

CITY OF LOS ANGELES  
INTER-DEPARTMENTAL CORRESPONDENCE

Date: April 25, 2011

To: Honorable Members of the  
Energy and Environment Committee

Date: 4/25/11

Submitted in E&E Committee

Council File No: 11-0452

From: Gerry F. Miller  
Chief Legislative Analyst

Item No.: 1

Deputy: Adam R. Lid

Miguel A. Santana  
City Administrative Officer

Subject: Implementation of Charter Amendments I (Office of Public Accountability) and J (Budget and Surplus Transfer) and related matters

**SUMMARY**

On March 18, 2011, a Motion (Perry – Garcetti – Smith – Rosendahl; CF 11-0452) was introduced in City Council that instructs the Chief Legislative Analyst, the City Administrative Officer and the City Attorney to report to the City Council on the listing of actions and implementing ordinances that need to be considered in order for Charter Amendments I and J to take effect. Both measures were approved by the voters on March 8, 2011.

This report provides a general background on each of these measures as well as the necessary actions/considerations that need to be taken by the City Council to implement the procedural and administrative functions of the Office of Public Accountability and the Department of Water and Power (DWP) budget reporting procedures. In addition, the formation of the Citizens Committee for the selection of the Executive Director of the Office of Public Accountability is recommended as a key step in a schedule of actions that will ensure progress in establishing the Office of Public Accountability (OPA). City Council deliberations on the qualifications and members of the Citizens Committee would begin the timeline for the remaining schedule of actions required, including civil service requirements for office employees and budget formation that will affect the establishment of the OPA.

**DISCUSSION**

**Charter Amendment I - Office of Public Accountability**

Charter Amendment I relates to the establishment of the Office of Public Accountability (OPA) for the DWP. The OPA will be tasked with providing independent analysis of DWP actions as they relate to water and electricity rates. Additionally, Charter Amendment I requires the OPA to maintain a Ratepayer Advocate to protect consumer interests.

## **Charter Provisions**

Provisions under Charter Amendment I are effective on July 1, 2011 pursuant to Section 683 (i) of the measure. However, various provisions under the Amendment require that an ordinance be developed to clarify its purpose and to implement it. Other provisions require no effectuating ordinance. Sections that do not require a clarifying and implementing ordinance consist of the following:

### Role of Office of Public Accountability

Section 683 (a) – Regarding the role of the Office of Public Accountability (OPA) providing the public independent analysis of department actions relative to water and electricity rates;

### Executive Director

Section 683 (b) - Relative to declaring the Executive Director the head of the OPA and establishing that the Executive Director shall be appointed by the Citizens Committee to a five-year term, with confirmation by the Mayor and City Council;

### Reporting Responsibility and Duties of the Executive Director

Section 683 (c) (1) - (5) and (7) - Relative to the Executive Director's reporting responsibility and duties which include:

- Reporting to, but not instructed by, the Board of Water and Power Commissioners (Board);
- Having full charge and control of all OPA work and the proper administration of its affairs;
- Authority to appoint, discharge, suspend, or transfer its employees, subject to civil service provisions;
- Issuing instructions to OPA employees in the line of their duties; and
- Authority to expend OPA funds in accordance with appropriated funding under the adopted budget.

### Access to DWP Information

Section 683 (e) – Concerning the OPA having access to DWP information to fulfill its responsibilities.

### No Affect on Authority of the City Controller

Section 683 (h) - Relative to declaring that that this Charter Amendment does not affect the authority of the City Controller to conduct fiscal and performance audits of the DWP.

## **Implementing Ordinances**

As previously noted, various sections of Charter Amendment I require clarifying and implementing ordinances. These sections are identified in this report and the steps necessary to implement them are also discussed.

### Citizens Committee

Section 683 (b) states that the City Council shall develop an ordinance that prescribes the composition and selection of the Citizens Committee that appoints the Executive Director. As mentioned in the Summary, this section is a key step in the implementation of Amendment I.

The composition may provide numerous options which include, without limitation, appointing members from:

- Community or business groups such as the Neighborhood Councils, environmental groups, utility industry, business organizations, labor unions, community-based organizations, or universities;
- Each City Council District;
- Each region of the City such as Central City, Harbor, West Los Angeles, East Valley, and West Valley;

The manner of selection, which shall be determined by the City Council, may provide various options which include that the appointee nominations are determined as follows:

- City Council President;
- Mayor and City Council President;
- City Council President and City Council Committee Chairs that cover the subject matter;
- All elected officials including the Mayor, City Council President, Controller, and City Attorney.

### Executive Director Removal

Section 683 (b) also states that the City Council shall develop an ordinance that provides for the removal of the Executive Director of the OPA in a procedure consistent with Charter Section 575 (e) - removal of the Chief of Police.

To follow Charter Section 575 (e), the process would:

- Require the City Council, by a two-thirds vote, to determine that it will hold a hearing on the removal of the Executive Director at a future meeting;
- Require the City Council to then give at least 10 days notice before that hearing to the Executive Director, the Board and the Mayor;
- Require the Executive Director, the Board and the Mayor to then provide comment on the performance of the Executive Director at that hearing; and
- Require removal of the Executive Director to then be subject to a two-thirds vote of the City Council at that hearing.

In addition, the implementing ordinance would need to outline reasons for the removal of the Executive Director, such as failure to perform the duties of the Office.

#### Other Possible Duties for the Executive Director

Section 683 (c) (8) states that the City Council may develop an ordinance that provides other duties for the Executive Director of the OPA, in addition to those listed in Section 683 (a) and (c) (1) – (7).

#### Reporting Requirements Schedule and Consumer Protection Procedures

Section 683 (d) states that the City Council shall develop an ordinance to establish provisions for the administration and operation of the OPA, which shall include at a minimum reporting requirements/schedules and consumer protection/complaint procedures. The City Council may proceed with developing this ordinance to initiate the implementation of the OPA.

However, it may be appropriate to develop this ordinance after the Executive Director is in place so that the Executive Director can provide input into the formulation of the ordinance.

#### Ratepayer Advocate

Section 683 (f) states that the OPA shall include a Ratepayer Advocate in addition to other positions, as prescribed by ordinance. The first question which must be addressed is whether the Ratepayer Advocate will be a designated individual reporting to the Executive Director, or whether the Executive Director will be the Ratepayer Advocate, with a distinct group of staff charged with carrying out the duties of the Ratepayer Advocate.

Duties for the Ratepayer Advocate may consist of, without limitation, the review of proposed DWP rate actions; the analysis of the impact of DWP renewable and conservation programs on rates; the provision of consumer protection/compliant evaluation services; or other duties.

City Council may wish to develop this ordinance in conjunction with the Executive Director so that the Executive Director can have input into the structure and staffing of the organization.

#### Office of Public Accountability Budget

Section 683 (g) states that the DWP shall include a budget for the OPA, set by ordinance, at a level not less than .025 percent of DWP annual revenues from the sale of water and electric energy. This section requires the OPA, in consultation with the DWP and other offices as necessary, to submit a budget proposal to the CAO by December 31 of each year for the fiscal year beginning on July 1 of the following fiscal year, and submit it to the City Council for approval. Upon approval by the majority of the City Council with the concurrence of the Mayor, or in the event of a mayoral veto, two-thirds of the City Council, the DWP shall include the approved OPA in the departmental budget for the coming fiscal year.

To implement these Sections, the City Attorney would need to be requested by the City Council to prepare the draft ordinances.

For Fiscal year 2011-12 we recommend that the Council request the City Attorney to draft the ordinance providing for the minimum .025 percent funding and that the DWP include this amount in their budget. This would provide more than sufficient funding given the timing relative to selecting the Executive Director and hiring staff for the OPA. We also recommend that the ordinance specify that unspent funds at the end of the fiscal year will revert to the Power and Water Revenue Funds.

## **Charter Amendment J - Department of Water and Power Budget and Surplus Transfer**

Charter Amendment J requires the DWP to submit its preliminary budget to the City Council for informational purposes prior to March 31 of each year. By May 31, the DWP must update the preliminary budget based on any additional information received. In this manner, the City Council can consider the impacts of the DWP budget on the City.

The following two sections do not have a specific mandate or directive that an ordinance be developed to effectuate them or to further define their purpose:

- Section 684 - States that the Board shall submit a preliminary budget for the upcoming fiscal year to the City Council for informational purposes no later than March 31 of each year; with an updated preliminary budget no later than May 31. This section will accelerate DWP's current budget cycle without negative impacts. Therefore, there is no further action required.
- Section 344 (b) - States that the City Council may, by ordinance direct that a transfer be made to the Reserve Fund from surplus money in the.....Power Revenue Fund with the consent of the Board, as provided in this section. The section then lists very specific steps and actions to be taken by Board and the City Administrative Officer {344 (b) (1) - (5)} relative to the notification/submittal of the transfer as specified. This would facilitate compliance with its provisions. For example, DWP staff would be on notice from July 1, 2011, to prepare and present audited financial statements for the prior fiscal year to its Board no later than November 30 and notifying the Mayor and City Council by December 31 as to the amount of the transfer and the schedule of payments.

Pursuant to Amendment J, if the Board makes a preliminary finding that making the surplus transfer would have a negative impact on the DWP's financial condition, the Board may withhold its consent to make all or part of the surplus transfer. In the event the Board makes this finding, the City Administrative Officer shall verify the DWP's findings and provide its findings and recommendations to the City Council and Mayor by February 28.

After conferring with the City Attorney, it has been determined that the Charter currently contains the language from 344 (b) in 344 (a) and this section was added to include procedural steps to the process. Therefore, there is no further action required.

## RECOMMENDATIONS

That the City Council:

1. Request the City Attorney to prepare the following ordinances:
  - a. Section 683(b) – Executive Director Removal consistent with Charter Section 575 (e), and Formation of the Citizens Committee;
  - b. Section 683(c)(8) – Other Possible Duties for the Executive Director;
  - c. Section 683(g) – Office of Public Accountability Budget as prescribed in the Charter Amendment and to provide that unspent funds at the end of the fiscal year revert to the Power and Water Revenue Funds.
  
2. Should the Council wish to proceed with the remaining ordinances in advance of the selection of the Executive Director, request the City Attorney to prepare the following ordinances:
  - a. Section 683(d) – Reporting Requirements Schedule and Consumer Protection Procedures;
  - b. Section 683(f) – Ratepayer Advocate;
  
3. Instruct the Chief Legislative Analyst and City Administrative Officer and request the City Attorney to report back in 15 days on options for the composition of the Citizens Committee relative to the selection of the Executive Director of the Office of Public Accountability.