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CITY ATTORNEY

REPORT NO. R 16 - 00 45

FEB 12 2016

**REPORT RE:**

**DRAFT ORDINANCE APPROVING THE RATES  
FIXED BY THE DEPARTMENT OF WATER AND POWER  
FOR ITS WATER AND WATER SERVICE**

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, California 90012

Honorable Members:

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. The draft ordinance would replace the existing Water Rate Ordinance No. 170435, as amended. The rates of the draft ordinance would commence on the earlier of April 1, 2016, or the earliest possible effective date of the draft ordinance after April 1, 2016. The draft ordinance, among other features, has five major aspects. First, according to the Department of Water and Power (Department), the draft ordinance's tier rates are cost-based, differentiated only by the costs of water supply and peak pumping and storage. Second, the draft ordinance collects revenues dedicated to the replacement of the rapidly aging water infrastructure of the City of Los Angeles (City) through the new Water Infrastructure Adjustment. Third, the draft ordinance adds the new Base Rate Revenue Target Adjustment. Fourth, the draft ordinance adds the new Water Expense Stabilization Adjustment. Fifth, the draft ordinance requires reporting by the Department of key performance metrics, variation from targets and, if necessary, mitigation plans to the Board of Water and Power Commissioners (Board), Office of Public Accountability (OPA) and Los Angeles City Council (Council).

### Summary of Key Features of the Draft Ordinance

Key features of the draft water rate ordinance include the following:

- Customer tier allocations are different than under the existing ordinance.
- Single-Dwelling Unit Residential customers are moving from two to four tiers in which lower levels of consumption are priced at lower rates.
- While the Multi-Dwelling Unit Residential, Commercial et al., and Publicly-Sponsored Irrigation et al. rate structures will continue to be two-tiered, the rate elements in each tier for those customer classes will ultimately be the same as those for the Single-Dwelling Unit Residential customer class.
- Second Tier base rates will no longer include the Water Procurement Adjustment (to be replaced by the Water Supply Cost Adjustment (WSCA)) and Water Quality Improvement Adjustment Factor (WQIA).
- In order to consider the differential costs associated with different sources of water supply, the draft ordinance includes the new WSCA to capture all costs of water supply and assign cost recovery to tiers and customer classes based on levels of usage.
- According to the Department, costs of peak pumping and storage are allocated in the base rates of some upper tiers of usage.
- The new Water Infrastructure Adjustment (WIA) recovers capital costs associated specifically with infrastructure investments to maintain and improve the reliability of the water distribution system of the Department. This factor requires that all qualifying infrastructure-related costs must be reported to the Board for review and approval annually.
- The Water Security Adjustment (WSA) of the existing water rate ordinance will not be included in the draft ordinance. According to the Department, the water quality-related costs that the WSA recovered will be recovered by the draft ordinance using the WQIA with any remaining costs included in base rates.
- The Base Rate Revenue Target Adjustment (BRRTA) is designed to recover a minimum level of base rate revenues. It would provide additional revenues when water consumption is below forecast and return money to the Department's customers when water consumption is above forecast. It replaces the Water Revenue Adjustment of the existing water rate ordinance.

- The new Water Expense Stabilization Adjustment recovers any shortage between the target determined by the Chief Financial Officer of the Department for the existing Water System Expense Stabilization Fund and the fund's balance and also the expense for legal and court costs or any judgment or settlement.
- The frequency of changes for the WQIA, Owens Valley Regulatory Adjustment (OVRA) and Low Income Subsidy Adjustment (LISA) factors will move from quarterly to semiannually.
- All caps on increases to the adjustment rate components, except for the LISA, will be removed.
- The draft ordinance requires reporting by the Department of key performance metrics, variation from targets and, if necessary, mitigation plans to the Board, OPA, and Council.
- The Department and OPA shall conduct their own interim rate reviews. After receipt of the results of the interim rate review from the Department and the OPA, the Board shall by resolution take action to choose whether or not to order the Department to prepare possible revisions to the draft ordinance for consideration by the Board no later than June 30, 2019.
- Interim rate reviews by the Department and the OPA shall include calculation of revised base rate revenue targets for Fiscal Year 2018/19 and Fiscal Year 2019/20. If any of such calculated revised targets varies from the respective Base Rate Revenue Target stated in the draft ordinance, the Board may choose to increase or decrease the respective Base Rate Revenue Target stated in the ordinance to any degree not in excess of 2% of that stated target.

#### Summary of Ordinance Provisions

Charter Section 676(a) provides that rates for water shall be fixed by the Board from time to time as necessary, subject to approval by the Council through ordinance. Approving this ordinance will establish the water rates of the draft water rate ordinance as described above.

#### CEQA Findings

The approval of the rates in the draft ordinance is exempt from the requirements of the California Environmental Quality Act under the provisions of the Public Resources Code, Section 21080(b)(8). The proposed rates meet financial needs of the Department, including operating and capital expenses.

Council Rule 38 Referral

This draft ordinance has been approved in substantial form by the Board pursuant to Council Rule 38.

Outreach/Proposition 218 Notice

The OPA was established to provide public independent analysis of Department actions as they relate to water and electric rates. The OPA has reviewed the draft water rate ordinance and finds the associated projected billing increases to be just and reasonable.

To increase awareness of the proposed water rates in the draft ordinance, the Department has held more than 60 public meetings.

In 2006, the California Supreme Court held that the requirements of Proposition 218, which introduced Articles XIII C and XIII D into the California Constitution, apply to domestic water service. Proposition 218's requirements include that rates shall provide no more revenue than necessary to cover the Department's revenue requirement and proportionality. The Board approved the mailing of Proposition 218 notices to the Department's customers and to the owners of record of each parcel in the Department's service area, advising them of the February 17, 2016, Council meeting scheduled to consider the draft ordinance. The Council should consider all written protests against the proposed charges for water service to determine if a majority protest exists.

If you have any questions regarding this matter, please contact Deputy City Attorney Brian E. Stewart at (213) 367-5115. He or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By



DAVID MICHAELSON  
Chief Assistant City Attorney

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Transmittal