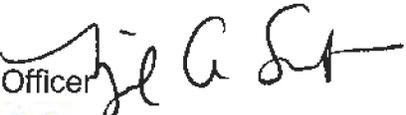


CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: April 5, 2016

To: Honorable Members of the Rules, Elections, Intergovernmental Relations,
and Neighborhoods Committee

From: Miguel A. Santana 
City Administrative Officer

Sharon M. Tso 
Chief Legislative Analyst

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

SUMMARY

The Offices of the City Administrative Officer (“CAO”) and the Chief Legislative Analyst (“CLA”) were instructed by the Rules, Elections, Intergovernmental Relations, and Neighborhoods Committee to report back on a motion (Fuentes – Wesson – O’Farrell; C.F. 16-0093) regarding governance reform options for the Department of Water and Power (“Department;” “DWP”). This report addresses key areas and identifies potential options for consideration. The CAO and CLA reviewed prior and current studies, statements made by City Council, the Mayor, and the Controller, and information provided by the DWP, as well as pertinent City departments, in developing this report. Further, the CAO extended an invitation to meet with all City and DWP labor partners and met with representatives from IBEW (“International Brotherhood of Electrical Workers”), AFSCME (“American Federation of State, County & Municipal Employees”), SEIU Local 721 (“Service Employees International Union”), LACAA (“Los Angeles City Attorneys Association”), LIUNA Local 777 (“Laborers International Union of North America”), and MEA (“Management Employees Association – DWP”).

The intent of this report is to provide a broad menu of options on reform of the DWP as a starting point for policy discussions by all stakeholders. This report does not make recommendations regarding reform, except to the extent that should the policy makers decide to pursue reform, special consideration should be given to ensure the elements are consistent and complete as a package of reform options. Undoubtedly, there are many other options not discussed herein which may evolve or develop as a result of future discussions. These options may be addressed in subsequent reports.

BACKGROUND

The DWP has an extensive history that is inextricably linked to the growth and development of the City of Los Angeles as the second-largest city in the country and the center of one of the most populous metropolitan areas in the world. DWP is one of the largest municipally-owned utilities, serving approximately 700,000 water customers and 1.4 million electric customers.

Over the years, many studies have been conducted that discussed in great detail the challenges faced by the DWP and contemplated possible solutions to various management challenges. The most recent 2015 Industrial, Economic and Administrative (“IEA”) Survey commissioned by the Controller and conducted by Navigant Consulting, Inc. provides extensive analysis of key areas of the Department such as water and power regulations, security and emergency preparedness, rates benchmarking, and customer service. The IEA Survey also includes a chapter dedicated to current governance challenges and suggests possible alternatives to help mitigate or resolve these challenges identified as follows:

- Decentralized City authority;
- Inadequate hiring process;
- Lack of external reporting, transparency, and trust;
- Decentralized internal authority; and
- Ambiguous role of the Office of Public Accountability (“OPA”)/Ratepayer Advocate (“RPA”).

The IEA Survey was presented to Energy and Environment Committee on January 20, 2016 (C.F. 15-1478). On January 22, 2016, a Motion (Fuentes-Wesson-O’Farrell; C.F. 16-0093; “Motion”) was introduced relative to the formation of a proposed ballot measure to amend the Los Angeles City Charter and Administrative Code (“LAAC”) to restructure the governance of the DWP to address governance challenges identified by past studies, including the latest IEA Survey. The Motion states the City should develop and adopt these provisions in order to increase oversight and transparency of the DWP, reduce political interference from City Hall, and streamline departmental operations.

The Motion identifies key sections of the City Charter and LAAC pertaining to the governance of the DWP and recommends these sections be amended to address the following concerns:

- The part-time, voluntary nature of the DWP Board of Commissioners (“Board”) limits oversight of utility operations.
- DWP must report to multiple City entities, resulting in decentralized authority and inefficiency.
- DWP Board has limited access to independent analysis of Department proposals.
- DWP is unable to quickly recruit and hire key positions with qualified personnel.
- The Department's annual transfer to the City General Fund continues to increase.

Rules, Elections, Intergovernmental Relations, and Neighborhoods Committee (“REIRN;” “Committee”) heard this matter on February 19, 2016 and March 3, 2016. During its meeting on March 3, the Committee directed the CAO and CLA to report back on the Motion and provided instructions on additional issues to address in the report.

CAO and CLA met with DWP and the OPA to discuss reform. The DWP identified challenges with contracting/procurement process, hiring and rate setting and suggested the following reform options:

- Increase the contracting authority of the General Manager from \$150,000 to up to \$5 million and five years to align with the practices of other public sector organizations.
- Eliminate Mayor's Executive Directive ("ED 4") requirement for ongoing operational contracts (i.e. software licenses, use of proprietary systems). ED 4 requires all Departments to submit to the Mayor all proposals requiring City Council consideration prior to submission or consideration of their respective boards, as well as several specified items and proposed actions of policy or financial significance to City operations or the public. The Mayor's Office may direct the CAO to report on the proposal as part of their review.
- Adjust requirement to engage in Request for Proposals ("RFP")/Competitive Negotiation for the purchase of specialized equipment using price and other evaluation factors.
- Eliminate ordinance requirement for power and design-build contracts.
- Revise Charter and Civil Service Rules to improve hiring.
- Authorize Department to hire some (or all) DWP-critical positions.
- Empower the Board to set rates and establish regular review every four years that includes the submission of a financial plan and rate request.

The OPA expressed general support for expediting the DWP's procurement and hiring processes. The OPA is in the process of reviewing the DWP's specific options.

These issues and options are further discussed in greater detail in this report.

This report addresses key areas of consideration identified in the Motion as well as in prior studies, the current IEA Survey, statements made by the Mayor, Council and the Controller, and discussions with the Department. For each subject, the report provides a discussion of the issue, identification of the problem, proposes options for further consideration and analyzes possible outcomes. These are also summarized in the first Attachment (Attachment 1). As previously mentioned, this report is not a final, comprehensive list of reform options, and is intended to serve as a guide to further policy discussions for all stakeholders.

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A. CITY HALL OVERSIGHT

Overview

The DWP Board serves as the head of the DWP and is responsible for overseeing the management and operations of the Department. Charter Section 675 provides that the Board “has the power and duty to make and enforce all necessary rules and regulations governing construction, maintenance, operation, connection to and use of the Water and Power assets for Departmental Purposes.” The Board appoints the General Manager (“GM”), subject to confirmation by the Mayor and City Council (Charter Section 604(a)).

DWP governance is divided between the DWP Board, City Council and the Mayor. Those matters subject to City Council approval are:

- Decisions concerning the acquisition of real property;
- Granting of franchises, concessions, permit, licenses, and leases;
- Approval of power contracts and actions regarding real estate;
- Debt issuance;
- Approval of long term contracts;
- Alternative contracting methods not utilizing open and competitive bidding;
- Sale or exchange of surplus water;
- Transfer of surplus Power Revenue funds;
- Entry into other business enterprises;
- Power of Condemnation;
- Exercise of the powers and duties identified in LAAC Section 23.133 *et. seq.*); and,
- Rate setting.

Further, prior to Board consideration of proposals requiring City Council approval, all such proposals must first be directed to the Mayor pursuant to the Mayor’s Executive Directive 4 (“ED 4”). As discussed in more detail in the section addressing Board Support, those matters subject to the ED 4 process often involve substantial review, analysis and fact checking by the CAO.

Oversight Challenges

The 2015 and 2009 IEA Surveys indicate the current governance and decision-making process is not adequate to address the DWP’s “mission critical” decisions. “The governance framework does not facilitate efficient decision-making and clouds accountability.” This assertion is closely aligned with the 1999 Rand Study. Additionally, the 2020 Commission report claims the “DWP is subject to too much political interference.” DWP asserts the existing governance structure also impedes their ability to execute routine procurement agreements and construction contracts.

In 2010, City Council considered a series of governance reform motions including the re-composition of the Board and the creation of a Ratepayer Advocate/Inspector General position. These motions ultimately led to a voter-approved Charter amendment creating the Office of Public Accountability (“OPA”) along with updated reporting requirements for the DWP budget and Power Revenue Transfer. The proposals to change the Board composition were discussed but not included on the ballot for voter consideration.

Continue the City Council Oversight with No Change

The City Council could continue to exercise oversight of the above identified DWP matters and rely on modifications to internal processes at DWP.

Continuing the current oversight structure provides a demonstrated level of transparency, oversight, and influence by the Mayor, City Council and the OPA. Notwithstanding the broad reform options currently being discussed, the current oversight process recently benefited the City and ratepayers with a lower power rate increase. Specifically, DWP rates contemplated in the 2011 IRP were forecasted to be seven to eight percent (7-8%) annually. Following the appointment of the OPA and a new General Manager, the DWP revised its forecast slightly lower to approximately six percent (6%) annually. And finally after a comprehensive review by the Department, the OPA, as well as the Mayor and the City Council, the actual rate increase was eventually reduced to less than five percent (5%) annually. The CAO and CLA, on behalf of the Mayor and Council, provided guidance during the rate setting process. This illustrates elasticity in the DWP rate setting process that is possible to investigate with the current level of oversight.

Along with a lower power rate increase, additional benefits demonstrated by the current oversight structure include an alignment of the DWP’s revenues to its ability to efficiently spend its funds and the development of 50 performance metrics which will improve accountability at DWP. Lastly, it displayed the ability of DWP to be responsive and nimble in addressing the concerns of multiple stakeholders including the Mayor, City Council and the OPA.

Maintaining the current level of oversight limits the options for DWP to address its concerns relating to contracting and personnel hiring. Research indicates the current level of oversight may be affecting the efficient operation of DWP and modifications may be warranted. The Rand Study suggests implementing “streamlined governance structures in order to be a competitive utility.” The 2015 IEA Survey asserts that modifications to oversight and governance are essential for the DWP to effectively achieve its major program goals and mandates. The OPA asserts support for changes to oversight and governance to improve the Department’s ability to contract and hire qualified personnel.

Remove the City Council’s Oversight of DWP

The Motion seeks to modify, among other areas, a section of the City Charter impacting oversight of the DWP. The Motion specifically impacts governance relating to real property transactions, long term contracts, power contracts, debt issuance, salary-setting authority, regulations, sale of surplus water, rate setting process, and Board powers.

Limit City Council Oversight on DWP Matters with Direct Impacts to the City

A governance option for consideration is to limit City Council oversight authority on matters with direct impacts to the City or which are impermissible to delegate by law. Reforming City Council's oversight of DWP may create a risk for adverse impacts affecting the City. Mitigating the risks to the City may be considered justification for City Council to retain a measure of oversight authority. Areas to consider for maintaining City Council authority may include the following:

- **Rate Setting** – Specific impacts and timing of rate changes could be considered to ensure all customer classes are represented. Allowing for a public legislative process encourages transparency and accountability. A detailed discussion on rate setting is provided.
- **Debt Issuance** – Investor risk of DWP debt could affect the City. Maintaining authority over the issuance of debt allows the City to effectively manage the risk.
- **Salary Setting** – Impacts of salary setting may directly impact positions in other bargaining units. Continuing centralized salary setting authority allows the City to effectively manage citywide salary issues. The chapter on Hiring and Civil Service provides further details.
- **Power of Condemnation and Eminent Domain** – Pursuant to California law, the exercise of eminent domain requires a resolution of necessity adopted by the local legislative body (i.e. City Council). The City Attorney's opinion is needed to determine if delegating this authority is legally permissible. This authority is infrequently exercised; therefore, continuing with this oversight is not expected to adversely impact the DWP.
- **Surplus Water Sales** – A vital City resource is its supply of water. Accordingly, the City Charter provides a high threshold of two-thirds of the City's registered voters for the sale of surplus water and only to other municipalities. Maintaining City Council authority of any sale of surplus water ensures the conservation of an essential City resource.
- **Policy matters of City-wide significance** – This may relate to strategic planning documents and initiatives associated with, for example, the implementation of renewable energy sources and water conservation directives of City-wide significance.

Remove the City Council's Oversight of DWP Operations and Restrict Mayor and City Council Oversight to DWP Policies and DWP Budget

The Rand Study identifies an option to modify the governance structure providing the DWP Board with broad authority of operational matters and providing the Mayor and City Council with authority of policy matters. The intent of this governance structure is to:

- i) Allow the Board and management the authority to effectively and efficiently operate;
- ii) Limit political interference in operations by the Mayor and City Council;
- iii) Allow the Mayor and City Council to influence and approve DWP policies; and,
- iv) Facilitate essential oversight of the DWP by the Mayor, City Council and the OPA.

This structure could allow DWP to be nimble and efficient with greater authority for various aspects of its operations including contracting and personnel functions. As a balance to the

expanded DWP authority, the City can achieve its oversight and legislative policy goals by asserting its influence and approval of essential water, power, and economic policies including the Integrated Resource Plan (“IRP”), Urban Water Plan and Department Budget.

Mayor and City Council approval of the DWP policies and budget would be a new governance authority. In recognition of the broad governance reforms being considered and delegations of authority to the DWP, this new authority provides a potent method of protecting the City's interests and influencing the DWP's policy goals. Additional benefits to the City could include facilitating Citywide implementation of EV Charger installation and energy efficiency programs. As well, the DWP could achieve financial transparency and accountability consistent with most City departments.

Establish DWP as a City Controlled, Non-Proprietary Department and Remove the DWP Board of Commissioners

The spectrum of oversight reforms available includes establishing DWP as a City controlled, non-proprietary department and removing the DWP Board. This option is contrary to other options presented in this report as it enhances the oversight authority of the City Council and Mayor. The Rand Study asserts that this governance structure simplifies governance with a direct reporting line and seems to work well in small cities with utilities of modest size.

Functionally, the governance and oversight of the DWP could be similar to the Public Works Bureau of Sanitation. A benefit of this model is its familiarity with all stakeholders. Additionally, inconsistent contracting, personnel hiring, and financial practices could be aligned to the other City departments. The 2015 IEA Survey does not elaborate on this governance structure. As such, additional studies relating to this option could be necessary to expand on the benefits and risks of this governance structure.

Contracting

Contracting oversight and authority has been cited by DWP as a significant area of concern. Consequently, contracting oversight is addressed separately in Chapter C of this report.

ACTION

A. 1 What level of oversight should the City Council retain over DWP matters?

- No Change. City Council will continue to exercise its existing authority (note items above).
- Remove the required City Council consideration. City Council will retain the ability to exercise authority under City Charter Section 245 (discussed further below).
- Amend the relevant Charter sections to maintain oversight limited to only the matters with direct impacts to the City. City Council will retain the ability to exercise authority under City Charter Section 245.
- Amend the relevant City Charter sections to:
 - i) Remove City Council's broad oversight of DWP Operations
AND
 - ii) Provide the Mayor and City Council with oversight limited to DWP policies and budget;
AND
 - iii) Retain City Council's ability to exercise authority under City Charter Section 245.
- Instruct the CAO and CLA to examine and report back on available options, along with benefits and risks, for establishing DWP as a City controlled, non-proprietary department and removing the DWP Board of Commissioners.

Authority Provided Under Charter Section 245 for DWP

The Charter currently provides the City Council with oversight authority granted in Charter Section 245. This Section permits the City Council to assert jurisdiction over a matter approved by the Board and veto the Board's decision. If a matter is vetoed by the Council, it is remanded to the originating Board for further action. Charter Section 245 exempts certain actions, such as actions of the Ethics Commission, Board of Fire and Police Pension Commissioners, and Board of Administration of Water and Power Employees Retirement System. Charter Section 245(e) empowers the Council to veto and act on actions of the City Planning Commission and Area Planning Commissions, with the same authority as originally held by the respective Commission. Consistent with the Motion, the reform options relating to oversight retain the City Council's authority provided in Charter Section 245.

As an option to enhance the authority of Charter Section 245 pertaining to DWP, an amendment to the Charter could allow the same authority City Council currently possesses over actions made by the Planning Commission and Area Planning Commissions. Under this option, where the City Council asserts jurisdiction over a decision by the Board, the City Council would have the same authority to act on a matter as that originally held by the DWP

Board. If the City Council chooses to implement this option, it should instruct the CAO and CLA to report back on available options for implementing a new Section 245 procedure.

Prior to the 2000 Charter, similar authority was provided to City Council under Prop 5. Prop 5 provided the same mechanism to asserting jurisdiction (two-thirds vote) but permitted City Council to substitute its decision for that of the Board by a simple majority vote. The 1999 Rand study on DWP Governance found that while Prop 5 had not been used often to overturn the Board's decisions, the threat of Prop 5 undermined the Board's ability to exercise independent judgment in overseeing DWP.

ACTION

<p>A. 2 What type of City Council jurisdiction should be provided in Charter Section 245 for DWP matters?</p> <ul style="list-style-type: none">- City Council may retain its current veto authority under Charter Section 245.- Propose an enhanced Charter Section 245 provision to provide City Council with authority to act on matters subject to Board action.	
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Rate Setting Process

Charter Section 676 provides that the Board may set rates for water, reclaimed water, surplus water, electric energy, and surplus energy. The rates must be approved by City Council, by ordinance. The current ratemaking process begins with the preparation of a rate case by DWP, which is then reviewed by the OPA. The OPA then provides the Board with a recommendation with respect to the rate case. Where the Board approves the rate case, the rate case and the OPA's review are sent to City Council for consideration and approval by ordinance. City Council then has the discretion to reject the rate case and send the matter back to DWP for additional analysis. If City Council approves the rate case and ordinance, it is sent to the Mayor. Rates are also subject to the ED 4 process, requiring submission to the Mayor prior to consideration by the Board.

DWP has acknowledged that rate reviews are inconsistent and the timing unclear. Further, rate increases are often partially rooted in an assessment of what is politically palatable rather than what represents the best business case for the both the Department and the ratepayer.

Regardless of which of the oversight options the City Council chooses to implement, the City Council may choose to modify rate setting in its own right. The City Council could choose to amend Charter Section 676 to vest the DWP Board with sole authority for rate setting. This option is similar to the recommendation made by the Los Angeles 2020 Commission, which suggested the City create the "Los Angeles Utility Rate Commission."

The City Council could also choose to amend Charter Section 676 to eliminate the need for City Council approval of rates. Under this option, City Council would retain the authority to exercise its power under Charter Section 245. Thus, City Council would be permitted to assert jurisdiction over and veto the Board's approval of water and power rates.

The City Council may also choose to amend Charter Section 676 to eliminate the requirement for City Council approval while adopting the enhanced version of Charter Section 245 discussed above. Lastly, the City Council could also choose to amend the Charter Section 676 to require City Council approval of strategic planning documents which will guide rate changes.

With the approval of the new metrics based rate structure, the City has already taken a step in this direction. Tying future rate changes to thoughtful strategic planning will increase transparency and accountability. Currently, DWP prepares an annual Power Integrated Resources Plan (IRP) and a Water Infrastructure Plan. The IRP provides a 20-year framework to ensure the City's current and future energy needs are met, identifying alternative strategies for meeting DWP's regulatory requirements and environmental policy goals. The IRP attempts to identify effective strategies for fulfilling these requirements while maintaining power reliability and minimizing the financial impact on the City's ratepayers. The Water Infrastructure Plan establishes goals and targets for replacing and/or upgrading the City's aging water infrastructure.

While DWP regularly updates these planning documents, neither is a business plan and could not on its own, support a rate case. Substantial modifications to DWP's strategic planning would be required. DWP is supportive of this approach to rate setting. However, decisions must be made regarding the appropriate entity to evaluate DWP's strategic planning and the process for the development and submission of the strategic planning documents. For example, DWP has proposed a process whereby the Department would present near term goals tied to its long term strategic plans. Rate changes would be linked to the costs of accomplishing those goals. Under DWP's proposed process, the Department would present a robust financial plan and an accompanying rate action every four years. Further, the Department would be provided a mechanism for requesting interim rate increases were the need to arise. Under this proposal, the Board would possess sole authority to review and approve rates changes. As noted above, any option eliminating the need for City Council approval will not impact City Council's power under Charter Section 245 nor will it impact the ED 4 process. Alternatively, City Council may adopt the strategic planning approach and require City Council approval, permitting City Council to authorize a permissible parameter within which DWP could adjust rates based on its near term goals.

If the City Council chooses to implement this option, it should instruct the CAO and CLA to report on available options for implementing a strategic planning approach to rate setting.

ACTION

A. 3 What level of oversight should the City Council retain over the adoption of new water and power rates?

- No change. Maintain the current rate setting process.
- Grant the Board the sole authority to approve rate changes. City Council approval would not be required and rates would not be subject to Charter Section 245.

<ul style="list-style-type: none">- Grant the Board authority to approve rate changes. City Council will retain the authority to exercise its power under Charter Section 245.- Remove the required City Council approval but adopt an enhanced Charter Section 245 provision.- Require that future rate changes are tied to the approval of strategic planning documents.	
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With any of the above options, the City Council will have to decide the role of the OPA in the rate setting process. As noted, the OPA currently reviews the rates and prepares a report to be utilized by the Board and City Council in their decision making. The Council should instruct the CAO and CLA to report back on available options for incorporating the OPA into the chosen rates setting oversight structure.

B. HIRING AND CIVIL SERVICE

Overview

There is a general consensus among the experts who have analyzed DWP that the Department is hindered by an inability to hire effectively and expeditiously. Discussions were held with the Department and the Personnel Department to obtain additional details, and to clearly identify the problems and possible options.

At the last Rules Committee meeting in March, the Personnel Department and CAO were instructed to report back on specific questions regarding the history of Civil Service, hybrid civil service models and the possibility of altering civil service for DWP only. Those discussions are included as attachments (Attachments 2 – 6).

Hiring Challenges

In the 2015 IEA Survey, Navigant made the following finding regarding the hiring process at DWP:

“Human Resources is one area in which the Department does not benefit from centralized City authority. The current hiring process does not meet the utility’s need to be more responsive and nimble. Moreover, it does not adequately address the aging workforce challenge. It is cited as a major impediment to every program initiated by the Department and has a significant impact on basic operations. It is a critical issue that, if not addressed, could prevent the Department from meeting its goals.”

According to the DWP, the inability of the Department to meet its hiring and workforce planning challenges is not solely a result of centralized civil service and central agency authority. Rather, it results from the combination of inflexible internal rules and practices, Charter limitations, Civil Service Rule limitations, and operational decisions made in silos that are not accountable to the utility. While all employers to some extent struggle with hiring the right person for the right job, it is DWP’s inability to hire quickly that is negatively impacting DWP’s ability to fulfill its operational requirements. In the best case, when an eligible list exists, it can take the Department a minimum of 48 days to fill a position. In the worst case when the Department needs to create a new classification and salary it can take over two years to fill a position.

To effectively address the hiring problems at DWP it is essential to look at the entirety of the hiring process, identify the specific issues and develop more effective policies and procedures. The CAO, Personnel Department and DWP have identified the specific areas impacting the hiring process, and the issues are addressed in the three broad categories below.

Internal Rules and Practices

1. **Seniority Based Bid Plan:** Pursuant to established labor contracts and past practice, DWP utilizes a seniority based bid plan to fill vacant positions for a significant number of positions with the majority being in craft job classifications. Provisions vary between

bargaining units, but all require that a vacant position be offered first to incumbents of the class internally within the Department first through the bid process and selection of the most senior bidder/applicant is mandatory in most instances. This process must be completed prior to certifying an eligible list to potentially bring a replacement. As a result of the requirement to bid before certifying the eligible list, it can take months before DWP actually replaces the individual that left the Department. Additionally, the requirement to take the most senior candidate does not provide the flexibility to fill positions with the most qualified candidate.

2. **Effective Rule of One:** The clerical bid plan is not a seniority based bid plan. However, pursuant to established past practice when only one candidate responds by bid to a vacant position, the hiring manager is required to select that candidate or leave the position vacant if the manager cannot identify a basis for non-selection based on specified criteria within the bid plan. This significantly limits a manager's ability to select the best qualified candidate for a position. As a result, positions are frequently left vacant and work re-organized at sub-optimal levels to avoid taking an unqualified candidate.
3. **Joint Selection Processes:** Pursuant to letters of agreement with the bargaining unit and past practices, the selection of candidates to fill certain special assignment positions or a varying of duties that may be perceived as "special" are made jointly by management and the union. If management and the union have difficulty agreeing, then the process is halted until there is mutual agreement on the final selection. This process is inherently slower due to the necessity to get management and labor to agree on the final selection. In addition, it potentially introduces non-merit based factors into the selection process that do not add value and potentially result in a lesser qualified candidate's selection.

Options

Maintain the Current Processes

These three processes evolved over time, and are the result of consensus between management and labor. As such, their value cannot be assessed on the speed to hire criteria alone, but must be assessed more broadly in terms of other values of the Department. Specifically, joint labor management processes and seniority are strongly held organizational values and the current process supports those values at the detriment of flexibility and speed to hire.

Negotiate Removal of these Rules

All three of these internal policies and practices are subject to bargaining with the union. Rule changes could be considered in the context of overall labor negotiations in the future.

Analysis

Current model advantages are:

- Recognizes seniority as a core value; and,
- Recognizes joint labor management processes as a core value.

Current model disadvantages are:

- Slow and cumbersome;
- Insufficiently flexible to meet unique operational needs;
- Selection is not merit-based;
- Management decision making is limited;
- Misaligns organizational value of time over qualification; and,
- Diffuses authority and accountability.

The advantages to negotiating removal of these rules are:

- Enhance hiring decision execution speed;
- Aligns authority with accountability;
- Increases flexibility;
- Enhances ability to select best qualified candidate; and,
- Enhances merit based selection.

The primary disadvantage to removal of these rules is that negotiations will be very difficult.

ACTION

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| <p>B. 1 How should internal rules and practices be handled by the Department?</p> <ul style="list-style-type: none">- No change. Maintain current internal rules and practices.- Negotiate removal of internal rules and practices with respect to Seniority Based Bid Plan, Effective Rule of One and the Joint Selection Process. | |
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Charter Sections

Certain Charter provisions have been identified as relevant to the issues and challenges faced by the Department.

- 1. Charter Section 1001 Exemptions:** Charter Section 1001 limits the number of exempt positions that are available Citywide to 150 positions. In addition, DWP may also employ up to 15 exempt positions. Council has authority to adopt an ordinance to increase the maximum number of exempt positions to no more than one percent of regular positions.
- 2. Charter Section 1009 Promotion:** Charter Section 1009 requires that all vacancies to the extent “practicable” be filled by promotion and that seniority in service be used as part of the selection process. This promotion from within policy has a twofold negative impact on DWP and Citywide hiring. First, it is essentially a non-merit based policy that effectively precludes the utility from hiring the best qualified candidate if that candidate

does not currently work for the City of Los Angeles. Second, in the limited instances when an examination is given on an Open and Promotional basis, the ability of the utility is constrained by the requirement to review the Promotional candidates first before going to the Open list, thereby slowing the hiring process. Charter Section 1009 also limits the life of a promotional eligible list to two years, potentially resulting in requiring a new examination when viable candidates remain available. Lastly, seniority is not a merit based selection tool and may create additional limitations on the ability to appoint the best qualified candidate.

3. **Charter Section 1010 Certification:** Charter Section 1010 limits the filling of any vacancy to the top three whole scores or five candidates plus the number of vacancies. This limitation was designed to ensure that the best qualified candidates based on civil service examination score were considered first for any vacancy.
4. **Charter Section 1011 Probation:** Charter Section 1011 sets the probationary period for all entry level classifications to not exceed 12 months for civilian positions and to not exceed 18 months for sworn police officer positions. However, Civil Service Rule 5.26 establishes civilian probationary periods as 6 months for entry level classifications and 12 months for management classifications
5. **Charter Section 1015 Layoffs:** Charter Section 1015 provides the flexibility to define DWP as three or more separate departments for layoff purposes.

Options

Maintain the Existing Provisions

If the existing provisions are acceptable, the following findings summarize the status quo:

- That the number of exemptions from civil service is sufficient to administer the Department;
- That promotion from within is a core value of the City of Los Angeles since the adoption of the Charter in 1925 and should be retained;
- That a promotional eligible list should not last in excess of two years;
- That the Rule of Three Whole Scores included in Charter Section 1010 provides sufficient flexibility to fill positions with qualified candidates;
- That six months is an adequate probationary period for all non-management classifications at DWP; and
- That continuing to treat DWP as three separate departments for layoff calculation purposes is appropriate.

Amend Key Charter Sections

Amendments to Charter Sections 1001, 1009, 1010 and 1015 would provide the Department with hiring flexibility.

Amendments to Charter Sections 1001 and 1009 would increase the number of exemptions available to DWP, eliminate the promotion from within policy and provide additional flexibility to operating department to select candidates on the eligible list, and provide the opportunity to extend the life of promotional lists. An amendment to Charter Section 1010 and 1011 would eliminate the restriction on the number of candidates a department could consider in filling a vacancy, and extend the probationary period to one year for all classifications. Lastly, an amendment to Charter Section 1015 would simplify the layoff process by treating DWP as a single department.

Analysis – Charter Section 1001

Current model advantages are:

- Provides some flexibility to exempt key positions from civil service;
- Provides protection from political influence in most selection decisions;
- Current Charter provision does provide ability to increase number of exempt positions Citywide as a percentage of the total City workforce; and,
- Limited exemptions serve to embed the professional service as the corporate culture.

Current model disadvantages are:

- Number of exemptions is insufficient to meet operational needs;
- Lack of exemptions hinders DWP's ability to respond to emerging operational issues; and,
- Lack of exemptions hinders ability to move forward aggressively with developing technology.

The advantages to amending Charter Section 1001 are:

- Enhances ability to create management team;
- Enhances ability to rapidly secure expert, professional and scientific staff; and,
- Enhances ability to hire quickly and address emergencies.

The primary disadvantages to amending Charter Section 1001 are:

- Potential increased political interference with the selection process; and,
- Likely union opposition.

Analysis – Charter Section 1009

Current model advantages are:

- Recognizes promotion from within as a core City value;
- Enhances institutional knowledge and expertise in existing practices; and,
- General union and employee support for current provision.

Current model disadvantages are:

- Does not necessarily produce the best qualified candidate; and,
- Insufficiently flexible to meet unique operational needs.

The advantages to amending Charter Section 1009 are:

- Enhances City's ability to select the best candidate;
- Simplifies the administration and maintenance of civil service examinations;
- Enhances ability to secure talent on emerging technologies; and,
- Enhances ability to create an environment of progressive change.

The primary disadvantages to amending Charter Section 1009 are:

- No operational disadvantages; and,
- Likely some union opposition.

Analysis – Charter Section 1010

Current model advantages are:

- Provides reasonable flexibility to operating departments in most selections;
- Assists in ensuring that the best qualified candidate is selected for position; and,
- Assists in defense of selections.

Current model disadvantages are:

- Negatively impacted by employee seniority creating artificial differences between candidates; and,
- Does not provide sufficient flexibility in all instances to meet operational needs.

The advantages to amending Charter Section 1010 are:

- Enhances City's ability to select the best candidate;
- Remove the impact seniority has on the selection of candidates;
- Enhances ability to secure talent on emerging technologies; and,
- Enhances ability to create an environment of progressive change.

The primary disadvantages to amending Charter Section 1010 are:

- Places a greater burden on the operating department to validate selection decisions; and,
- Likely some union opposition.

Analysis – Charter Section 1011

There are no specific advantages of the current model.

Current model disadvantages are:

- Evaluation period is too short;
- Removal once probation completed is burdensome;
- Particularly problematic in classifications with training periods where training period may be too short to make a complete assessment; and,
- Potentially results in poor removal decisions wherein employee may be removed too early.

The advantages to amending Charter Section 1011 are:

- Provides adequate period to assess performance;

- Maintains simplified removal during probationary period; and,
- Addresses problem with training periods.

There are no specific disadvantages associated with amending this Charter Section.

Analysis – Charter Section 1015

Current model advantages are:

- Separates Water from Power for layoff purposes; and,
- Potentially provides for the retention of key staff in the event of a mass layoff.

Current model disadvantages are:

- Requires intensive recordkeeping;
- Creates overly burdensome and complex layoff calculations;
- Acts a deterrent to layoffs as a solution to staffing issues; and,
- Overly time consuming to conduct a layoff.

The advantages to amending Charter Section 1015 are:

- Simplifies layoff process; and,
- Provides for more timely implementation of layoffs.

There are no specific disadvantages associated with amending this Charter Section.

ACTION	
B. 2 Should the Charter be amended to provide hiring flexibility to DWP?	
<ul style="list-style-type: none">- No change. Maintain existing provisions.- Amend Charter Sections 1001, 1009, 1010 and/or 1015 addressing exemptions, promotion, certification, probation and layoffs, respectively.	

Civil Service Rule 4.10 (b) Seniority Credit in Examinations

This rule provides .25 of a point of seniority credit for each year of service to be added to a candidate's final score in promotional exams for all positions except those designated as management by the Board.

Options

Maintain the Existing Provision

If the existing provision is acceptable, then policy makers concur that the current rule recognizes the value of years of service and that it is an appropriate factor when determining candidates eligible to be considered for promotion.

Amend the Provision

Amendment options include recommending to the Civil Service Commission either the elimination of seniority credit on promotional examinations, or capping seniority credit consistent with the methodology currently used in management classifications.

Analysis – Civil Service Rule 4.10(b)

The primary advantage of the current model is that it recognizes time served in the City for examination scoring purposes.

Current model disadvantages are:

- Non merit factor influences the selection of candidates; and,
- Potentially distorts the list of candidates that are available to departments for consideration.

The advantages to amending Civil Service Rule 4.10(b) are:

- Minimizes non merit based factors in examination process; and,
- Removes potentially negative impact on available candidates for department consideration.

The primary disadvantage to amending this Civil Service Rule is potential union concerns.

ACTION	
B. 3 Should Civil Service Rule 4.10(b) regarding seniority credits in examinations be amended?	
- No change. Maintain existing provisions.	
- Amend Civil Service Rule 4.10(b) to eliminate seniority credit on promotional examinations.	
- Amend Civil Service Rule 4.10 (b) to cap or reduce seniority credit consistent with the methodology currently used in management classifications.	

Central Agency Internal Operating Practices

The Personnel Department and the CAO's internal operating practices and decisions impact the hiring process at DWP. The Personnel Department impacts the hiring process on a daily basis as decisions are made regarding staffing allocations, and the composition, structure, timing, administration and scoring of civil service examinations. DWP has identified the following as examples of examination structure decisions that are not meeting the needs of the organization.

- **Out of Area Testing:** Due to DWP's operations in the Owens Valley, Utah and Nevada, testing in Los Angeles does not effectively reach the candidates that will take positions in the areas.
- **On Site Job Offers:** Due to the competition for qualified Electrical Distribution Mechanics the ability to make a job offer the same day is essential to competing with other utilities.

These decisions are made within the context of the overall City demands for examination services. Necessarily, DWP does not always have priority on resource allocation as the Personnel Department responds to public safety demands as well as other critical civilian testing requirements.

Similarly, although to a lesser extent, the CAO also impacts DWP's hiring process in its role as Chief Labor Negotiator. In accordance with instructions from the Executive Employee Relations Committee ("EERC"), the CAO resolves salary issues necessary for the completion of the hiring process. These issues are resolved in accordance with the priority set by the CAO after considering the entirety of Citywide issues and the established priority may or may not be aligned with the operational requirements of DWP.

Options

Maintain the Existing Structure

If the existing practices are acceptable, then policy makers concur that the current role played by the Personnel Department and the CAO in the hiring process at DWP is appropriate, and that both departments are performing appropriately in their dual role of service provider to the operating department and gatekeeper of overall City policy.

Reconfigure the Existing Structure

The role of the CAO in the salary-setting authority process and possible reform options are addressed in the Oversight Section (refer to page 5). The role of the Personnel Department in the classification process and administration of the civil service examinations for DWP could be changed through significant Charter reform, with the focus of the reform to place all DWP human resource programs under the control of the General Manager or Board of Water and Power Commissioners.

Analysis

Current model advantages are:

- Subject matter experts in examination process;
- Economy of Scale in Examinations;
- Merit based candidate lists ;
- Universal background standards;
- Equal pay for equal work;

- Low Equal Employment Opportunity risk;
- Low nepotism risk; and,
- Low political influence in selection process.

Current model disadvantages are:

- DWP not in control of total hiring process;
- Process is slow; and,
- Limited flexibility to meet emerging operational needs.

The advantages to amending the Charter to remove Personnel from DWP classification and examination process are:

- DWP solely in charge of entire hiring process;
- Potentially faster hiring decisions; and,
- Enhanced flexibility to meet operational needs.

The disadvantages to amending the Charter to make these changes are:

- Higher risk; and,
- Lost economy of scale and additional costs, including increased labor costs to the City.

ACTION

B. 4 Should the Charter be amended to remove Personnel from DWP classification and examination process and place all human resource functions under the control of the Department?

- No change. Maintain existing practice.
- Amend relevant Charter Sections to place all human resource functions under the control of the DWP Board

Potential Path Forward on Employment Issues

The issues concerning employment and civil service at DWP are inextricably linked to the governance and oversight issues of the Department. If those issues are resolved in a manner that provides DWP with greater flexibility and autonomy, then it would be consistent to provide the DWP with the flexibility to increase the autonomy, flexibility and responsiveness of its overall human resource system. Given the time necessary to develop and approve exactly what human resource reforms are necessary and the additional time necessary to complete the appropriate discussions with labor, it may be appropriate to defer these issues to the new governance and oversight structure. However, to avoid the necessity of going back to the ballot for any identified reforms of the civil service system, the Charter could be amended to provide DWP with the flexibility to waive civil service for its employees pursuant to guidelines included in a revised Charter. This approach would allow the current system to remain in place, and provide flexibility to the new governance structure if it wants to implement a new system consistent with the guidelines in the revised Charter. All resulting labor issues created by the new system proposal would be addressed under the authorities of the new governance structure. The following is conceptual Charter language that could be provided to the City Attorney for inclusion with any Governance reform Charter amendment:

Potential Charter Section 1025

The salary setting authority (Mayor/Council or DWP Board) may waive administration of all or part of the civil service standards provided in Article X of this Charter, pursuant to a legally binding memorandum of understanding. Such waivers shall be granted following determination by the salary setting authority (Mayor/Council or DWP Board) that the provisions of the memorandum of understanding maintain merit system standards that provide for merit based hiring, merit based retention and discharge, EEO compliance and protection from coercion for partisan political purposes. All merit system standards waivers shall be subject to periodic audit, approval, or revocation by the salary setting authority.

The following identifies the advantages and disadvantages of this conceptual approach without the necessity of identifying, negotiating and approving specific proposals for the upcoming ballot.

Analysis

Advantages to identifying, negotiating and approving specific civil service reform in conjunction with DWP reform are:

- Places full reform on one ballot;
- Provides certainty going forward;
- Completes labor process;
- Fully controls scope of reform; and,
- Expedites known reforms.

The disadvantages to moving forward with the above-referenced approach are:

- Specific proposal have not been identified;
- Timeframe of process with labor is potentially inadequate;
- Not necessarily aligned with scope of governance reform;
- Limits future flexibility; and,

Advantages to taking actions that will provide flexibility to the potentially new governance structure to make decisions regarding employment issues are:

- Aligns human resource reform with governance reform,
- Provides appropriate flexibility with safeguards;
- Provides adequate time to address labor issues;
- Aligns human resource with collective bargaining core value; and,
- Eliminates necessity to go back to electorate on specific issues.

The disadvantages to moving forward with the above-referenced approach are:

- Full reform unknown to voters;
- Lower level of transparency; and,
- Lack of definition could delay reform.

ACTION

B. 5 Should the Charter be amended to enable the new governance structure to have the option to eliminate Civil Service and implement a new employment system in its place?

- No action. Current civil service system stays in place.
- Amend Charter to empower new governance structure to make future decisions regarding the civil service system at DWP.

C. CONTRACTS

Contracting Challenges

The Navigant report indicates that the Department is impacted by challenges in its contracting process. It noted that these challenges slow down major capital investments and infrastructure repairs and upgrades. The report recommends that the DWP conduct a review of its procurement process and consider a comprehensive redesign for both the water and power systems.

As part of this review, the REIRN Committee requested that our Offices look into the contracting issue. Our Offices requested the DWP to identify its procurement process and describe its specific challenges.

The DWP submitted information to our Offices with regard to proposed modifications to the contracting process. The DWP requests the City Council consider the following modifications:

- Increase the contracting authority of the General Manager from \$150,000 to up to \$5 million and five years to align with the practices of other public sector organizations.

The DWP states that the current practices are inconsistent with procurement best practices of other governmental organizations such as the Sacramento Municipal Utility District (SMUD), Seattle City Light and LA Metro. For example, SMUD delegates authority to the General Manager to sign contracts up to \$5 million for equipment, operational inventory and construction and maintenance services. Seattle City Light's General Manager signs all contracts \$250,000 and above. These utilities procurement practices are more efficient and effective than the practices followed by the DWP.

This change would require modification to the City's Administrative Code Sections 10.1.1 and 10.5.

- Eliminate Mayor's Executive Directive 4 ("ED 4") requirement for minor on-going operational contracts.

The DWP states that this recommendation would apply to software licenses, equipment, and the use of proprietary systems. DWP claims that his adjustment would improve efficiency and reduce administrative costs.

- Adjust requirement to engage in Request for Proposals ("RFP")/Competitive Negotiation for the purchase of specialized equipment using price and other evaluation factors; and eliminate the ordinance requirement for design-build contracts.

The Department seeks a change in the Request for Proposals/Competitive Negotiation requirement for the purchase of specialized equipment used in water and power generation and transmission and distribution equipment. Due to technical complexities of these items, their purchase could allow for factors other than price to be taken into

account. These factors may include the equipment's applicability and long-term performance as it relates to the needs of the Department.

The DWP indicates that the City's Administrative Code Section 10.15 (f) allows factors to be used, other than price; however, it is limited to the purchase of telecommunication services, automated/computer systems and software. A modification to the Administrative Code would address this matter.

The DWP follows that the current practice of requiring an ordinance prior to advertising a design-build project is lengthy and open-ended with no time limit. Delays in the advertisement of design-build solicitations can increase the cost of projects and expose the Department to elevated risks that may be detrimental to the completion of its projects and mandated deadlines.

To eliminate the ordinance requirement, an adjustment to City Charter Section 371 (b) would be needed.

- Eliminate ordinance requirement for power contracts.

The DWP notes that the City Charter Section 674 requires an ordinance for the DWP to enter into a power contract with any state, corporation, public or private, located inside or outside of the City or for the construction, ownership, operation, and maintenance of facilities for the generation of energy.

DWP states that the current process for securing ordinances is lengthy and open-ended and creates an unnecessary delay, uncertainty, and disruption that can increase the cost of contracts. This change would require a modification to the City Charter.

It appears that these changes to the Department's procurement process would expedite the contracting process which may result in operational and administrative efficiencies. These modifications to the contracting process may be considered in relation to oversight changes between the Department and the City Council.

The Office of Public Accountability has expressed general support for expediting the DWP's procurement process; however it is in the process of reviewing these specific modifications.

D. BOARD STRUCTURE

Composition - Current Structure

The current Board structure consists of five members who are appointed by the Mayor and confirmed by the City Council (City Charter Sections 502; 670). The members serve on a volunteer/part-time basis. The Board generally meets twice a month to consider Departmental policy and operational matters.

The Board is responsible for setting policy and controlling finances, although final rate decisions are submitted to the City Council. Board-approved finances include: revenues, operational budgets, fuel, purchased power, purchased water, bonds, and notes. These components are further described in the Oversight Section of the report.

Part-time boards

Based on a review of the Navigant report, the majority of Boards which govern municipal utility-oriented operations consist of membership which serve on a part-time basis. The membership is either appointed or elected.

Sacramento Municipal Utility District

The Sacramento Municipal Utility District (SMUD) is governed by a seven-member Board of Directors who serve on a part-time basis. The Board meets twice a month to conduct District business, including committee meetings which are held weekly. Each Director is compensated \$150 per day of service which may not exceed ten days per month. The Board members are elected for four-year terms by customers from each of the seven geographic areas within SMUD's service area. The Board appoints the General Manager, approves the budget, and approves rate changes.

San Francisco Public Utilities Commission

The San Francisco Public Utilities Commission (SFPUC), a department of the City and County of San Francisco, provides water, power, and wastewater services to the city. The SFPUC is governed by five commissioners who serve on a part-time basis for terms of four years. The Commissioners determine utility rates and approve contracts for the utility.

The commissioners are nominated by the Mayor and approved by the San Francisco Board of Supervisors.

CPS Energy

CPS Energy (CPSE) is a natural gas and electric utility owned by the City of San Antonio. It is governed by a five-member Board of Trustees, which includes the mayor and four other representatives from four geographical quadrants of the city. The Trustees serve part-time for a term of five years.

Their duties include appointing the utility CEO, approving the budget, and providing rate recommendations to the City Council for approval.

Jacksonville Energy Authority

The Jacksonville Energy Authority (JEA) is an independent city agency in Jacksonville, Florida, providing power, water, and wastewater services. The utility is governed by a seven-member Board of Directors that is appointed by the mayor and confirmed by the city council. Board members serve four-year terms for no more than two consecutive terms.

The Board of Directors appoints the utility CEO and has the power to approve rate changes for the utility.

Full-time Professional Board

The Motion (Fuentes – Wesson – O'Farrell) proposes to replace the existing Board with a full-time professional board. It states that the part-time, voluntary nature of the Board limits oversight of utility operations. A Charter amendment would be necessary to replace the Board with five to seven full-time, professional members.

The City's Board of Public Works is the nearest example of a full-time board. Under the City Charter, the Board of Public Works consists of five members required to devote their time to the duties of office as full-time compensated City employees. The Board has oversight of the Department of Public Works which is tasked with maintaining streets, public works improvements, storm-drains, sewer treatment facilities and solid waste disposal.

The specific duties of the Board of Public Works include:

- Setting policy and managing the Department of Public Works;
- Consideration of requests for proposals/bids;
- Consideration and awarding of contracts;
- Exercising the power of eminent domain, subject to City Council authorization;
- Authorizing the lease or purchase of property on behalf of the City for the construction and maintenance of public works projects;
- Conducting hearings and reviewing appeals relating to the work of the department; and
- Related matters.

In the administration of these duties, the members/Commissioners of the Board of Public Works generally meet three times a week. The Commissioners are appointed by the Mayor and confirmed by the City Council.

ACTION	
D.1	Should the City Charter be amended to provide a full-time Board for the DWP? - No change. Maintain part-time/volunteer board. - Full-time board.

If the City Council chooses to implement modifications to the Board, it would need to consider various policy options pertaining to:

- Number of board members;
- Qualifications to serve on the board;
- Selection – appointed or elected;
- Term and term limits;
- Removal.

The qualifications element above should also address the expertise requirement question sought by the Motion.

In addition, if the City Council chooses to pursue a full-time board modeled after the Board of Public Works or a modified version, the City Council would need to consider the level of oversight it would maintain over Department activities and operations. This would also include the support structure for the Board.

Number of Board members

As previously indicated, the existing DWP Board consists of five members. If the City Council chooses to pursue modifications to the Board, it may wish to consider expanding the membership. The Motion (Fuentes – Wesson – O’Farrell) proposes the implementation of a professional board that consists of five to seven members.

As previously noted in the examples of other municipal utility boards and commissions, most are governed by 5 to 7 members:

- SMUD - seven-member Board of Directors;
- SFPUC - five commissioners;

- CPSE - five-member Board of Trustees; and
- JEA - seven-member Board of Directors.

A review of other municipal utility boards showed that the City of Riverside's Public Utilities Board consists of nine members. A nine member board may serve the desired purpose of representing more diverse city-wide interests.

The City boards consist of varying sizes to meet different governance purposes as follows:

- Board of Harbor Commissioners – five members;
- Board of Airport Commissioners – seven members;
- Board of Neighborhood Commissioners – seven members;
- City Planning Commission – nine members; and
- Fire and Police Pensions Board of Administration – nine members.

Ultimately, this matter is dependent upon the preferences of the decision-making body. Nine members for a utility commission may prove operationally cumbersome. It may also be difficult to obtain a quorum for board meetings. Five to seven members seems to be the most common board size for utility commissions.

To modify the size of the DWP Board, a ballot measure to amend City Charter Section 670 would be required.

ACTION

- | | |
|---|--|
| <p>D. 2 How many members should a modified DWP Board include?</p> <ul style="list-style-type: none">- Five members, similar to the existing board.- Seven members.- Nine members. | |
|---|--|

Qualifications to Serve on the Board - Current Requirements/Qualifications

The City Charter provides that appointed commissioners be registered voters of the City (Charter Section 501 (d)). A commission appointment, as a City official, is also required to comply with City Ethics Commission and state law requirements such as submittal of a financial disclosure statement. In some cases, there are residency requirements. These standard requirements are separate from qualifications related to subject-matter expertise.

The Motion (Fuentes – Wesson – O’Farrell) calls for Board members to have expertise in areas such as public utility management, environmental policy, consumer advocacy, or finance. To that end, the Motion proposes that the City Charter be amended to include these expertise-oriented qualifications with the City’s standard requirements.

A review of similar municipal utility boards shows that SFPUC requires expertise-oriented qualifications for a majority of its seats:

- Seat 1 - experience in environmental policy and environmental justice issues;
- Seat 2 - experience in ratepayer or consumer advocacy;
- Seat 3 - experience in project finance;
- Seat 4 - expertise in water systems, power systems, or public utility management; and
- Seat 5 - member at-large.

During the City Council’s prior review of DWP reform options in late 2010, it considered restructuring the Board and implementing expertise-oriented qualifications. The Chief Legislative Analyst (CLA) provided a report to the City Council that offered the following options (C.F. 10-1335):

- Utility – experience in water and/or energy policy and operations;
- Labor – experience in labor management and/or labor law;
- Business/Commerce – experience in operating a business, or finance/real estate;
- Environment – experience in water and/or energy environmental policy; and
- Community Organization – experience in community organization, including but not limited to Neighborhood Councils/homeowner associations.

The CLA report noted that these qualifications attempt to strike a balance between the concept of a Citizens Commission and expert oversight of utility operations.

City Ethics Commissioner Qualifications

The City Charter stipulates that Commissioners that serve on the City Ethics Commission, during their tenure, may not hold any other public office; or participate/contribute to a City election campaign. In addition, they may not employ or be a registered lobbyist in the City; and are barred from running for elected office under certain circumstances. The City Charter maintains these requirements to provide an ethical firewall between the Commission's responsibilities and the political process.

The City Council may find that there is a benefit in implementing a similar ethical firewall between the DWP Board and other entities. A DWP Board member could be prohibited from contributing to campaigns or working as a registered lobbyist. This approach may eliminate the potential for conflicts on departmental business matters.

ACTION

D. 3 Should the City Council modify qualifications to serve on the Board?

- No change. Maintain existing qualifications (registered voter, ethics commission and financial disclosure compliance).

OR

- Existing qualifications **AND**
- City Ethics Commissioner qualifications model; and/or
- Utility-oriented expertise in water and power policy/operations; and/or
- Diversified utility-oriented expertise which includes: water and power policy/operations; environmental policy; labor relations; business/finance; and community relations/organizations.

Term - Current Structure

Pursuant to City Charter Section 501, the Board of Water and Power Commissioners are appointed to serve a term of 5 years beginning on July 1. In addition, the Commissioners' terms are staggered, as much as possible. Staggered terms, with sequentially expiring terms, provide a degree of institutional continuity to the Board when new members are appointed. Board of Water and Power Commissioners' terms are consistent with general Charter provisions for other City commissions.

Utility Board Term Comparison

Locally, Glendale Water and Power Commissioners are appointed and serve four-year terms. Examining utility commissions more comparable in customer base to the City of Los Angeles, the San Francisco Public Utilities Commissioners are appointed and serve four-year terms as well. With regard to elected commissioners, the SMUD Board of Directors serve four-year terms. It should be noted the number of years in a term for many commissioners of municipal water and power utilities are consistent with other respective municipal commissions.

Options

The Mayor and City Council may wish to propose one of the following actions with regard to the terms of the Board of Water and Power Commissioners:

ACTION	
D. 4 Which set of terms shall the City Council pursue for the DWP Board members?	
- No change. Maintain the existing term of five years, staggered as much as possible.	
- Change the terms to four years.	
- Change the terms to three years.	

Considerations

If the City Council chooses to implement a 4-year or 3-year term for the Board of Water and Power Commissioners, the following should be considered:

- **Four-Year Term** - This model would be most suitable for an appointed or elected, full-time board. If this were to be implemented for a part-time Board, the City might incur challenges maintaining sufficient candidates who would be interested in running for a part-time position. In addition, if the City Council opts for an elected Board in lieu of appointed, this model would work best to follow current municipal election practices and would allow terms to be staggered in a manner consistent with other City elected officials. Two members would run in odd year elections, and three would run during even years. If the Board were expanded to seven members, three members would run during odd year elections, and four would run during even years.
- **Three-Year Term** - A three-year term would be most appropriate for an appointed part-time Board. A reduced term might provide incentive for increased participation for those with long-term commitments; conversely, this could be viewed as too short to oversee long-range policies and initiatives. If there continued to be five members on the Board, the terms would be staggered by appointing one-third of the Board's membership at a time, and one year in which one member would be appointed, at the expiration of terms. If the Board's member composition were to change to seven members, the same

concept would apply, except that the appointing authority would appoint two members each year, with the exception of one year, in which three members would be appointed.

Term Limits - Current Structure

Currently, the Board of Water and Power Commissioners is not subject to term limits, as is consistent with most City Boards and Commissions. Most City officials subject to term limits are elected officials, with the exception of the City Ethics Commission and the Police Commission. The Ethics Commissioners are subject to one full term of five years; and the Police Commissioners are subject to two five-year terms, plus two years of any unexpired term.

Options

The City Council may wish to take one of the following actions with regard to the terms of the Board of Water and Power Commissioners:

ACTION	
D. 5 Shall the City Council pursue term limits for the DWP Board members?	
- No change. No term limits will be applied to the Board.	
- Seek to implement term limits, such as the Ethics Commission or Police Commission.	

Considerations

If the City Council chooses to seek to amend the City Charter to provide that the Board be subject to elections, then term limits should be considered. There are several advantages and disadvantages of term limits for appointed officials.

Term limits for boards and commissions may foster participation from a range of community members over time, and could potentially encourage new and innovative ideas, as stagnation from a lack of board turnover would be prevented. In addition, the potential for political influence on board decisions may be slightly mitigated as there would consistently be rotating members on the Board of Water and Power Commissioners.

One disadvantage to term limits is the potential for continual loss of institutional knowledge. If the Board of Water and Power Commissioners was granted increased authority, it may be beneficial to maintain additional institutional knowledge beyond a five-year period. In addition, given the technical nature of the Department, it may be difficult to find candidates with the expertise necessary to serve during each new term, especially if the Board is required to have more specific expertise, as previously discussed. Lastly, due to consistent turnover, it may require more time and resources to recruit and educate new Board members.

Selection

The members of the DWP Board are appointed by the Mayor, subject to the approval of the City Council (Charter Section 502(a)). Navigant has identified that 54 percent of utilities with appointed boards are appointed by the mayor, 29 percent are appointed by city council, and 7 percent are appointed jointly by the mayor and city council. Various options to modify the selection process of the Board have been identified as follows: 1) maintain the current appointment process; 2) change the appointing authority from Mayor to City Council; 3) a shared authority appointment method; or 4) an elected model.

A majority of City commissions, like the DWP Board, are currently appointed by the Mayor with City Council confirmation, including the Board of Public Works, the Police Commission, and the boards of commissioners for the proprietary departments. As stated earlier, examples of other utilities that operate with a similar appointment model include the SFPUC and the JEA.

Challenges Identified

The Rand study states that the current appointment model is justified politically as the way for the City's top elected officials to establish control over the DWP. However, according to Rand this effectively has eliminated the ability for the Board to act as an independent, non-political governing entity. The 2015 IEA Survey found that the DWP faces political influence by multiple elected offices and this may inadvertently cloud practical discussions of utility issues. The 2020 Commission also concluded that DWP is subject to too much political interference.

In 2010, the City Council considered a series of governance reform motions including the re-composition of the Board. Specifically, two motions proposed changes to the appointing authority of the Board. The proposals to change the Board composition were discussed but were not included on the ballot for voter consideration.

Options for Reform – Appointment Authority

The Mayor's key principles for governance reform stress the importance of public accountability. The Mayor contends that the Mayor should continue to appoint the Board members and City Council should confirm the appointment. The Mayor states that this allows the public to hold their elected officials accountable for the performance of the utility.

In alignment with the Mayor's position, if the Board is given full governing authority, the Rand Study asserts Board appointment by City officials could effectively distance utility operations from City politics. Similarly, the 2020 Commission stated that an appointed Board, with increased governance authority and an advisory staff, would successfully function without disruptive political interference. Further, the 2020 Commission concludes appointment by Mayor with City Council confirmation maintains an appropriate level of accountability to City Hall.

The Motion requests that DWP governance reform include the determination of a process for appointing or electing Board member positions, but does not call for a specific selection process.

One option to modify the current appointment process relates to changing the appointing authority of the DWP Board from the Mayor to the City Council. There is precedent for the City Council appointing commissioners as seen in the Los Angeles City Health Commission. This Commission consists of 15 members, with each City Councilmember appointing one Commissioner. Depending on the number of DWP Board members, this option would give the City Council President authority to appoint all members, or a combination of the City Council President, City Council President Pro-Tem, and the Chair of the Energy and Environment Committee would each appoint a set number of members.

Another option is a shared authority appointment model. Under this option, multiple appointing authorities would be permitted to appoint one or more commissioners, each subject to City Council confirmation. For example, if there is a five member board, the Mayor would have the authority to appoint three members, for a majority of seats, and the City Council President would appoint the remaining two members.

The City Ethics Commission and the Innovation and Performance Commission are both examples of the shared appointment model within the City. The City Ethics Commission consists of five members. Pursuant to Charter Section 700(b) the Mayor, the City Attorney, the Controller, the President of the City Council and the President Pro Tem of the City Council each appoint one member to the City Ethics Commission, and all of these appointments are subject to confirmation by a majority vote of the City Council. The Innovation and Performance Commission consists of fifteen members, and in accordance with the Administration Code, the Mayor appoints six of these members while the City Council President appoints nine members. Prior to the appointment, the City Council President receives nominations by the Chairs of three specific City Council Committees. Again, all appointments are subject to City Council confirmation.

Option for Reform - Elected

Instituting an election process for the selection of the Board is another option. This option would elect members at large in a manner comparable to the Mayor, Controller and City Attorney, or elect members by region or district in a fashion similar to the City Council or the Los Angeles Unified School District Board. As referenced earlier in this report, SMUD is an example of a municipal utility with an elected board. SMUD is governed by seven Board members that are elected by customers from each of seven geographic areas.

The 2015 IEA Survey finds that that the elected Board model has potential to de-politicize the governance structure by distancing the utility from City political bodies. The elected Board members would be directly accountable to the electorate, but City elected officials would lose the authority to influence policy for the utility. However, the elected board governance structure does not completely remove politics as the election of board members could allow for a different form of politicization. The 2015 IEA Survey also asserts an election process may not necessarily result in the selection of Board members with utility or business expertise but contends this can be offset by a training program for the elected Board members. Ultimately, the 2015 IEA Survey concludes elected board governance would result in the City losing direct control of the DWP. If an elected model is chosen, well-defined policies, including internal and external controls, would be required.

ACTION	
D. 6	How should the Department of Water and Power Board Commissioners be selected?
	<ul style="list-style-type: none">- No Change. Mayor will continue to appoint with City Council approval.- City Council to appoint all members, without Mayor approval.- Shared appointment model between Mayor and City Council and possibly other elected officials, in which each appoint a certain number of members.- Elected by the registered voters of the City of Los Angeles, either at large or by regions.

Removal

Members of the DWP Board are currently removed by the Mayor. Their removal does not require approval of the City Council. Various options for the removal process of the Board have been identified, as follows: 1) maintain the current removal process; 2) modify the current process to include the ability to appeal to City Council; 3) adopt a “for cause” removal method; or 4) implement a recall process if the board members are elected.

There are a several methods for removal of an appointed board member currently utilized by various City commissions. These requirements vary among commissions. Currently, as with the DWP Board, the Mayor has the authority to remove most City commissioners without City Council confirmation, with the exception of the members of the Police Commission and the City Ethics Commission.

In a letter dated February 19, 2016, Councilmember Fuentes called for a change in the removal process of the Board members and asserted that the Mayor should not have the authority to remove them. The Mayor has not communicated a position regarding the removal process.

Challenges Identified

Under the current process, the authority to remove a Board member allows the Mayor to potentially influence the Board on operational and policy decisions. The Rand Study asserts the DWP needs Board members that make decisions based on independent judgment. The 2015 IEA Survey states that the Board could function as a fully professional board protected from political whims if the proper controls were implemented. One form of this protection is the modification of board member removal requirements.

Options for Reform

One option for modification of the removal process is to include a City Council appeal process, as is the case with the Police Commission. A police commissioner removed by the Mayor may appeal to the City Council, which by a two-thirds vote may reinstate the commissioner.

Another option for consideration is the removal provisions for members of the City Ethics Commission. It is more difficult to remove a City Ethics Commissioner than any other commissioner in the City. The Mayor may only remove a member of the commission with the majority vote of the City Council. Additionally, the City Council may also remove a commissioner for cause with a two-thirds vote. According to City Charter Section 700(e), the removal must be for substantial neglect of duty, gross misconduct in office, or an inability to discharge the powers and duties of the office.

If the selection of the Board commissioners is through an election, the electorate must also have the ability to remove the elected official prior to the end of the term. There are various policies and procedures that can be developed regarding the recall of elected commissioners. The recall process enables the registered voters that selected the officials to hold them accountable while in office. Currently, the City's Charter establishes a process in which registered voters of the City may remove an incumbent of an elected office.

 D. 7 How should the Department of Water and Power Board Commissioners be removed?

- No Change. Mayor will continue to have authority to remove without requiring City Council confirmation.
- Modify to allow a member removed by the Mayor to appeal to the City Council.
- Require that a member may only be removed with Mayor and Council majority approval.
- Require that a member can only be removed by two-thirds City Council vote for neglect of duties or gross misconduct.
- Recall process, if members are elected.

E. GENERAL MANAGER

The City Charter identifies the General Manager's duties as they pertain to the operations of the DWP. It specifies that the General Manager shall enforce all orders, rules and regulations adopted by the Board. In addition, the General Manager shall supervise the design, construction, maintenance and operations of all work associated with the purposes of the Department.

Appointment and Removal

Under the City Charter, the Board appoints the General Manager of the DWP subject to confirmation from the Mayor and City Council. The Board also has the authority to remove the General Manager subject to the confirmation of the Mayor.

The removal of the General Manager may be appealed to the City Council. The City Council, within a prescribed timeframe, may reinstate the General Manager by a two-thirds vote.

The Motion (Fuentes – Wesson – O'Farrell) states that the City Charter should be amended to remove City Council and Mayor's oversight of certain Board actions; thereby reducing political interference. The Motion cites studies that claim that the DWP must report to multiple City entities resulting in a decentralized authority and inefficiency in department operations.

The Oversight section of the report discusses the specific provisions that would be modified under this component. With regard to the General Manager, the Motion proposes that City Charter Section 604 should be amended to remove the Mayor and City Council confirmation of the General Manager.

It also seeks to remove the Mayor from confirming the Board's removal of the General Manager. This would also eliminate the City Council's role in the General Manager's appeal of the removal.

General Manager Compensation

Under the Charter, the Board sets the compensation of the General Manager within guidelines established by the City Council, per the recommendation of the CAO (Charter Section 604).

With the objective of reducing interference and granting the Board greater authority, the Motion (Fuentes – Wesson – O'Farrell) provides that the City Council compensation guidelines requirement be eliminated from Board use. In essence, the Board should be able to set the compensation of the General Manager as it deems appropriate.

Matter of Autonomy

Ultimately, the Motion's request is about limiting political interference by providing the Board and Department a measure of autonomy in the administration of its functions. At this stage, it is difficult to gauge the effectiveness of granting the Board sole authority to appoint, remove and

set compensation for the General Manager and whether it would lead to a more efficient and effective operation of the DWP.

In recent years the Department has lacked stability in the General Manager role. There have been several interim General Managers over the past decade. It is unclear if stability would be improved by removing the Mayor and City Council from the appointment and removal process. Although, an argument can be made that the appointment and removal process politicizes the role and may affect ongoing stability.

In our review of other municipal utilities, the majority of the boards appoint the general manager or CEO, such as the boards of SMUD, CPSE and JEA. With regard to the SFPUC, the Mayor appoints the General Manager nominated by the Commission.

It is important to note that the General Manager appointment/removal and compensation requirements under the City Charter apply to the other proprietary departments, as well. If the City Council pursues adjustments in these areas, it may need to consider whether to include similar options with the Harbor Department and the Department of Airports.

ACTION

E. 1 Should the Charter be amended to remove Mayor and City Council confirmation of the General Manager appointment by the Board?

- No change. Maintain existing Mayor and City Council confirmation requirements.
- Remove Mayor and City Council confirmation thereby vesting the Board with sole authority of the appointment.
- Vest the Board with authority to appoint. City Council retains authority to exercise Charter Section 245 to assert jurisdiction over the appointment.
- Vest the Board with authority to appoint subject to confirmation from the Mayor only.

ACTION

E. 2 Should the Charter be amended to eliminate the Mayor from confirmation of General Manager removal?

- No change. Maintain existing Mayor confirmation requirements and City Council appeal.
- Eliminate Mayor confirmation, and City Council appeal, thereby vesting the Board with sole-authority over removal.
- Vest the Board with authority to remove. City Council retains authority to exercise Charter Section 245 to assert jurisdiction over the removal.
- Vest the Board with authority to remove subject to confirmation from the Mayor only.

ACTION

E. 3 Should the Charter be amended to grant the DWP Board sole authority to set the General Manager's compensation?

- No change. Maintain existing requirements that the General Manager's compensation meet City Council guidelines.
- Grant the Board sole authority to set the General Manager's compensation without meeting City Council guidelines.
- Grant the Board authority to set the General Manager's compensation. City Council retains authority to exercise Charter Section 245 to assert jurisdiction over the determination.
- Grant the Board with authority to set the General Manager's compensation subject to confirmation from the Mayor only.

F. BOARD SUPPORT

The DWP Board of Commissioners consists of five volunteer members who are responsible for overseeing the management and operations at DWP. The Board conducts regular meetings twice per month to review and approve proposals presented by the Department. The DWP Board receives direct staff support for clerical and administrative tasks. Analytical support for the Board is currently provided, although indirectly, by various divisional managers who are responsible for preparation of their own proposals. Since January 2012, the Board has reviewed and considered 1,516 proposals prepared by the Department.

Pursuant to Mayor's ED 4, proposals requiring City Council approval or an ordinance are first submitted to the Mayor for review and approval. The Mayor generally sends these proposals to the CAO for review and analysis by experienced staff who work with DWP managers to provide a written report with a recommendation. Alternatively, the Mayor may opt to waive the ED4 process and allow the proposal to remain in the Department for further consideration by the Board and/or City Council. Since January 2012, the CAO has prepared approximately 185 reports pursuant to ED 4 (12 percent of the total proposals considered by the DWP Board).

Challenges Identified

The 2015 IEA Survey indicates DWP proposals do not sufficiently communicate consistent and reliable data on major programs and performance against goals to decision makers and the public at large. Consistent with these findings, Board members also publicly express dissatisfaction over the quality of support provided for major programs and expenditures. Recent examples of the Board's concerns include the use of anecdotal references rather than objective research data and the lack of program budget details for significant program expenditures.

The 2015 IEA Survey also asserts that the DWP's failure to clearly communicate has created distrust and confusion among citizens and City leadership, who find the DWP's operations and finances to be opaque. "Without increased transparency through clear reporting, it will be difficult for LADWP to earn back the public trust and carry out its agenda."

Structuring a standardized process for preparing DWP proposals could result in efficiencies and benefit the Board by:

- i) Ensuring proposals are satisfactorily prepared prior to submitting to the Board;
- ii) Allowing the Board to consider proposals in an informed and efficient manner;
- iii) Increasing transparency through clear reporting; and,
- iv) Encouraging stakeholder trust of the DWP.

Board Hiring Authority (Option 1)

An option for reforming the DWP Board identified in the Motion includes authorizing the DWP Board to hire its own dedicated staff to provide ongoing analytical and research support in a manner similar to the CAO and CLA. This option is discussed in the 2015 IEA Survey.

The IEA Survey indicates that DWP proposals approved solely by the DWP Board generally do not provide adequate analysis to support its recommendations; however, an exception is cited for proposals submitted in accordance to the Mayor's ED 4, and requiring City Council approval. Compared to other proposals, the ED 4 proposals benefit from a standardized process of review, analysis, and fact-checking by the CAO.

It can be inferred that DWP elevates its own analysis and support for proposals that will be reviewed and scrutinized by the CAO. To some extent, this may be the case. In practice, the CAO regularly communicates with numerous DWP managers to obtain support for proposals and to clarify highly technical aspects into easy to read reports with recommendations. Periodically, proposals that provide insufficient support and analysis are identified to DWP by the CAO who facilitates the analysis and research necessary to eventually support a recommendation for consideration by the Mayor and City Council.

As previously discussed, approximately 12 percent of the DWP Board proposals are submitted to the Mayor pursuant to ED 4. If the DWP Board desires its own dedicated support division for CAO-like support on a wider range of DWP proposals (i.e. the 88 percent not currently reviewed by the CAO), it is expected that a significant level of staffing may be required. The structure of the CAO division which provides ongoing support of DWP proposals to the Mayor, pursuant to ED 4, generally involves five positions consisting of:

- 1 City Administrative Officer (part-time)
- 1 Assistant City Administrative Officer (part-time)
- 1 Chief Administrative Analyst (part-time)
- 2 Senior Administrative Analysts (full-time)

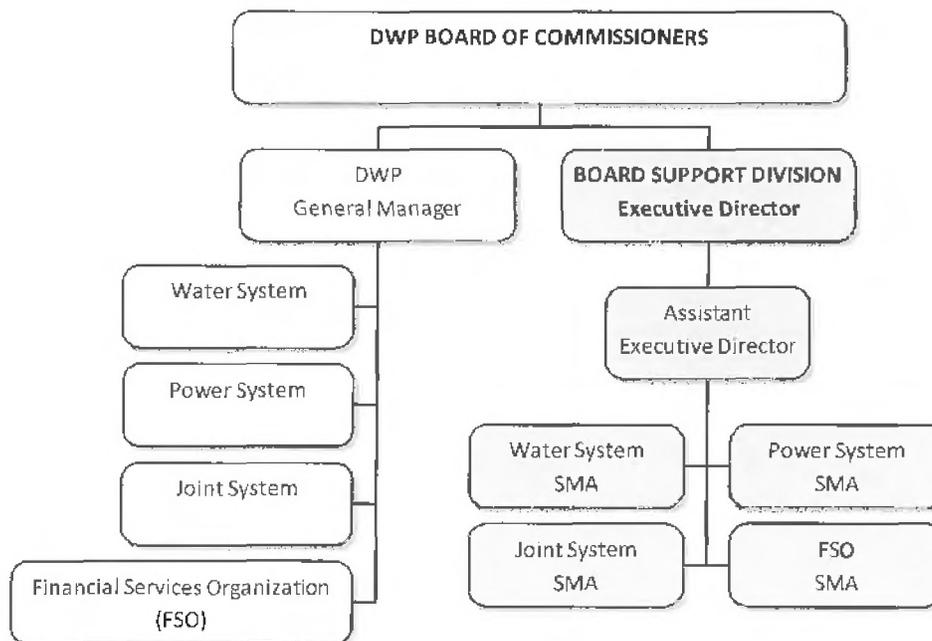
Composition of Staff

The composition of support staff should be sufficient to provide the desired level of service. The actual number and type of positions could be determined by the Board with recommendations by a selected Executive Director in order to appropriately achieve the desired level of support. Prior to hiring new positions though, the DWP could review the role, function, and efficiency of existing DWP positions such as Utility Administrators and Management Analysts already assigned within the Department. If possible, these positions could be realigned to provide direct support to the Board without impacting the total position count of the Department.

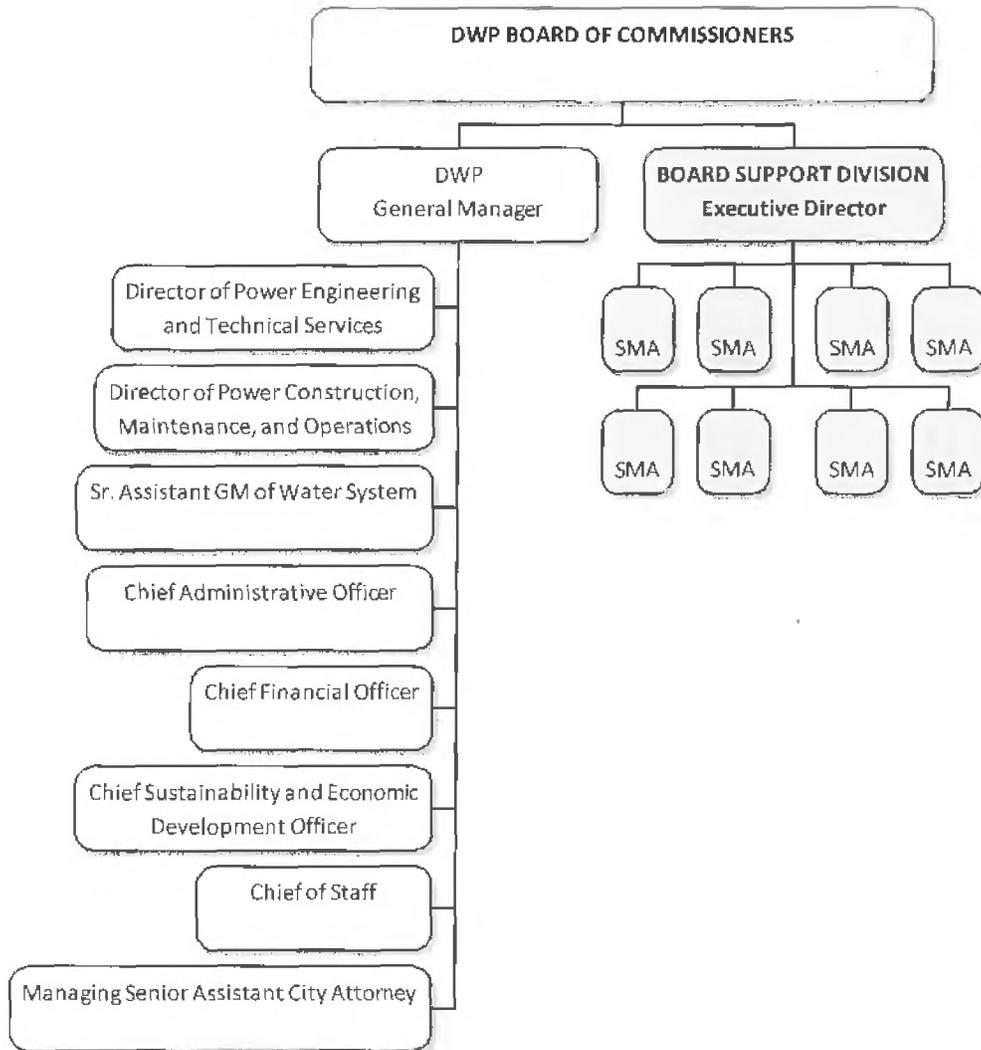
Organizational Structure

A division of the Board dedicated to supporting its analytical and research requirements could be structured similar to other commissions in the City. The City's Board of Police Commissioners and Board of Public Works ("PW") are both supported by an Executive Director responsible for direct support of their Board members in addition to Board-directed programs (e.g. Police Alarm Permits, PW Accounting, and PW Community Beautification). The total amount of staff supporting the Police Commission and the Board of PW is approximately 25 positions and 106 positions, respectively. It is noted the positions identified may not exclusively provide support to the Board as they may be assigned to Board-directed programs.

An option to consider is a functional organizational structure with a traditional hierarchy aligned to the DWP Systems consisting of Water, Power, Joint, and the Financial Service Office ("FSO"). An Executive Director and Assistant Executive Director could oversee four Senior Management Analyst ("SMA") level positions that could each be the primary liaisons to a DWP system and the FSO. Each of the SMA positions could administer the Board's priorities and facilitate any support required through collaboration with various DWP division managers. The following organization chart illustrates this option.



Another option is a project organizational structure that flattens the hierarchy and furthers communication with additional SMAs. An Executive Director could oversee eight SMA positions, each assigned to one of the eight members of the DWP Executive Team and serve as a liaison on a one-to-one basis to facilitate any support of the Board. The following organization chart illustrates this option.



Staff Qualifications and Duties

Options for staff qualifications could emphasize administrative analysis and strong communication skills for report writing and presentations to the Board. Additional qualifying skills could include financial reporting, legislative research, and contract analysis relating to complex utility proposals. Along with the ability to review and analyze complex proposals, qualifications could also include the ability to interact with various stakeholders, elected officials, and the public. These qualifications align with the concerns of the 2015 IEA Survey that suggest the DWP does not adequately communicate with consistent and reliable data to all stakeholders.

Prior to the Board's consideration of selected DWP proposals, the Support Division could review, analyze, and recommend actions to the Board. During Board meetings, the Support Division could present its own report for consideration related to the Department's operational staff proposal.

A non-exhaustive list of topics for review by a Support Division could include the following:

- Rate setting
- Analysis of performance metrics
- Contract analysis
- Legislative analysis
- Financial reporting
- Benchmarking analysis
- Real property transactions
- Project management
- Bid release schedules

Authorize the Board to Instruct the OPA (Option 2)

An alternative structure could include support provided by the Office of Public Accountability (OPA). While functional similarities can be identified, Board direction of the OPA conflicts with the OPA's mission to analyze and report on the DWP while advocating on behalf of ratepayers. Furthermore, the City Charter explicitly states that the OPA is not to be instructed by the DWP Board to ensure the OPA's objectivity and independence. Reforms affecting the OPA are addressed in Chapter G of this report.

Considerations

Establishing an analytical support division for the DWP Board is proposed by the Motion on governance reform at DWP. Part of the Motion suggests delegating City Council's authority to the DWP Board. In light of the delegated authority, the Motion proposes the DWP Board could be more effective at its oversight with a dedicated support staff that is capable of providing CAO-like analysis and reporting.

A group of qualified analysts could readily be assembled by DWP management and assigned to support the Board. It is not clear if such a group assigned by Department management would be more or less objective than a group hired directly by the DWP Board. However, the appearance of influence could diminish the effectiveness of a management-selected group and the actions of the Board.

As indicated, there is a precedent within City commissions to utilize a dedicated support division such as at the Police Commission and the PW Board. Furthermore, as an example of success, the use of the CAO-type support for DWP proposals is asserted to be satisfactory by the 2015 IEA Survey.

A concern exists that a distinct Board Support group for the DWP Board could further administrative work and delays for the Department. The 2015 IEA Survey cites, "DWP proposals do not sufficiently communicate consistent and reliable data." As such, developing a robust research, analysis, and reporting group in support of the Board could be justified regardless of the potential for additional administrative work and delays.

An amendment of the City Charter is necessary for the DWP Board to be authorized to directly hire its own full-time Executive Director or to instruct the OPA to provide support.

ACTION

F. 1 What type of analytical, administrative, and research support should be provided to the DWP Board of Commissioners?

- No change. Maintain the existing support provided to the DWP Board.
- Provide authority to the DWP Board to hire a dedicated staff to provide ongoing analytical, administrative, and research support in a manner similar to the CAO and CLA.
- Provide authority for the DWP Board to instruct the Office of Public Accountability (OPA) to provide ongoing analytical, administrative, and research support in a manner similar to the CAO and CLA.

G. ROLE OF THE OFFICE OF PUBLIC ACCOUNTABILITY

In 2010, the City Council introduced three motions (CF 08-1967, CF 08-1967-S1, CF 09-2544) instructing the CAO and CLA to report on the implementation of an independent oversight/monitoring office for DWP. These motions were followed by several others addressing broader governance reform within the Department. The joint CAO and CLA report resulted in new Charter language creating the Office of Public Accountability (OPA or Office) on the March 2011 ballot. On March 8, 2011, Charter Amendment I was approved by the voters.

Charter Section 683 establishes the OPA's role as "provid[ing] public independent analysis of department actions as they relate to water and electricity rates." The OPA functions independently of DWP and its management structure and reports to the DWP Board but is not instructed by the Board. Pursuant to Administrative Code Section 23.144(c), the OPA has the following reporting obligations:

- Provide reports/information to the Board, the City Council, the Mayor, the Neighborhood Councils, and the public on:
 - The reasonableness of rate actions and any modifications to them and
 - The development of DWP's long-term strategic plans (e.g., Integrated Resource Plan), the annual proposed DWP budget/policies, practices, programs, contracts, agreements, and other actions that may impact rates.

The OPA is also required to maintain a repository of all reports produced by the Office. Further, the OPA has the discretion to provide recommendations on ways to improve the reasonableness and transparency of DWP's policies and rates. While the OPA must provide information and advice to DWP, the Mayor, and City Council, it does not provide direction.

The City Charter and Administrative Code also vest the OPA with consumer protection and complaint functions. At its discretion, the OPA may audit individual ratepayer cases and obtain customer data to conduct analyses of customer service performance at DWP. When appropriate, the OPA is to coordinate with other City departments where it has received complaints of fraud, waste, and abuse.

The OPA is headed by an exempt Executive Director/Ratepayer Advocate (RPA). The RPA is appointed by a citizens committee, subject to confirmation by the City Council and Mayor, to a five-year term (Charter Section 683(b)). The RPA may be removed for those reasons set forth in the Personnel Department's Guide to Disciplinary Standards, Policies of Personnel Department Section 33.2 (Administrative Code Section 23.145(b)(2)). Further, the Administrative Code emphasizes that due to the RPA's unique role, special consideration must be paid to the higher standards imposed on supervisors. Thus, the RPA may be subject to potentially more severe levels of discipline than a nonsupervisory employee. The first RPA was appointed to a five-year term in February 2012.

While the OPA was established as an independent office, the Administrative Code directs other City departments to provide the OPA with administrative support (Administrative Code Section 23.144(c)). This support is to be offered in a manner which does not compromise the OPA's independence. To that end, the OPA is assisted administratively by the CAO on matters concerning personnel, payroll, budget, and other general matters. The OPA also receives legal support from the City Attorney's Office.

Charter Section 683(g) provides that the OPA's budget must be set at no less than .025 percent of DWP's annual revenues. Each year, the RPA must submit the OPA's proposed annual budget to the CAO (Administrative Code Section 23.144(d)(5)). The CAO then reviews the budget and submits it, with recommendations, to the Mayor and City Council. The approved budget is then forwarded to DWP to fund the OPA. For FY '15 - '16, the OPA's budget is \$2,316,836 plus \$750,000 for benchmarking and rate studies.

Challenges Facing the OPA

The 2015 IEA Survey identified the "ambiguous role" of the OPA as a governance challenge facing DWP. Navigant noted that while the City's intent was for the OPA to function in an independent advisory role, the OPA's reporting line weakens its independence. As structured, the OPA faces political pressure from DWP, elected officials, and City management. Navigant observed that as a result, the OPA is functioning as neither a regulator nor an independent advisor.

In addressing the challenges faced by the OPA, Navigant suggested the City revise the OPA's mission as a means of clarifying the OPA's authority and independence. However, Navigant also noted that revising the OPA's mission may require a decision between ensuring the OPA functions as a wholly independent office focused on ratepayer priorities versus an office with staff oversight functions and the resources necessary to advise City stakeholders.

In addition to Navigant's assessment, the RPA has identified additional challenges facing the OPA. The Administrative Code does not formalize any method of communication between DWP and the OPA. The current channels of communication were determined by DWP and it has often been difficult for the OPA to obtain necessary information. With regard to staffing, the OPA does not have the staff necessary to balance a review of rate requests with other matters for review identified in the OPA's operating ordinance. The OPA has also indicated that the RPA has no power to place items on the Board's agenda and may not speak on non-agendized items. DWP has not provided feedback regarding reform of the OPA.

Examples of Ratepayer Advocates from the Utilities/Jurisdictions

A review of ratepayer advocate roles at other utilities indicates that the City employs a unique model. The 2015 IEA Survey explored examples from six other utilities – Seattle City Light Review Panel, Austin Energy Electric Utility Commission, SMUD, SFPUC Rate Fairness Board, CPSE Citizen Advisory Committee, and the California Public Utilities Commission Office of Ratepayer Advocates. At three of these utilities, the role of ratepayer advocate is filled by a city official or an individual appointed by city officials.

Austin Energy Electric Utility Commission does not employ a full time ratepayer advocate. Instead, when necessary, the utility hires a consultant and an independent consumer advocate to assist in a five-year rate review. SMUD does not employ a ratepayer advocate, addressing competitive rates as one of the utility's values. On the other hand, San Francisco's electorate voted down a proposal to create a ratepayer advocate, finding the role redundant with the consumer advocate position on the Rate Fairness Board. Instead, the SFPUC adopted a Ratepayer Assurance Policy and Scorecard, published annually by the Controller and used to assess performance and improvements within the utility.

The most robust ratepayer advocate considered was the CPUC's Office of Ratepayer Advocates which employs 142 engineers, economists, scientists, and auditors with extensive expertise in a number of areas. This allows the CPUC to function independently to focus on ratepayer's interests, as its mission is to obtain the lowest possible rates while ensuring reliable and safe service.

Reform

The Motion does not address the role of the OPA and a report on the role of the OPA was not requested by the City Council. However, Councilmember Fuentes raised the issue in a communication to the REIRN Committee, dated March 2, 2015. He noted that while the RPA provides analysis of major DWP proposals, the size of the OPA staff precludes the Office from expanding the number of issues it can report on. Councilmember Fuentes expressed hope that the Committee would aid in further defining the role of the RPA to ensure the OPA is successful.

Further, recent statements by the Controller and the Mayor also address the role of the OPA. In a Daily News editorial dated February 26, 2016, the Controller expressed the view that the OPA must advocate. The Controller noted that while the office has conducted "some very fine research" the OPA must serve as a "more forceful watchdog." On February 8, 2015, the Mayor released a statement indicating the OPA should function as an inspector general with expanded access to information to provide the public with transparency.

Discussions with the OPA highlighted several possible areas for reform. The OPA supports reform which retains their current mission while bolstering its impact with additional staffing, an increased budget, and the development of formalized procedures. Such changes would require modifications to both the Charter and the LAAC. The RPA indicated that current staffing authorization makes it difficult for the OPA to balance a review of rates with the other matters they are expected to analyze. Further, as the new rates structure evolves and requires a review of DWP's metrics, the OPA may require more staff to perform this task. Providing the OPA with the necessary staff and budget will strengthen their ability to fulfill its mission of seeking to improve DWP's performance through a review of rates, long term strategic planning documents, and other policies, procedures, decisions, contracts, and proposals.

In the 2015 IEA survey, Navigant observed that the CPUC's Office of Ratepayer Advocates is much larger than the City's OPA. However, Navigant highlighted that the CPUC's Office of Ratepayer Advocates' success has stemmed from access to ample resources and the expertise of its staff. This supports providing the OPA with additional professional staff.

Assuming additional staff is needed, the City Council may consider providing the OPA with the authority to hire additional exempt positions. The RPA has indicated a preference that all non-administrative OPA employees be granted exempt status. This may require changes to Charter Section 1001 to provide for additional exempt positions. To accommodate these staffing costs, it may also be necessary to modify Charter Section 683 to increase the OPA's minimum budget. Further analysis will be required to determine the necessary positions and appropriate budget formula, and whether a Charter amendment will be necessary.

The RPA has also proposed clarifying Charter Section 683 to grant the OPA with access to books and records. Charter Section 683(e) states "the OPA shall have access to information to fulfill its responsibilities." However, neither the Charter nor the LAAC provides a mechanism for ensuring the OPA access to requested records or information. By ordinance, the OPA may be granted "books and records" access, with a formal process delineated for the OPA to compel information where access is denied. However, further analysis and discussion would be required to determine the proper mechanism for arbitrating records disputes between the OPA and DWP.

Lastly, the OPA is in support of clearly defining a mechanism for reappointment of the RPA to a second 5-year term. LAAC Section 23.145 outlines the procedures for appointment of the RPA but is silent on the issue of reappointment. Providing a clear mechanism for reappointment will provide stability within the OPA, allowing for the sustained presence of an RPA dedicated to fostering accountability and reasonableness in DWP's actions.

While we have begun exploring options for strengthening the OPA, the governance decisions made in response to the Motion will determine which of those options are viable. Once the City Council has taken action with regard to the other sections of this report, it should instruct the CAO and CLA to report on available options for strengthening the OPA and as discussed in more detail in Section A, clarifying the OPA's role in the rate setting process.

ACTION

<p>G. 1 Should the CAO and CLA be instructed to report on viable options for strengthening the OPA, including its role in the rate setting process?</p> <ul style="list-style-type: none">- No Change. Maintain the existing role of the OPA.- Instruct the CAO and CLA, along with the OPA, to report on specific options for strengthening the OPA via Charter amendment or changes to the LAAC.	
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H. CITY ATTORNEY

Authority

Charter Sections 271 through 275 and Chapter 2 of Division 20 of the Administrative Code provide the authority to the City Attorney to serve as the legal advisor to the City, including all City boards, departments, officers and entities. The Charter specifies that the boards of the Proprietary Departments shall make client decisions in litigation exclusively involving the policies and funds over which the Charter gives those boards control. If there is a question, the City Attorney has the authority to determine who is authorized to make client decisions on behalf of the City in accordance with the Charter and accepted principles of representation of municipal entities. The Charter also specifies that the City may contract with outside counsel subject to recommendation by a Proprietary Board and the written consent of the City Attorney.

Challenges

In proposing to amend Charter Sections 271, 670 et seq. and possibly 675 to empower the Board to appoint its own legal advisor, the Motion identifies the Board's limited access to independent analysis as a challenge to effective governance at DWP. The Navigant study acknowledges the City Attorney as part of the governance structure, but does not identify any specific issues related to the current model of legal services. The Department also has not identified any issues or problems due to the current model.

Current Structure

The City Attorney currently has 41 positions assigned to handle DWP-related matters on a full-time basis; an additional 16 positions provide partial services to the Department. The dedicated positions are housed at Department offices and work exclusively on DWP matters, such as utility issues, rates and finances. Other positions in the City Attorney's office provide additional support in areas such as outside counsel procurement, public records requests and ethics issues.

Options

The City Council could recommend no change to the role of the City Attorney or could choose to amend the relevant Charter sections to empower the Board to conduct its own procurement process and retain legal counsel independent of the City Attorney. Another option could be to direct the CAO and CLA to report back on ways to strengthen the Board's authority over litigation.

ACTION

H. 1 Who should represent DWP with respect to all legal matters?

- No Change. Continue City Attorney representation.
- Direct the CAO and CLA to report back on options to strengthen the Board's authority over litigation.
- Amend the relevant Charter and Administrative Code sections to empower the Board to conduct its own procurement process and retain legal counsel independent of the City Attorney.

I. REVENUE TRANSFER

The Motion states that the Revenue Transfer should be capped and that the City Charter should be amended to reflect this adjustment.

The Revenue Transfer consists of the DWP's annual submittal of a percentage of its power system gross operating revenue to the City's General Fund. In 1925, the City instituted the Revenue Transfer from the DWP's Power Revenue Fund and has collected it on an annual basis, with some exceptions.

In recent years, the Revenue Transfer has equaled eight percent of the DWP's power system gross operating revenue. For example, in fiscal year (FY) 2013-14, the Revenue Transfer submitted to the City totaled \$253 million. In FY 2014-15, it totaled \$266 million.

City Charter & Ordinance

Specifically, the City Charter (Sect. 344) provides 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. The City Charter also requires the Board to notify the City Council and Mayor of its approval of a transfer in whole, in part - or its disapproval by December 31 of each year.

The amount of the Revenue Transfer is set by ordinance and contains additional limitations to protect the financial health of the DWP. These additional limitations include the power system's prior fiscal year's net income and total indebtedness.

Other Municipal Utilities

Revenue Transfers are common among municipal utilities and are generally based on a percentage of revenues. DWP's peers such as CPSE, Austin Energy, Riverside Water and Power, Glendale Water and Power and Burbank Water and Power provide revenue transfers, or some form of payment in lieu of taxes, to their local jurisdictions. Their revenue transfers range from 4 percent to 13 percent of annual operating revenues. The DWP's eight percent falls within this range.

Legal Challenges

Last year, three class action lawsuits related to the Revenue Transfer were filed against the City in Los Angeles County Superior Court: *Chapman v. City of Los Angeles*, *Eck v. City of Los Angeles*, and *Eisan v. City of Los Angeles*. The claimants allege that the City violates the State Constitution by charging customer fees in excess of the cost of providing electric utility service. The plaintiffs, on behalf of a class of electricity ratepayers, seek a refund of alleged excess fees collected from January 30, 2012, through the end of the lawsuit.

The three cases have been consolidated into a single complaint before a single judge. This Consolidated Complaint names the City, the DWP, and the Board as defendants. The lawsuit is currently in discovery. The City's defense is being administered by the City Attorney's Office.

A further assessment of this matter may include consultation with the City Attorney's Office.

ATTACHMENT 1
TABLE OF OPTIONS

SUMMARY OF PROPOSED ACTIONS FOR REFORM

	Proposed Actions for Reform	Action is authorized by:
A.	City Hall Oversight A-1 Council Oversight Authority A-2 Charter Section 245 or Enhanced 245 A-3 Rate Setting	Amending the Charter Amending the Charter Amending the Charter
B.	Civil Service and Hiring B-1 Department Internal Rules and Practices B-2 Hiring Flexibility B-3 Seniority Credits in Examination B-4 Human Resources in Department B-5 Eliminate Civil Service	Amending the Charter, Civil Service Rules, Memoranda of Understanding, and/or Internal DWP rules.
C.	Contracts	Amending the Charter and/or Administrative Code, and/or Exempting DWP from ED 4.
D.	Board Structure D-1 Full Time or Part Time Board D-2 Number of Board Members D-3 Qualifications D-4 Term D-5 Term Limits D-6 Selection D-7 Removal	Amending the Charter Amending the Charter Amending the Charter Amending the Charter Amending the Charter Amending the Charter Amending the Charter
E.	General Manager E-1 Appointment and Confirmation E-2 Removal E-3 Compensation	Amending the Charter Amending the Charter Amending the Charter
F.	Board Support	Amending the Charter
G.	Role of the Office of Public Accountability	Amending the Charter and/or modifying an Ordinance
H.	City Attorney	Amending the Charter

ATTACHMENT 2
CIVIL SERVICE HISTORY

Provide a history of Civil Service within the City of Los Angeles and DWP

Civil Service within the City of Los Angeles is a long and storied tale of competing interests and goals, ripe with cycles of spoils and graft, reforms and efforts to find efficiencies. First codified in 1903 with amendments to the City Charter, Civil Service provisions were added that “shall apply” to specified Departments of the City, including “The Department of Electricity” and “The Waterworks Department,” (Sec. 239 1903 Charter) the predecessors of the Department of Water and Power. The new 1925 charter further codified provisions regarding Civil Service. (Article IX) Section 111 specified that Civil Service provisions “shall apply to all departments, divisions and offices of the city government, including therein all employees of the city,” except certain enumerated positions and/or departments. Employees of the Department of Water and Power were **not** listed as among those exempt; only the general manager, auditor and cashier of the Department of Water and Power are specifically listed as exempt from civil service. (Section 111, 1925 Charter.)

Yet, in spite of the reform movement in the State of California and the vision of the City Charter of 1925, the most corrupt period in modern Los Angeles governmental history was the administration of Mayor Frank L. Shaw (1933-1938). Under Shaw, City jobs and promotions were bought and sold to support the Mayor’s administration. The General Manager of the Civil Service Department (Personnel) had the authority to review the results of all written tests and oral interviews prior to the creation of a list. Under pressure from the Mayor’s office, the General Manager would see that the Mayor’s friends and supporters were given the best scores by “correcting” the scores of candidates prior to the final certification. According to the rules of the time, the person with the highest score would be the one hired. Grand Jury records indicated more than 5000 grades were changed between 1928 and 1938 adding thousands of dollars to the Mayor’s campaign coffers. Public pressure resulted in the recall of Shaw in 1938 and the election of a reform mayor, Fletcher Bowron. Reborn in 1939, Civil Service in Los Angeles became a national model of honesty and professional practices, creating a new and effective classifications and examinations system for employment and promotion.

These professional practices provide for a clear framework of procedure under which City employment and promotions are conducted. However, almost from the outset of reform, the system was viewed as being cumbersome and “rule-bound.” Over the years it has been the subject of countless efforts to modify, streamline and eliminate because of Departmental and citizen complaints that the Civil Service process could not “keep up” with the specific needs of Departments to hire and promote employees. While the Civil Service System works at a deliberate pace, it has also protected the City, limiting its liability when legal challenges have been brought alleging discrimination and charges of favoritism such as in 1981 when the Ninth Circuit Court of Appeals¹ rejected the

¹ See, *Contreras v. City of Los Angeles* (1981) 656 F.2d 1267.

plaintiffs' allegations of discrimination, stating that "the City had been able to prove that its tests practices were job-related, actually measuring skills, knowledge and abilities required to perform the job, as shown by professionally accepted methods of development and expert test validation."

ATTACHMENT 3
CIVIL SERVICE HYBRIDS

Identify Civil Service Hybrid Human Resource System Models in the State of California

A. Definition of Hybrid Civil Service Models

For purposes of this memo, Hybrid Civil Service Models shall mean models with some sort of merit based system and that termination of employment must be for cause. We will assume that when one refers to eliminating civil service, it means that the allocation, classification, recruitment, discipline and discharge of employees is not governed by a merit based system. There may be processes for hiring and discipline, but employment is "at-will" – an employee may be terminated with or without cause and there may not be property rights to continued employment (except that an employee may not be discharged in violation of state or federal law; such as for a discriminatory basis, retaliation for whistleblowing or some other reason in violation of public policy).

B. Types of Hybrid Civil Service Models.

We have identified several types of Civil Service Models in the public sector in the State of California. Most, if not all, public agencies contain some sort of merit based recruitment for positions and include some form of due process prior to termination of an employee. The types of Civil Service Models include:

1. Civil Service System overseen by a Civil Service Commission or other type of Review Board. Examples include:
 - a. State of California (State Personnel Board)
 - b. County of Los Angeles (Civil Service Commission)
 - c. City of Los Angeles (Civil Service Commission)
 - d. City of San Diego (Civil Service Commission) (City of San Diego includes a Department of Water and Power and it appears to be subject to the City's Civil Service Commission)
 - e. City of Long Beach (Civil Service Commission)

2. Merit Based System for appointment and termination of Employees, but no Civil Service Commission or Review Board. Merit System, including appeal process for discipline, is set forth in the enabling statute or in an Administrative Code. Examples include:
 - a. Metropolitan Water District of Southern California ("MWD")¹

¹ See Metropolitan Water District Administrative Code, Section 6200 et seq. By way of example, MWD appears to have a more streamlined process for approving the appointment of an applicant for employment. See sections 6204 through sections 6207. Employees must meet minimum qualifications and then their applications are forwarded to the Department Head for interviewing and final determination. At least according to its administrative code, there does not appear to be any ranking of applicants or a requirement to interview a certain number of applicants. In terms of discipline, MWD does not have a Civil Service or Review Board. Any regular, non-probationary employee, who is suspended for 40 hours or

- b. East Bay Municipal Utility District (“EBMUD”)²
- 3. Merit Based System for appointment and termination, but no Civil Service Commission. Merit System is set forth in a Personnel Manual or Policy and/or provisions are included within Memorandum of Understandings with Unions.
 - a. Special Districts and County Water Agencies³
- 4. No Civil Service System. Employees are at-will and “serve at the pleasure” of the General Manager or Board.
 - a. Open Space Districts. Up and until a few years ago, employees at Open Space Districts “served at the pleasure of the General Manager.” It is our understanding the Special Districts included in their personnel policies or manuals provisions for hiring and discipline, but ultimately they were “at-will” employees. A few years ago, the State Legislature changed the enabling statute for Open Space Districts to no longer include this restriction.

more, demoted or discharged is entitled to appeal the discipline. The employee has the option to choose a hearing officer, a consultation with a second level manager or mediation. Any result of the hearing officer, the consultation or mediation is advisory to the Department Head who may accept, reject or modify any result. The Department Head’s decision is final and binding. See section 6218.

² See Municipal Utility District Act, Section 12001 et seq. EBMUD has a merit system, which includes the establishment of a list of eligible applicants. See sections 12101 and 12102. Appeals of discipline, including termination, are before a three person committee appointed by the General Manager. Decisions of the committee are final, unless appealed by the employee to the General Manager. Decisions of the General Manager are final. See Section 12166.

³ See California Special Districts Association – Comprehensive Overview of Types of Special Districts (2012)

ATTACHMENT 4
APPLICATION OF CIVIL SERVICE HYBRID

Application of Hybrid Civil Service Models to the City of Los Angeles

The City of Los Angeles and DWP appear to be able to adopt a "hybrid" civil service system, that ranges from a fully at-will, essentially completely exempt system, to one that has some, but perhaps not all, of the procedures and provisions either of our current system, or that of other public systems.

First, the City Charter provides in Section 104(c) the authority for the City, with a two-thirds voter approval, to sell or otherwise dispose of any or all of the utility. This would essentially amount to a layoff of current DWP employees, with some having reversion rights to positions they may have once held in other City Departments.

Next, the City Charter could be amended to provide that DWP is no longer subject to the Civil Service provisions therein. Essentially, the entire Department could be made "exempt." An HR screening process would be conducted to determine if an applicant meets the minimum qualifications for a position; but, selection is then left to appropriate managers.

Currently, the Mayor's Office is entirely "exempt" per the Charter; so is the City Attorney's office, at least with respect to hiring. Hence, a Charter Amendment could provide that this would be the case with all DWP hiring occurring as of a given date. However, the status of present civil service employees, heretofore possessing tenure and due process rights, is unclear. Can a Charter Amendment serve to erase the "property rights" that civil servants have acquired? If the answer is "no" then under this type of Charter Revision, new employees would essentially be "at-will" while their colleagues would retain civil service status.

Another possible Charter change that would create a "hybrid" system would be to adopt a separate mechanism for disciplinary proceedings that would apply to DWP, as compared with the rest of the City. To an extent, this is already the case for Police Officers, Firefighters, Doctors, Veterinarians, and City Attorneys, who each have separate Charter sections prescribing disciplinary procedures. DWP could similarly be set apart from the rest of the City in this respect. This would probably present no problem even with respect to current DWP employees, as long as any new system acknowledged that the standard for any punitive action such as discharge, demotion or suspension be premised on "just cause."

The Charter could be amended to create a system akin to that found in the "MUD" Act (Municipal Utility District) which applies to the East Bay Municipal Utility District. The MUD Act provides that an employee who is discharged or suspended has a choice of remedies: (1) request an opportunity to be heard by the GM; (2) utilize a grievance procedure if such has been negotiated between management and the union; (3) appear at a hearing convened by three management designees of the GM, with the employee having the right to have the GM review the panel's findings. In addition, the employee would retain the right to seek Superior Court review.

ATTACHMENT 5

ALTERATION OF CIVIL SERVICE AT DWP ONLY

Can civil service be altered for the Department of Water and Power only?

Yes, and expect to be litigated on the issue.

One of the basic tenets of employment law is that public sector employment is created by statute or Charter and not by contract. Civil service was created in the City and at the Department of Water and Power with the adoption of the 1925 Charter. Consistent with the tenet above, it would follow that specific provisions of civil service, the applicability of those provisions and even the very existence of civil service could be amended or abolished by amending the City Charter. However, the issue is clearly not free from legal risk. There is no existing case law on a mass removal of civil service for a large group of previously covered employees. In addition, the removal of certain elements of civil service are more at risk, specifically layoff and displacement protections, that could be found to be individual vested rights that cannot be eliminated. Attachment X is a letter from the Coalition of City Unions that has been provided to the Rules, Elections, Intergovernmental Relations, and Neighborhoods Committee that provides an outline of the likely legal challenges the City will face relative to the removal of civil service. The City Attorney is researching these issues and will provide a report to the Committee at a later meeting.

It must be noted that the ability to amend the Charter is not absolute. Amendments must be in compliance with applicable state and federal law, and the amendment process must also be compliant with the employer's obligations regarding collective bargaining. The amendment or elimination of civil service is within the scope of collective bargaining. Multiple unions have expressed numerous concerns over the concepts contained in Councilmember Fuentes motion specific to civil service as well as governance, oversight and revenue. These concerns can be broadly categorized as follows: DWP hiring problems can be addressed within existing civil service, impact on civilian jobs at the City, loss of revenue implications on civilian positions, lack of transparency of alternate employment models, and erosion of merit based employment through political or other non-job related influences. Due to the collective bargaining implications, it is appropriate to refer this issue to the Executive Employee Relations Committee for the development of bargaining instructions, as well as a complete briefing by the City Attorney on potential legal challenges to any proposed amendment.

ATTACHMENT 6

IMPACT ON CITY OF DWP ALTERNATE MODEL

What is the impact on the City if the Department of Water and Power has an alternate employment model?

Any change to the City's human resource system will have intended and unintended consequences. The magnitude of those consequences will be dependent on the specific amendments that are ultimately approved by the voters. However, civil service is only one element of the City and DWP's multifaceted human resource system. Federal and state regulations, collective bargaining obligations, Memoranda of Understanding, internal department rules, regulations and past practices all dictate and impact on the functionality of the City and DWP's human resource system.

The City's civil service system impacts the following four key areas of the overall human resource system:

- Classification Plan
- Hiring Process
- Seniority System
- Disciplinary Process

Classification Plan

The Civil Service Commission and the Personnel Department are responsible for the City's job classification plan. The purpose of the centralized classification plan is to ensure that the same requirements, tests of fitness, and schedule of compensation are applied to positions similar in duties and responsibilities. The existence of the classification plan creates a legally defensible position to base assignments and compensation. The removal of DWP from civil service would reduce the City's classification plan by 121 classifications that are unique to DWP. Personnel would no longer be responsible for creating any new classifications for DWP, and the Civil Service Commission would have no responsibility for reviewing out of class complaints by DWP employees. Since the implementation of collective bargaining and the grievance procedure, out of class complaints are almost non-existent averaging less than 5 per year.

Hiring Process

The Personnel Department and the Civil Service Commission are responsible for merit based testing process that establishes lists of qualified candidates to fill all City positions covered by civil service. Removing DWP would remove 121 examinations from the Personnel Department's workload. These exams are not administered on an annual basis, however, the last administrations of these examinations in total account for over 60,000 applications and the review of over 5,000 candidate backgrounds.

The impact on current City/NonDWP employees is unknown. DWP would responsible for setting requirements for all positions at DWP, it is possible that DWP could

implement changes that would eliminate City employees from qualifying for positions that were previously available.

Seniority System

The Civil Service Commission and Personnel Department are responsible for the calculation of seniority for layoff purposes. The Commission is authorized to hear appeals to claims that an employee's seniority was not calculated correctly, but have no authority over the determination of the necessity for layoffs. The Personnel Department is responsible for calculating layoff and displacement seniority. Removing DWP would remove these responsibilities from the Commission and Personnel. Fortunately layoffs are infrequent, but when necessary depending on the scope of the layoff are extremely labor intensive. The last large scale layoff effort in 2009 required numerous months and 30 Full-time equivalents.

Seniority is also calculated and used for promotional exams. The seniority credit is calculated and added to the score a candidate received on a promotional exam. Removing DWP would remove this responsibility from Personnel. If DWP establishes a seniority component within future selection processes after removal, those calculations would be done by DWP.

The impact on existing City/NonDWP employees is limited to those employees that previously worked at DWP. Depending on the specific language of the Charter change it is possible that employees could lose rights to previously held positions.

Disciplinary System

The Civil Service Commission is responsible for hearing appeals from suspensions over five days and discharges, and making the final decision on the imposition of discipline. For the DWP, the Commission currently averages approximately 41 hearings per year. Removing DWP from civil service would eliminate this workload. There is no impact to City/NonDWP employees by removing DWP employees from the Civil Service Commission based disciplinary review system.