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December 23, 2011

REPORT TO THE AUDIT COMMITTEE

RESPONSIBILITIES OF THE INDEPENDENT RATES OVERSIGHT COMMITTEE UNDER  
SAN DIEGO MUNICIPAL CODE SECTIONS 26.2001 THROUGH 26.2003

**INTRODUCTION**

On November 7, 2011,<sup>1</sup> the Audit Committee asked this Office to review the last five years of annual reports issued by the Independent Rates Oversight Committee (IROC) to identify any IROC recommendations or findings made outside the scope of IROC's responsibilities as described in San Diego Municipal Code (SDMC) section 26.2003(a)-(i), and to request from IROC the authority under which it acted if its recommendations or findings were outside the scope of its authority. Based on our review of the annual reports, we conclude that IROC's recommendations are within the scope of duties described in the SDMC.

**DISCUSSION**

The City Council approved the creation of IROC on April 10, 2007, by adding SDMC sections 26.2001 through 26.2003. San Diego Ordinance O-19607 (April 18, 2007).<sup>2</sup> The City Council confirmed the Mayor's appointments to IROC on October 18, 2007, and IROC held its first meeting on November 5, 2007. San Diego Resolution R-303045 (Oct. 18, 2007).

IROC issued annual reports in 2008, 2009, and 2010.<sup>3</sup> IROC has not completed its 2011 annual report, which was discussed at the IROC meeting on December 19, 2011, so our review is limited to three annual reports.

The Audit Committee requested a review of IROC's annual reports in light of SDMC section 26.2003(a)-(i). We have broadened that review to include SDMC sections 26.2001 through 26.2003, as IROC's responsibilities are not limited to SDMC section 26.2003(a)-(i).

IROC's purpose and intent is broadly described in SDMC section 26.2001. Specifically, IROC advises the Mayor, the City Council, and the City Manager on policy issues relating to the oversight of the City of San Diego's public utilities department operations. Issues within IROC's

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<sup>1</sup> The request followed a discussion of IBA Report No. 11-65 (Nov. 4, 2011) entitled "Independent Rates Oversight Committee (IROC) - Audit Responsibilities."

<sup>2</sup> See the attached Memorandum from Deputy City Attorney Thomas C. Zeleny dated February 23, 2009 for a comprehensive description of IROC's responsibilities.

<sup>3</sup> IROC annual reports are available at <http://www.sandiego.gov/mwwd/general/commissions.shtml>.

purview include, but are not limited to, resource management, planned expenditures, service delivery methods, public awareness and outreach efforts, the provision of high quality and affordable utility services provided by the public utilities departments, and tracking and reviewing the use of rate proceeds to advance capital improvements related to the rate packages and work programs adopted by the City Council. IROC is also responsible for performing the mandatory functions delineated in SDMC section 26.2003. Except for SDMC section 26.2003 (i), which requires IROC to provide annual public reports to the Mayor and City Council, IROC is not provided with a timeframe in which it must complete these mandatory functions.

This Office believes each of the six conclusions pertaining to operations, capital improvement projects, financing, environmental management, rate structure equity and effectiveness, and education and outreach in the 2008 annual report fall within IROC's purview under the SDMC sections 26.2001, 26.2003(b), 26.2003(e), and 26.2003(j).

This Office also believes recommendations one through five of the 2009 annual report fall within the purview of IROC's responsibilities. These recommendations concern resource management, affordable utility services, and education and outreach under SDMC section 26.2001.

Recommendation six, entitled "other matters," includes a discussion of pension costs and the City Auditor's whistleblower hotline. The 2009 annual report includes a discussion of pension costs because "ratepayers are fully exposed to risks inherent in a defined benefit plan." Likewise, the City Auditor's whistleblower hotline is discussed because "IROC believes a confidential whistleblower process, including a fraud hotline, is an essential element of the Public Utilities Department's risk management program." Recommendation six likely falls within SDMC section 26.2001, which includes, but is not limited to, resource management, public awareness and outreach efforts, and the provision of affordable, high quality services.

The 2010 annual report includes fourteen recommendations that fall under resource management, planned expenditures, service delivery methods, public awareness and outreach efforts, and the provision of high quality and affordable utility services as described in SDMC sections 26.2001 and 26.2003(d).

## CONCLUSION

Based on our review of the annual reports, we conclude that IROC's recommendations and findings are within its scope of duties as described in the SDMC.

Some Audit Committee members questioned whether IROC is fulfilling its objectives as intended by the City Council. Although the Audit Committee does not have oversight responsibility for IROC, "[a]ny duties or functions of the Independent Rates Oversight Committee that fall within the oversight responsibilities of the Audit Committee should be fully coordinated with and reported to the Audit Committee." SDMC section 26.2003. It would

therefore be permissible for the Audit Committee and members of IROC to meet in the future to discuss and to coordinate efforts in areas such as performance audits and the whistleblower hotline.

JAN I. GOLDSMITH, CITY ATTORNEY

By 

Mara W. Elliott  
Deputy City Attorney

MWE:als  
Attachment: Memorandum dated 2/23/09  
RC-2011-41

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Office of  
The City Attorney  
City of San Diego

MEMORANDUM

533-5800

**DATE:** February 23, 2009  
**TO:** Natural Resources & Culture Committee  
**FROM:** Thomas Zeleny, Deputy City Attorney  
**SUBJECT:** Responsibilities of the Independent Rates Oversight Committee

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INTRODUCTION

During the two previous meetings of the Natural Resources & Culture Committee, questions were raised as to what are the duties and responsibilities of the Independent Rates Oversight Committee ("IROC"). Specifically, the questions are (1) whether IROC should be reviewing City policies regarding the water and wastewater utilities or be focusing solely on the City's use of ratepayer funds, and (2) whether review by IROC is a prerequisite to City Council action on water and wastewater matters.

DISCUSSION

The City Council approved the creation of IROC on April 10, 2007 by Ordinance No. O-19607. The ordinance added Municipal Code sections 26.2001 - 26.2003 establishing IROC and repealed sections 26.1101 - 26.1103 relating to the former Public Utilities Advisory Committee. The City Council confirmed the Mayor's appointments to IROC on October 18, 2007 by Resolution No. R-303045. IROC held its first meeting on November 5, 2007.

The Municipal Code sets forth the purpose and intent of establishing IROC:

It is the purpose and intent of the City Council to establish the Independent Rates Oversight Committee to serve as an official advisory body to the Mayor, City Council, and City Manager on *policy issues* relating to the oversight of the City of San Diego's public utilities department operations including, but not limited to, resource management, planned expenditures, service delivery methods, public awareness and outreach efforts, high quality and affordable utility services provided by the public utilities departments, including the Water and Metropolitan Wastewater Departments. In addition, the Independent Rates Oversight Committee is established to assist the City in *tracking and reviewing*

*the use of rate proceeds* to advance the capital improvements related to the rate packages and work programs adopted by the City Council. It is the vision of the Independent Rates Oversight Committee that a high level of public confidence in the City of San Diego's utility services is maintained because the services are provided in the most cost effective and environmentally sensitive way.

SDMC § 26.2001 (emphasis added). The apparent purpose and intent is to give IROC the responsibility of advising the City on both "policy issues" and "tracking and reviewing the use of rate proceeds." The expressed duties and functions of IROC, however, are more narrowly focused on oversight of utility rates and performance, as the IROC name implies:

The Committee shall:

(a) Meet at least every other month with additional meetings convened as necessary and as determined by the Committee Chair, and set an attendance policy for Committee members to help ensure a quorum of members are present for all meetings.

~~(b) Review reports from staff and an independent audit organization on rate and bond proceed expenditures.~~

(c) Review independent performance audits on Water and Wastewater systems.

(d) Provide advice on the efficiency and performance of Water and Wastewater systems on a regular basis.

(e) Provide advice on future cost allocation models.

(f) Oversee departmental savings efforts and deposits to the "Dedicated Reserve from Efficiency and Savings (DRES)" fund to be established as another part of the safeguard plan.

(g) Assist in the selection and retention of the independent firm to conduct the annual financial audit of the utility departments' budget activity.

(h) Assist in the selection and retention of the independent firm to conduct the annual performance audit to be set for each utility department.

(i) Provide an annual public report on the above issues to the Mayor and City Council.

(j) Provide advice and review of policy and proposals as sought by department leaders and other City staff related to budget and finance, environmental issues, technology innovations, public outreach and education efforts.

(k) Perform such further duties as may hereafter be delegated to the Committee by resolution of the City Council.

Any duties or functions of the Independent Rates Oversight Committee that fall within the oversight responsibilities of the Audit Committee should be fully coordinated with and reported to the Audit Committee.

SDMC § 26.2003. Of these eleven subsections, seven relate to utility rates or performance, three to administration, and only one to City policy (subsection (j)). To reconcile any perceived conflicts between sections 26.2001 and 26.2003, and to help interpret subsection (j), we turn to the legislative record of the ordinance establishing IROC to examine the intent of the Mayor and City Council.

The information presented to the City Council when they considered creating IROC included a memorandum from the Mayor dated February 15, 2007 (attached as Exhibit 1). On page 1, the memorandum explains:

The IROC will assume and expand upon the role currently played by the City's ~~Public Utilities Advisory Commission (PUAC) and will replace the PUAC as the~~ venue for first review of changes in budgets and project scope being proposed for the water and wastewater systems.

IROC's assumption of the duties of the former PUAC is repeated on page 2 of the memorandum under "Primary Responsibilities of the IROC:"

Assume all PUAC duties related to the review of policy and proposals and advice as sought by Water and Wastewater department leaders and other City staff. The subject areas to be addressed by the IROC will include budget and finance, environmental issues, technology innovations, public outreach and education efforts.

This language is strikingly similar to that of subsection (j) of section 26.2003, thereby linking subsection (j) to the assumption of the duties of the PUAC. Therefore, the apparent intent of subsection (j) is for IROC to assume the responsibilities of the former PUAC as the Mayor's memo indicates.

This interpretation is affirmed by a recital in the City Council's action confirming the Mayor's appointments to IROC.

WHEREAS, the IROC will replace the City's existing Public Utilities Advisory Commission, assuming its duties related to the review of policy, proposals and advice sought by the water and wastewater systems, and will also take on expanded duties;

City Council Resolution No. R-303045.

The duties of the PUAC are set forth in former Municipal Code section 26.1103 (now repealed, but attached as Exhibit 2). The subject matter assigned to the former PUAC was very broad, covering public policy issues not only for City utilities, but also for gas, electric, television and telecommunication services. According to above language in the Mayor's memorandum and the City Council's resolution, however, IROC's assumption of the PUAC's duties is limited to water and wastewater issues. Consistent with that direction, IROC has not considered matters related to gas, electric, television or telecommunication services.

There is nothing in the IROC ordinance or the former PUAC ordinance that suggests review by IROC is a legal prerequisite to City Council taking action on a water or wastewater matter. IROC is purely an advisory body to the Mayor and City Council. It is certainly preferable that IROC review matters before they are considered by the City Council so that IROC's advice is timely, but City Council is free to act without consulting IROC.

#### CONCLUSION

The focus of IROC is oversight of water and wastewater ratepayer funds and the performance of the City utilities. ~~IROC is also tasked with advising the Mayor and City Council on policy issues related to water and wastewater service, having assumed that responsibility of the former PUAC.~~ While prior review by IROC is recommended so that IROC can accomplish its mission, IROC review is not a legal prerequisite to City Council action.

JAN I. GOLDSMITH, City Attorney

By

Thomas C. Zeleny  
Deputy City Attorney