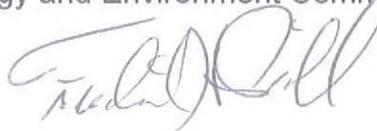


CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: June 19, 2012

To: Honorable Members of the Energy and Environment Committee

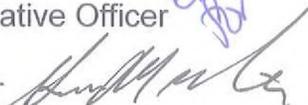
From: Frederick H. Pickel, Ph.D.
Office of Public Accountability



Miguel A. Santana
City Administrative Officer



Gerry F. Miller
Chief Legislative Analyst



Subject: Charter Amendment I (Office of Public Accountability) – Administration and Operations Provisions for the Office of Public Accountability; and Status of Staffing and Related Matters

SUMMARY

When it was adopted March 8, 2011, Charter Amendment I created the Office of Public Accountability (OPA) and, in so doing, largely defined its authority. That Charter design, however, was deliberately left incomplete in recognition that some measure of flexibility was desirable if the Office was to be able to adapt to changing needs and conditions. To this end, Charter Amendment I provided in § 683(d):

The City Council shall by ordinance establish provisions for the administration and operation of the OPA, which provisions shall include at a minimum: (1) reporting requirements and schedules and (2) consumer protection and complaint procedures.

On July 13, 2011, the Council instructed the City Administrative Officer (CAO) and the Chief Legislative Analyst (CLA), upon confirmation of the Executive Director, to work with the Executive Director and City Attorney to develop and report back on reporting requirements and schedules and consumer protection and complaint procedures (CF 11-1452-S2). A working group was formed, consisting of the four offices, to shape the contours of an implementing ordinance on these subjects and, more generally, on OPA administration and operations. The attached Ordinance Outline reflects the results of that effort.

In addition, this report also provides the status of staffing for the OPA as instructed by the City Council on April 24, 2012 (CF 10-0475-S9). Further, this report seeks an additional amendment to the existing contract with PA Consulting to assist the OPA with a supplementary review of a water rate proposal.

DISCUSSION

Charter Amendment I – Office of Public Accountability

Charter Amendment I, approved by voters on March 8, 2011, established the OPA to provide public independent analysis of Department of Water and Power (DWP) actions as they relate to water and electricity rates. Additionally, Charter Amendment I requires the OPA to maintain a Ratepayer Advocate (RPA) function.

The OPA is to be headed by an Executive Director who is selected by a Citizens Committee and confirmed by the Mayor and the City Council. The Charter Amendment provides that the Executive Director serve a five-year term and conduct a variety of duties related to the operation and management of the OPA.

The members of the Citizens Committee were appointed by the Mayor and City Council in August 2011 and commenced the selection process in September 2011. The five member Committee was aided in its efforts by the CAO, CLA, Personnel Department, City Attorney and the professional recruitment firm of Ralph Andersen and Associates. The Citizens Committee conducted a thorough recruitment, interview, and selection process which concluded with the unanimous selection of Frederick H. Pickel, Ph.D. as Executive Director on January 17, 2012.

The City Council confirmed the appointment of Frederick H. Pickel as Executive Director on January 31, 2012. The Mayor concurred in the appointment on February 1, 2012. Dr. Pickel was sworn in on February 14, 2012.

Administration and Operation Provisions

Charter Amendment I states that the City Council shall by ordinance establish provisions for the administration and operation of the OPA which include at a minimum: (1) reporting requirements and schedules and (2) consumer protection and complaint procedures. This Charter directive served as the impetus for the City Council instruction/request to the CAO, CLA, City Attorney and OPA to develop administrative language for the new Office.

Under the Charter, the Executive Director/RPA of the OPA is charged with a number of duties and responsibilities related to the operation of the Office. However, the Charter allows for further clarification and refinement of these duties through the Ordinance process. In this manner, the Executive Director/RPA has the ability to implement his/her vision for the Office and effectively meet its transparency objectives.

The CAO, CLA, and City Attorney convened a working group to address this task, which was augmented by the Executive Director/RPA after his confirmation. The working group developed the attached Administration and Operations Ordinance Outline (Attachment 1) for the OPA. The Ordinance Outline is intended to provide the City

Attorney's Office guidance as it develops the final ordinance for the Administrative Code.

The Ordinance Outline consists of vision and mission provisions that clarify the scope and objectives of the OPA. In addition, the Ordinance Outline includes sections concerning independence of the Office, reporting requirements, consumer protection procedures and other related provisions.

The Ordinance Outline Provisions are further summarized below:

1. **Vision of City Charter Amendment I** – Restates the vision of the Charter with respect to the OPA and its role as “independent watchdog” of DWP rates and operations.
2. **Mission of the OPA** – Provides that the Mission of the Office is to improve performance of the DWP by providing analysis and reporting on the reasonableness of rates, long term plans, and operations. It further states that the Mission is to assure the DWP's transparency and accountability to its customers. It further states that the OPA shall provide information and advice to the DWP, the Mayor and City Council.
3. **Independence of the OPA** – Stresses the independence of the OPA from the DWP and other City entities and officials. This section notes that the OPA has a reporting relationship with the Board of Water and Power Commissioners, however it is not to be instructed by the Board.

This reporting relationship extends to other City entities as well. No City entity can instruct or control the operations of the OPA. The section notes that City departments can provide support to the OPA, but in a manner that does not compromise its independence.

The independence of the Office is critical in establishing the credibility of the OPA and its central task of conducting separate and unfettered review of DWP matters.

4. **Powers and Duties of the Executive Director** – Restates the existing language of the Charter relative to the duties of the Executive Director. The Charter states that the Executive Director shall have full charge and control of all OPA work; administration of its affairs; the ability to appoint, discharge, suspend, or transfer its employees; determine the expenditure of funds including, without limitation, awarding contracts.

This section further clarifies that the CAO is to review the proposed budget of the OPA and submit its recommendations to Mayor and City Council within the annual City budget process. The section also notes that the approved budget of the OPA will be funded by the DWP.

5. **Reporting Obligations of the OPA** – Establishes the requirements of the OPA to provide reports and information to the Board of Water and Power Commissioners, the City Council, Mayor, the Neighborhood Councils, and the public on the reasonableness of rate proposals and modifications. This reporting requirement includes providing these entities analysis on the reasonableness of DWP strategic plans (e.g., Integrated Resource Plan, Utility Strategic Plan), annual proposed DWP budget, DWP policies, practices, and other actions that may impact rates.

The section also indicates that the OPA shall maintain a repository for all reports produced by the Office.

The creation of this section is critical in establishing the OPA's role in conducting analysis and the dissemination of its findings and recommendations to impacted parties. It sets forth a clear understanding that all parties will have access to information produced by the OPA.

6. **Consumer Protection and Complaint Procedures of the OPA** – Establishes consumer protection and complaint procedures for the Office as follows: (a) investigate legitimate complaints from customers and propose recommendations to address these issues, and (b) audit individual ratepayer cases and obtain customer data to develop analyses of customer service performance.

The section further states that reports of waste, fraud, and abuse will be referred to the City Controller consistent with its existing investigatory program.

This section is crafted to allow the Executive Director/RPA the ability to review legitimate complaints at his/her discretion given existing resources. The Executive Director/RPA may choose to investigate complaints which suggest an ongoing problem or trend that impacts a variety of ratepayers. The Executive Director/RPA may then provide recommendations for addressing the matter, including the application of customer service performance reviews.

Status of Staffing for the OPA

On April 24, 2012, the City Council requested/instructed the OPA, CAO and the CLA to expedite the OPA's plan for long-term staffing and to report on its status in the near term.

On May 24, 2012 a new technical City classification and four new positions for the OPA were allocated by the Civil Service Commission. These General Fund (not DWP) Utility Rate & Policy Specialist positions are funded in the OPA's 2012-13 operating budget. These positions will provide the OPA with the ability to research and analyze highly technical utility rates, utility policies and practices including debt management issues and financing. In addition, these positions will monitor, analyze, and develop utility

related legislation and review costs and revenue requirements for existing and projected levels of service.

It is anticipated that this staff, through the use of a proactive communications strategy, will inform and present recommendations to the DWP, City Officials, Neighborhood Councils, ratepayers, and other interested parties of findings and recommendations on utility policies and operational issues.

The OPA, in conjunction with the Personnel Department, plans to utilize a recruitment firm to assist in the search for qualified candidates to fill these positions. It is anticipated that the same recruitment firm that conducted the search for the Executive Director will be utilized.

Supplementary Water Rates Review

Pending appointment of the OPA technical staff, the OPA has been provided temporary contracted assistance for Power System issues through PA Consulting. This assistance has included the significant knowledge transfer from PA Consulting to the OPA from its work on DWP issues since 2010.

With the recent submission of a proposed Water System rate adjustment, it is necessary to provide additional contracted support for the OPA. Thus, it is recommended that the existing contract with PA Consulting be amended to add a water system task not to exceed \$20,000.

Specifically, the task will assist the OPA in reviewing the Water System rate proposal and related rate restructuring provided to the OPA in June 2012.

The latest amendment (Amendment No. 2) totaled \$380,000 for a contract total of \$1,516,000. Approval of an additional amendment will bring the total to \$1,536,000. Sufficient funds are included in the OPA's approved Budget for FY 2011-12 and FY 2012-13 to fund this amendment.

RECOMMENDATIONS

That the City Council:

1. Request the City Attorney to prepare and present an ordinance for the Administration and Operations of the Office of Public Accountability consistent with the Ordinance Outline Provisions as attached (Attachment 1);
2. Instruct the CAO and the CLA, in conjunction with the OPA, to execute an amendment (Amendment No. 3), utilizing existing OPA funds, to the existing agreement with PA Consulting (Contract No. C-118747; CF 10-0475-S9) for an additional \$20,000 for a contract total of \$1,536,000 to provide the OPA

supplementary review of the Water Rate Adjustment proposal by the Department of Water and Power;

FISCAL IMPACT

The total cost of Amendment No. 3 to Contract No. C-118747 is \$20,000. Sufficient funds are available in the 2011-12 and 2012-13 adopted budgets of the Office of Public Accountability to fund the amendment. The Department of Water and Power will fully reimburse the City for this cost.

Attachment

MAS:WRK:RPR:10120162

Attachment 1

Ordinance Outline - Administration and Operations Provisions of the Office of Public Accountability

- I. The City Charter's vision
 - A. Charter Amendment I (adopted March 8, 2011) stated that "[t]he role of the Office of Public Accountability ("OPA") shall be to provide public independent analysis of department ["DWP"] actions as they relate to water and electricity rates." Charter § 683(a).
 - B. The ballot argument in favor of the measure argued that it would establish the OPA "to shed greater light on the DWP's operations and finances" and to serve as "an independent watchdog, charged with analyzing proposed increases in our water and power rates on a timely and continuous basis."

- II. Mission
 - A. The OPA shall seek to improve the performance of the DWP by analyzing and reporting on the reasonableness of water and power utility rates, its long-term strategic planning documents, and other DWP policies, procedures, decisions, contracts, and programs, including assessing the reasonableness of such proposals and the assumptions upon which they are based.
 - B. The OPA shall provide information and make recommendations to the Board of Water and Power Commissioners ("Board"), the City Council, the Mayor, Neighborhood Councils, and the public, to assure the DWP's transparency, accountability, and reasonableness of its policies and rates.
 - C. The OPA shall provide information and advice, as opposed to direction, to the DWP, the Mayor, and Council.

- III. Independence
 - A. The OPA is to function independently of the DWP and City officials.
 1. Charter Amendment I noted, intended that the OPA be independent.
 - a) While the Executive Director is to "report directly" to the Board, he or she is "not to be instructed" by the Board. Charter § 683(c)(1).
 - b) The ballot argument in favor of Charter Amendment I argued that the OPA is to serve as an "independent watchdog."
 - B. The OPA's existence outside of the DWP is critical to its independence.
 - C. While substantively the OPA shall function independently of the DWP and its management structure, and of the City Council,

Mayor, and Controller, administratively the OPA shall be given ongoing support by City departments and offices in a manner that does not compromise the OPA's independence.

- D. The Office of the City Administrative Officer (CAO) shall provide the OPA with ongoing support and advice on administrative (e.g., personnel, payroll, administrative, budgetary, and general) matters.

IV. Powers and duties of the Executive Director

- A. The Charter prescribes particular powers and duties in § 683(c).
- B. Consistent with that prescription, the Executive Director shall:
 1. Report to, but not instructed by, the Board.
 2. Have full charge and control of all OPA work.
 3. Be responsible for the proper administration of its affairs.
 4. Appoint, discharge, suspend, or transfer its employees, subject to the Civil Service provisions of the Charter.
 5. Issue instructions to OPA employees in the line of their duties, subject to the Civil Service provisions of the Charter.
 6. Prior to the beginning of each fiscal year and in accordance with a schedule prescribed by ordinance submit to the CAO, in accordance with City procedures, a proposed annual budget covering the anticipated expenditures of the OPA. The CAO shall review the proposed budget and submit it with recommendations to the Mayor and City Council for approval. The approved budget will be forwarded to the DWP for funding.
 7. Expend the funds of the OPA (including, without limitation, awarding contracts), in accordance with the provisions of the adopted budget, any subsequent budget amendments and standard City provisions.
 8. Perform other related duties as may be prescribed by ordinance.

V. Reporting Obligations

- A. Provide reports to the Board, the City Council, the Mayor, the Neighborhood Councils, and the public on the reasonableness of those rate actions and any modifications to them.
- B. Provide information to the Board, the City Council, the Mayor, the Neighborhood Councils, and the public regarding the development of the DWP's long-term strategic plans (e.g., IRP), the annual proposed DWP budget, and departmental policies, practices, and other actions that may impact rates.
- C. Have the discretion to make recommendations to the Board, the City Council, the Mayor, and the public on ways to improve the reasonableness and transparency of DWP policies and rates.
- D. Provide information to the public and maintain a repository for all reports produced by the Office.

VI. Consumer protection and complaint procedures

- A. The ballot argument in favor of Charter Amendment I argued that consumer protection would be increased by authorizing the OPA "to investigate legitimate complaints" from customers and "to propose recommendations" to address these issues.
- B. The OPA shall have the discretion to audit individual ratepayer cases and obtain customer data to develop analyses of customer service performance at the DWP. Reports of waste, fraud, and abuse will be coordinated with the City Controller and other concerned departments, offices, or governmental agencies.