

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: May 26, 2016

To: Honorable Council President Herb J. Wesson, Jr.
Rules, Elections, Intergovernmental Relations, and Neighborhoods Committee

From: Miguel A. Santana *MAS*
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Subject: **DEPARTMENT OF WATER AND POWER – GOVERNANCE REFORM
(C.F. 16-0093) – REPORT ON BOARD STRUCTURE**

SUMMARY

On April 13, 2016, the Rules, Elections, Intergovernmental Relations, and Neighborhoods Committee (Committee) considered the City Administrative Officer (CAO) and Chief Legislative Analyst (CLA) (C.F. 16-0093) report on governance reform options for the Department of Water and Power (Department; DWP) dated April 5, 2016. The Committee instructed the CAO and CLA to report on several issues presented in the April 5, 2016 report. In some instances, the Committee instructed other departments to report as well. To facilitate the discussion, the CAO and CLA have prepared a series of reports, organized to align with the chapters presented in the April 5, 2016 report. Where applicable, other departments have participated in the development of the material contained herein.

The Committee instructed the CAO and CLA to report on several issues concerning the structure of the Board of Water and Power Commissioners, the qualifications to serve on the Board, and compensation for the Commissioners. With regard to Board structure and qualifications, the Committee requested (1) a review and assessment of expansion of the Board to seven members; (2) a review of the rationale for limiting Commissioners to registered voters within the City and options for eliminating this requirement; and (3) an assessment of whether a part-time Board limits the pool of qualified candidates. The Committee also requested an analysis of options for compensating a part-time Board. Specifically, the CAO and CLA were asked to consider what compensation would be sufficient to attract qualified candidates. In analyzing the matters raised by the Committee, the CAO and CLA consulted with the DWP and the City Attorney where necessary.

DISCUSSION

Board Size & Qualifications

Seven Member Board Option

As indicated, our Offices were requested to provide a review of expanding the Board from five to seven members. Given public comments from stakeholders, the Committee expressed an

interest in exploring this option. Specifically, comments from the public have shown support for expanding the Board to increase its diversity. Supporters have noted that the City is expansive and composed of a variety of viewpoints, backgrounds and expertise. They state that a Board which best reflects these attributes is most capable of representing the City's diverse interests and guiding the DWP.

In addition, the City Charter provides that City appointing authorities shall strive to make appointments to boards that reflect the diversity of the City, including, but not limited to, communities of interest, neighborhoods, ethnicity, race, gender, age and sexual orientation (Charter Section 501 (e)).

Increasing the Board to seven members facilitates these objectives.

In addition, public comments note that increasing the Board will allow Board-related committees to be fully maximized; thereby enhancing policy and operational review of DWP matters. Currently, the Board maintains the following committees:

- Personnel Relations Committee;
- Audits Committee;
- Customer/Community Relations/Neighborhood Council and Low Income/Lifeline Committee;
- Economic Development, Strategic Recruitment and Hiring Committee; and
- Security/Emergency Preparedness Committee.

Board members are currently assigned to the Personnel Relations and Audits Committees; the remaining committees are vacant.

In prior DWP Boards, vacancies on committees were the result of conflicting schedules between members and the limited time members had available to meet. The same constraints may be impacting the current Board thereby not allowing it to fully maximize the Committee structure to conduct reviews. Expanding the Board to seven members may assist the Board in fully utilizing the Committee structure.

Our report on Governance Reform Options, dated April 5, 2016, provided examples of other municipal utility boards and commissions governed by seven members. For example, the Sacramento Municipal Utility District (SMUD) and the Jacksonville Energy Authority (JEA) both consist of seven member Board of Directors. In addition, the report identified City boards that consist of seven members such as the Board of Airport Commissioners and the Board of Neighborhood Commissioners.

By providing these examples, the report showed that the seven member board model is common for municipal utilities and boards within the City. This membership range does not hinder these boards from operating effectively and meeting organizational objectives.

To increase the size of the DWP Board from five members to seven, a ballot measure to amend City Charter Section 670 would be required. Therefore, if the Council wishes to pursue this option, it should request the City Attorney to prepare the appropriate ballot language to that effect.

Registered Voter Requirement

Our Offices were also instructed to provide a review of the rationale for limiting commissioners to registered voters within the City; and options for eliminating this requirement. This instruction was derived from comments from the Office of Public Accountability (OPA) noting the value of expertise outside the City which may benefit the Board.

The OPA cited the example of the Metropolitan Water District (MWD) and the City's appointments to the Board of Directors. The OPA stated that some of the City's appointments do not live in the City nor are registered voters within the City. However, these appointments, which reside in the MWD's service area, possess valuable water-oriented expertise that helps the City and region.

Our report on Governance Reform Options, dated April 5, 2016, indicates that the City Charter provides that commissioners to City boards be registered voters of the City (Charter Section 501 (d)). The rationale for this requirement is based on the premise that City appointments are best served by community members/residents which have a direct stake in its interests. The registered voter requirement is a way to verify, or account, for this connection to the City.

If the Council wishes to modify this requirement to allow for a larger pool of appointments to the DWP Board, it would need to amend the City Charter. However, in weighing this option, consideration should be given to its impact on other City boards. Eliminating this requirement for the DWP Board may compel a similar discussion for a number of City boards and commissions. This approach may, or may not, serve the interests of the City.

The value of expertise, outside the City, is not without merit. The DWP Board can benefit greatly from specialized water and power knowledge and expertise developed outside the City and region. The Board may obtain specialized expertise through the use of consultants or the selection of managers with diverse knowledge of the utility industry.

Part-Time Board Candidate

Our Offices were instructed by the Committee to determine whether a part-time board limits the pool of qualified candidates.

Aside from the City's Board of Public Works, the majority of the City's boards are composed of members that serve on a volunteer/part-time basis. For many years, the City has been able to attract a diverse pool of qualified candidates to serve on its boards and commissions. Many of

the City's board members are primarily motivated by the desire to serve the community. In most cases, board members devote two days a month to conduct board meetings and meet with constituents to address City business. Part-time board duties are often conducted while they maintain full-time employment with private/non-profit firms or running their own businesses.

Compensation does not seem to be a driving force for most board members although growing part-time responsibilities for some City boards may warrant a review of compensation options.

Compensation

Our Offices were instructed to report on compensation options for a part-time board. The Committee asked us to explore the compensation necessary to attract qualified candidates to part-time Board positions.

Currently, the DWP Commissioners serve on a volunteer/part time basis and do not receive compensation. The Charter vests the City Council with the authority to establish attendance fees. Charter Section 501(b) states that the City Council shall, by ordinance, establish attendance fees to be paid to commissioners. Any ordinance establishing attendance fees must be approved by a two-thirds vote. Administrative Code Section 21.12 provides that commissioners, including DWP Commissioners, shall be paid an attendance fee of \$50 for each meeting attended, not to exceed \$250 per month. Previously, DWP Commissioners received this sum but it has become standard practice for the Commissioners to forego attendance fees.

With regard to travel, the DWP has indicated that the Commissioners receive reimbursement for travel related expenses, utilizing the same process applicable to DWP employees. This policy is consistent with the travel policy issued by the Controller and is applicable to all City employees. Travel expenses exceeding \$500 require approval by Board action. Further, Commissioners receive parking at the DWP's headquarters.

Assuming the City Council chooses to modify the current compensation and reimbursement structure for the Board, the City Council may choose to (1) adopt a new attendance fee applicable to the Board; (2) adopt a modified reimbursement method for the Board; or (3) establish a salary for the Board. As discussed above, the City currently attracts qualified candidates to serve on the Board in the absence of significant compensation. Should the City Council propose to modify the structure of the Board to require more members and specific expertise, a more robust compensation structure may be justified. This may make Board service more attractive to the desired candidates and would signal the City's investment in the Board's commitment to the utility.

Attendance Fees

The City Council may choose to adopt a unique attendance fee for the DWP Commissioners. A review of models utilized for attendance fees, both within and outside of the City, offers avenues the City Council may choose to pursue. Pursuant to Administrative Code Section 21.12 the current attendance fee for all part-time commissions is \$50 per meeting. Additionally,

Administrative Code Section 8.132 establishes a \$50 attendance fee for the City's representatives on the MWD Board of Directors. Attendance fees are not to exceed \$250 per calendar month and the ordinance modifying the attendance fee may only be amended once per year.

Outside of the City, State legislation also establishes attendance fees for certain part-time commissions. California Water Code Sections 20201 and 20202 provide that water districts may, by ordinance, provide members of their governing body with \$100 per day for "each day's attendance at meetings of the board or for each day's service rendered as a member of the board by request of the board." Compensation must be limited to a total of 10 calendar days per month. Water districts may also, by ordinance, choose to increase the compensation provided above the \$100 limit. However, the increase may not exceed an amount equal to 5 percent for each calendar year.

Public Utilities Code Sections 11908-11908.2 provide that each member of the governing body of a municipal utility district shall receive a \$100 attendance fee for "each attendance at the meetings of the board, or for each day's service rendered as a director by request of the board." Compensation may not exceed more than six days per calendar month. For boards with seven members, the board may maintain the above attendance fee or may institute a salary not in excess of \$600 per month, subject to annual adjustments of no more than 5 percent per calendar year, calculated from the date of the last adjustment. For those districts which have owned and operated an electric distribution system for at least eight years and have a population of 250,000 or more, members may receive an attendance fee of \$100 and compensation may not exceed more than ten days per month. Further, the Board may increase compensation per day not more than 5 percent per calendar year.

SMUD's policies provide an example of how these sections have been implemented. SMUD's part time board members are compensated \$150 per day of service, not to exceed ten days in one calendar month. The members may be compensated for (1) attendance at full meetings but also for attendance at committee meetings; (2) ad hoc committee meetings; (3) publicly noticed SMUD workshops or meetings; (4) other publicly noticed meetings where the Board member is representing the Board; (5) state or federal legislative briefings meetings where the Board member is representing the Board; (6) events where SMUD is being recognized; (7) conferences; and (8) organized educational activities. Thus, in a calendar year, a SMUD board member may be compensated a total of \$18,000 for attendance at such events.

Should the City Council choose to institute a higher attendance fee, the City Attorney has advised that a rate, applicable only to DWP Commissioners, may be adopted via ordinance. City Council has this authority pursuant to Charter Section 501(b). The City Attorney has also advised that attendance fees should be reasonably commensurate with the time and expense necessary to prepare for and attend Board meetings. The authority to establish an attendance fee may not be used to effectively set a full-time salary for the Commissioners.

Reimbursement for Expenses

The City Council may also choose to adopt a new travel reimbursement policy for the DWP Commissioners. Outside of the City, State legislation establishes reimbursement policies for certain part-time commissions. Pursuant to the California Water Code, members of water district boards may be provided with reimbursement for travel expenses pursuant to Government Code Sections 53232.2 and 53232.3. These sections provide reimbursement “for actual and necessary expenses incurred in the performance of official duties,” such as travel, meals, lodging and other actual and necessary expenses. They also require adoption of a written policy specifying the types of expenses to be reimbursed and the types of occurrences qualifying for reimbursement. Section 53232.2(c) provides that if the written policy does not specify the reimbursement rates, reimbursement will be permitted at the rates established by IRS Publication 463. Publication 463 defines those “ordinary and necessary business expenses” which one may deduct from their income. These expenses can include travel, entertainment, gifts, or transportation. Further, the Government Code provides that all expenses for which reimbursement is sought be detailed in expense reports.

Directors serving on seven member boards of municipal utilities districts may also be reimbursed for their expenses subject to Government Code Sections 53232.2 and 53232.3. SMUD’s policies allow for reimbursement for expenses related to travel, meals, lodging and “other actual and necessary expenses incurred in the performance of his or her official duties.” Reimbursement is in accordance with IRS Publication 463. However, SMUD Board members are also provided a \$10,000 annual budget for travel and training purposes. This figure is adjusted annually for inflation based on the Travel Price Index. Board members must reimburse SMUD for all expenses exceeding \$10,000 and must provide written justification for requests for travel, training, and events in excess of \$500. The justification must explain the benefit to SMUD and must demonstrate how the request is consistent with Board policy.

With regard to offering reimbursement for travel, meals, and lodging, the City’s policy is very similar to that provided for in both the Water Code and the Public Utilities Code. Institution of a separate travel and training stipend would likely be a matter of Board policy and would not require an action by the City Council.

Establishment of a Salary

Lastly, the City Council may choose to adopt a salary for the DWP Board of Commissioners. Within the City, the only Board which receives a salary is the Board of Public Works. However, the Board of Public Works is a full-time board. As a full-time board, the members are required to devote their entire time to the duties of office as full-time compensated City employees (Charter Section 581). Our Offices were unable to identify any full-time public utility boards in the State of California. All identified Boards were part-time, with members receiving attendance fees and travel reimbursement.

Assuming the City Council wishes to explore the option of instituting a salary for the Board, the City Attorney has advised that such authority exists pursuant to Charter Section 219. This section permits the City Council to set salaries for all officers and employees of the City via ordinance. DWP Commissioners are officers of the City (Charter Section 200). It is with this

authority that the City Council established the salaries for the Board of Public Works. However, unlike Charter Section 581 which establishes the Board of Public Works as a full-time board, Charter Section 501 establishes the DWP Board of Commissioners as a part-time board, whose commissioners serve for a fixed term and are not required to dedicate their entire time to the duties of office. Further, Charter Section 501(b) specifically references attendance fees for the part-time commissions. Based on these differences, the City Attorney has advised that while the authority to institute a Board member salary exists, doing so may raise additional issues requiring discussion with the Personnel Department. Thus, if the City Council wishes to pursue a salary, it should instruct the CAO and CLA, along with the Personnel Department, to report on the implications of instituting a salary for the Commissioners.