

Austin Energy Governance – by Karen Hadden

Why Austin City Council Should Retain Control of Austin Energy, and not lose control to an independent board.

***A City Council Committee Board would be appropriate, but handing over control of a public utility to an independent board would pose huge risks, including accountability to Austin Energy shareholders/ ratepayers.**

***Lessons should be learned from San Antonio, where CPS' independent board went awry, utility management lied and City Council couldn't control the utility. A \$400 million loss had to be written off.**

As the Austin City Council discusses the best governance for Austin Energy, takes public input and reviews the recommendation of the Electric Utility Commission, the issue of how best to ensure public accountability is crucial.

The Pedernales Electric Cooperative had very bad experiences with their previous board, which became insulated from public accountability. Court action and the installation of a new board have been needed to straighten things out and clean up the rampant corruption.

We should also learn from the San Antonio municipal utility experience, where inadequate oversight by the utility's independent board eventually cost the utility and ratepayers \$400 million.

One of the great things about a municipal utility is that citizens get to have a say in what they want their utility to invest in. Citizens are the shareholders. What they think and want matters. For example, citizens may want their utility to pursue more energy efficiency, which makes homes and businesses comfortable while saving money for both the consumers and the utility, which can then avoid unnecessary investment in expensive infrastructure.

Our utility has done very well in many regards and won national awards and recognition for innovative programs and policies. Austin Energy has set important precedents in greenbuilding and energy efficiency programs, plug-in hybrid and electric cars, and wind and solar energy. Efficiency programs that continue to reduce energy consumption over the years have allowed Austin Energy to save money and keep rates down by avoiding building another coal plant. Meanwhile other utilities, including CPS Energy, did build another expensive coal plant. It could be argued that one reason Austin didn't have to have a rate increase in 17 years was because we didn't invest in more coal or nuclear plants. Our electric rates have been reasonable compared to other utilities, our bond ratings have been great and customer satisfaction has been high.

Recently the Mayor and Austin City Council rose to the challenge of becoming well educated quickly on many energy management issues when a rate increase was needed. While the process was long and time-consuming, it was democratic, allowing for input from many people with various viewpoints. The result is a rate package that is reasonable and defensible, and greatly improved.

To best maintain crucial public accountability Austin Energy should be directly overseen by the Austin City Council, which could become an incorporated body – an Austin Energy Board, with monthly meetings to address utility issues only. One or two representatives from the Austin Service area that live outside the city limits could be added to the board to ensure their representation. One or more committees could meet more frequently, as needed, to be able to advise the full board, and could call on experts and consultants to assist with technical issues when necessary. This would allow direct continued regular focus on energy issues, as opposed to addressing utility issues on an irregular schedule. The City Council based board could set salaries for Austin Energy employees so that highly talented personnel can be recruited and retained.

The incorporated City Council board structure would allow a more direct line of communication and more direct access through City Council members than would a separate, independent board. In San Antonio the additional layer that resulted from having a separate board insulated CPS Energy utility management from the public, and led to serious problems, especially since Council control was limited.

Several former general managers of Austin Energy provided comments in the Bob Kahn report on utility governance and discussed the fact that public accountability would be lessened with a separate independent board.

If the City Council plus up to two additional service area representatives incorporated as the Austin Energy Board, the Council members could be re-elected or removed by a vote, whereas it would be extremely difficult to remove members of an independent board who might take our utility in a bad direction.

With a separate board, Citizens would have to convince a large majority (a 75 % vote is proposed by the EUC) of City Council members to take action if it was necessary to remove a board. Significant damage would be done long before a bad board member could be voted off of a separate independent board.

Risky decisions could be rushed through without adequate public awareness or opportunities for input. San Antonio's utility ended up having to write off \$400 million on two proposed nuclear reactors, a project that citizens and many Council members strongly opposed, but the utility board pursued anyway. NRG Energy also wrote off \$400 million in this investment.

By contrast, the Austin Mayor and City Council wisely avoided investing in the nuclear expansion and saved utility ratepayers a lot of money by doing so. We should keep Austin Energy's governance in the hands of an incorporated board consisting mainly of the Austin City Council, close to access and accountability to the citizens who are the utility's shareholders. The utility would remain strong financially and would continue to maintain high credit ratings, while the important cost-saving clean energy goals of the community could be realized.

The models that can be drawn from include those of Seattle City Light and Colorado Springs. Seattle's municipal utility is governed successfully by the City Council. The full Council receives reports from an

Energy and Environment Committee and a Budget Committee that makes recommendations regarding rates. The utility is comparable in size to Austin Energy, being only slightly smaller. They're pursuing clean energy and have high bond ratings. Their customer satisfaction has risen from a ranking of 11th to 4th in the region for customer satisfaction. They recently had a two-year energy planning process in which governance was considered, and a decision was made not to change from City Council oversight.

A committee of Austin City Council Members, perhaps the existing Finance Committee, could take on close scrutiny of Austin Energy issues and report back to the full Council as needed, avoiding having utility issues take up excess time for the full City Council time. Citizens would be able to provide input to this committee (or several committees if needed) as well as to the full council.

What Happened in San Antonio and Why it Matters in Austin Today:

Things run fairly smoothly at CPS Energy today, that was not the case several years ago. The CPS Energy Board is comprised of business leaders from various parts of the city of San Antonio, but it turns out that this expertise was not enough. In fact, a very difficult and expensive scenario arose largely due to the existence of a separate board and its insulation from public accountability.

The utility pushed for and was able to build another coal plant, Spruce 2, despite citizen opposition, under the 2003 recommendations set by the Board. A push for two more nuclear reactors followed.

In February 2009, the San Antonio City Council reduced the first CPS Energy rate hike, from 5% down to 3.5%, due to public opposition. Citizens decried the fact that much of the increase would go to build more nuclear reactors. City Council clearly instructed the utility not to spend any more money on nuclear development, a directive that appears to have been ignored. The same day, the City Council allocated \$96 million for energy efficiency but somehow only \$3 million of that \$96 million ever went for the designated purpose. Some believe that the remaining \$93 million went into nuclear investment despite direction from City Council. The money became hard to trace. Citizens demanded a line-item budget, but were never able to get it. The Ratepayer Protection Coalition and many concerned citizens pled their case at City Council, but the CPS Energy Board and management were largely unresponsive to both citizens and to City Council. The utility, with its separate board, was operating with virtually no oversight or accountability.

The San Antonio Current reported on October 24, 2007: "CPS has appealed numerous Open Records requests by the Current to the state Attorney General. **The utility argues that despite being owned by the City they are not required to reveal, for instance, how much it may cost to build a plant or even how much pollution a plant generates, since the electricity market is a competitive field.**"

The nuclear issue became very heated. Citizens wrote to the CPS Energy Board, requesting to speak regarding an important upcoming nuclear development decision, one that ratepayers

would end up paying for. When people arrived for meeting they were told that they were too early and to wait outside the building. CPS Energy then filled the room with employees. When citizens re-entered at the appropriate time, they were told that they couldn't come in and were locked outside while the CPS Energy Board made major decisions regarding proposed nuclear reactors. Some people pounded on the door for half an hour, yelling, "Let us in." Board members left them outside. Eventually a few people were allowed into a sealed off glass press room where they could watch, but not be heard, but citizens were never allowed to speak regarding a major decision to move forward with more nuclear power.

Great furor broke out when it was learned that a \$4 billion nuclear development cost increase had been hidden by utility management from the board and City Council. This came to light just days before a city bond election that would fund more nuclear reactors. Later it was learned that the secret \$4 billion cost increase had been known by CPS Energy management for a long time, but kept concealed. The Mayor and Council members announced in a press conference that the City Council vote for nuclear reactor funding would be postponed until January.

Were San Antonio City Council members or the public glad to have separate CPS Energy Board? No. Was City Council able to get the information they needed from CPS Energy? No. San Antonio City Council members wished that they had more, not less, direct oversight ability.

A San Antonio Express-News article from October 27, 2009, reported the following:

"Councilman John Clamp said the increase put the council in a "precarious situation," even if it is just a negotiating tactic.

"You don't play poker with billions," he said.

Councilwoman Jennifer Ramos said the unexpected news makes an idea she and Clamp have been pushing, of creating a council committee that oversees public utilities, even more of a priority.

"So that in the future, we're always in the loop," she said.

CPS board chairwoman Aurora Geis acknowledged that the board had not heard the increased cost figure, but she said trustees generally are not aware of every twist and turn in negotiations.

"We're not in day-to-day management," Geis said. She reiterated the board's support for CPS management's recommendation to pursue the nuclear expansion and said she was not concerned with the council delaying the vote.

"We understand that we need council support," she said.

Read more: <http://www.mysanantonio.com/news/environment/article/Nuclear-cost-estimate-rises-by-as-much-as-4-844529.php#ixzz2ASwZ2QH1>

The disastrous scenario, with a cover up of a \$4 billion cost increase, illustrates the fact that an independent board is no guarantee that things will run well, even with experienced business leaders at the helm. Investigation was needed, but very little ever occurred. Virtually nothing

was revealed to the public. Several board members were asked to leave by Mayor Castro, but they refused to go. Eventually they did leave, as did former General Manager Milton Lee and former Interim General Manager Steve Bartley.

The whole experience was a horrendous nightmare for San Antonio, a distressing mess. With the wrong people in power at a utility board, it could happen anywhere. The nuclear fiasco pursued by an out of control independent board cost the utility and ratepayers \$400 million. The utility was financially unable to install the coal plant pollution controls that they'd previously promised the community.

Through an expensive court case, CPS Energy sought to get out of the nuclear deal and ended up reducing their 50% investment down to 7.5%. For years the CPS Board in San Antonio was a major barrier to progress towards efficiency and renewable energy, and a huge problem in terms of lack of transparency. City Council frequently couldn't get the answers and real information they wanted from the CPS Energy Board. Citizens were unable to vote a Board member in or out.

Progress toward cleaner, safer energy was not made because of having an independent CPS Board, but only despite it, and many citizens had to fight long and hard for years. They urged City Council to regain control of the utility. City Council members were by far more responsive to citizen concerns than the CPS Energy Board, but their oversight was unfortunately too limited to do enough.

While things are finally better today in San Antonio, especially with a new CEO at the helm of the utility, Austin should avoid making the same disastrous mistakes. The governance structure was a large part of the problem.

The August 2012 governance report by Bob Kahn provided comments from interviews with former utility managers, including former CPS Energy General Manager Mr. Milton Lee, but failed to include an interview of even one of the many citizens who struggled for years to put the utility back on track.

Many of those deeply involved in San Antonio over the last few years would advise Austin to prevent the agonizing experience that they had with the CPS Energy Board. They would urge the Austin City Council to control the utility, and to maintain as much direct public accountability as possible.