal tax credits. As a result, a formidable financial barrier is imposed on non-profit organizations, which ultimately bars access to DWP's solar program.

Recommendation: *DWP should permit the use of PPA similar to what is already allowed by IOUs or, if the use of PPAs is otherwise restricted by City Charter, the use of an Energy Service Agreement that satisfies the IRC requirements for non-profits.*

3) DWP Does Not Support Virtual Net Metering and Solar Access to Low-Income Renters

DWP currently does not allow Virtual Net Metering (VNM), which is essential to make solar economically feasible in low-income rental properties. Instead of allocating the electricity generated from a single PV array serving the entire property as is done under VNM, DWP requires multifamily rental property owners to install multiple solar systems with separate inverters and solar meter hook ups to serve tenants units. This requirement increases both the cost and complexity for multifamily solar installations in Los Angeles. The added costs and complexity adversely affects project feasibility, and impose barriers to undertaking solar installations scaled to provide low-income renters with the same economic benefits available to other households installing solar.

Under CPUC guidance, the IOUs in California have been able to set up VNM billing approaches to facilitate the installation of shared solar installations at multifamily properties and allocate solar credits to each electric utility meter at the property. The approach is relatively simple and cost-effective. DWP must implement a similar approach to provide renters with access to solar PV.

Recommendation: *DWP should permit the use of VNM in affordable multifamily rental properties.*

III. OTHER POLICY BARRIERS TO ACCESS DWP SERVICES

There are four (4) additional barriers that impact overall customer service and access to services for affordable rental multifamily properties.

1) DWP Does Not Recognize Rent-Regulated Affordable Rental Multifamily Properties Across Its Programs

DWP does not currently offer any efficiency incentive specifically targeted to larger apartment buildings. DWP's current offering of programs is better suited to single-family and smaller apartment buildings. DWP's equity goals should include offering higher incentives aimed at rent-regulated affordable multifamily properties because owners of affordable housing properties are unable to capture energy savings to pay off capital costs due to the split incentive structure between owners and tenants. In most affordable multifamily buildings, electricity and gas consumption are individually metered and therefore much of the cost savings accrue to the tenants.

In the case of master metered buildings, where the owner theoretically should capture the savings, government lenders such as the Los Angeles Housing & Community Investment Department (HCID) and the California Department of Housing & Community Development (HCD) use their regulatory agreements to ensure they have first claim on all savings, which means that owners often have little practical ability to capture savings. Because of rent restrictions and lender claims on cash flow, RR MF owners are generally not able to charge a management fee to recover their overhead costs for energy retrofits unless they are undertaking the retrofit as part of a larger renovation and refinancing project. The following are some of the major financing programs that govern the rents and income of participating rent-regulated affordable rental housing properties:

- Tax-Exempt Bonds
- 9% and 4% federal and state Low Income Housing Tax Credits
- HUD Sections 8, 202, 811, 221d4, 223f, 236, McKinney-Vento, VASH
- California Multifamily Housing Program (MHP)
- Mental Health Services Act (MHSA) program
- California Affordable Housing Sustainable Communities (AHSC) program

- California Veterans Housing and Homeless Prevention (VHHP) program
- State HOME and CDBG
- Local CDBG, HOME and (former) Redevelopment Agency programs

Recommendations:

1. *DWP should recognize affordable multifamily housing as a unique property type in all of its incentive programs with unique needs that require higher investment levels.*
2. *DWP staff should become more familiar with the regulatory and ownership framework and should coordinate with HCID to learn about the affordable housing regulatory structures and inform budget and program design.*
3. *DWP should fund added incentives for qualified affordable multifamily properties.*

2) DWP's Policies Currently Do Not Recognize the Unique Ownership Structure of Rent-Regulated Affordable Multifamily Properties

Under U.S. and state tax law, an affordable multifamily property financed with LIHTC must either be owned by a single purpose limited partnership (LP) or a limited liability corporation (LLC). The LP is comprised of a nonprofit general partner and an investor limited partner. The general partner has legal responsibility to develop and operate the property and is typically the affiliate of a larger nonprofit housing corporation, which in most cases already controls multiple accounts with DWP (In an LLC, these roles are played by the Managing Member and the other Member(s) who are passive investors.). However, when a general partner wants to open a new account, DWP currently requires it to provide a deposit as required for new customers opening accounts in spite of the fact that the non-profit organization already operates multiple RR MF properties in DWP's service area. CHPC has raised a similar issue with the ownership structure requirement of DWP's Solar Incentive Program (see section two (2), item one (1) above).

Recommendation: *For the purpose of opening new accounts and program enrollment, DWP should explicitly recognize the legal connection between the non-profit organization serving as the general partner (or managing member) of an affordable multifamily property.*

3) DWP's Low-Income Discount Rate Program Does Not Include Master Metered Multifamily Rental Properties

Master metered affordable multifamily buildings where the owner pays all tenant utilities are disadvantaged by DWP policies. First, the owner pays for the tenant's electricity usage at the commercial rate, which is higher than the residential rate paid by individually metered affordable multifamily buildings. Second, the owner is ineligible for DWP's low-income discount rate program despite the fact that 100% of the units are income restricted and otherwise eligible. The DWP discount rate program excludes **all** master metered buildings because DWP requires the tenant account holder to apply for the rate discount, not the owner.

Both the federal government, which recently reversed its position to allow Weatherization Assistance Program (WAP) and Low Income Home Energy Assistance

Program (LIHEAP) funds to be made available directly to RR MF owners, and the state of California, which has designed the LIWP program to determine income eligibility at a property level, have seen the wisdom of recognizing that the only practical way to assist low-income tenants living in affordable housing is by working through the property owners. We recommend DWP adopt this approach as well.

Recommendation:

1. *DWP should offer owners of master metered affordable housing buildings a low-income rate discount program for the portion of the building's residential electricity load.*
2. *DWP should make this discount available to owners that can demonstrate tenants' income qualifications and provide proof of the property's tax exemption. To start, DWP should work with HCID to identify master metered buildings in the HCID portfolio.*
3. *DWP should request that HCID permit affordable housing owners to retain the utility cost savings generated by the retrofit if it is being used to pay for costs related to the retrofit.*

4) DWP Should Provide Owners Access to Tenant Utility Data and Streamline the Process for Benchmarking

Several SCANPH members have already benchmarked their property utility usage using Portfolio Manager, WegoWise, EnergyScoreCard, and other systems. With the passage of AB 802 and LA's proposed benchmarking ordinance, it's imperative that DWP work with affordable housing owners to streamline access to aggregated building utility data. The major challenges for affordable housing owners will be receiving the exact data required for reporting purposes in a streamlined process and format that does not create an administrative burden. Some of the other challenges that members encounter are related to the transition of tenants. For instance, when power and water accounts are shut off at a unit, DWP generates a new pin. This takes tenants out of WegoWise and leaves a data gap until the data connection is restored.

Recommendation:

1. *DWP should establish a protocol for making aggregate building data available to affordable housing owners.*
2. *DWP should provide technical assistance to affordable housing owners to assist with benchmarking their portfolios and remove barriers.*

V. CONCLUSION

The above list of twelve (12) policy and programmatic barriers points to DWP's track record of underserving this market segment. It also suggests that existing policies and programs that directly impact the city's affordable multifamily rental market and lower income renters have been designed and implemented without an in-depth understanding of this market's unique needs and challenges[3].

While we understand inequitable access is not intentional, it does require intentional action by DWP and city officials to achieve equitable access. For this reason, in Part I of our written comments dated May 27, 2016, we propose institutionalizing change by creating a Chief Low Income Officer position and a Low Income Oversight Board. These entities will support DWP in improving its performance on equity and access to clean energy resources.

CHPC, NRDC, and SCANPH are available to provide additional detail on the above barriers and would be happy to follow up on these issues and our proposal directly with DWP's General Manager and Executive Team.

Thank you for your consideration.

Sincerely,

California Housing Partnership Corporation
Natural Resources Defense Council
Southern California Association of NonProfit Housing

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[3] Los Angeles contains over 39,000 apartment buildings that house low-income residents (American Community Survey 2013 5-Year Estimates). Low income is defined as buildings with more than 5 apartments where 40% of the residents make less than 200% of the federal poverty guidelines. There are over 64,000 apartment units where the city and state have made an investment to provide and maintain affordable rents.