

**GOVERNANCE STUDY OF PUBLIC POWER UTILITIES
FOR THE CITY OF AUSTIN**

Bob Kahn, LLC

Energy Consultants

August 27, 2012

Table of Contents

Austin City Council Resolution.....	4
Past City Council and Electric Utility Commission Actions Regarding Governance.....	4
Background.....	5-22
Governance Models in Texas.....	5
Survey of Municipally Owned Electric Utilities in Texas by the Texas Public Power Association...11	
Governance Models Outside of Texas.....	12
2010 Governance Survey by the American Public Power Association.....	15
Interviews.....	17
Rating Agency Public Power Rating Criteria.....	19
Rating Reports for Austin Energy.....	21
City of Austin Electric Utility Commission’s Public Forums on Utility Governance.....	21
Discussion.....	23-30
Issues to Consider When Contemplating the Form of Governance.....	23
Pros and Cons of City Council versus Board Governance.....	28
Governance Models.....	29
Conclusion.....	30
Recommendations Going Forward.....	31
Appendix A—Austin City Council Resolution No. 20120607-038	
Appendix B—September 29, 1994 Austin City Council Minutes	
Appendix C—1996 Price Waterhouse -City of Austin Electric Dept. Competitive Performance Review	
Appendix D—Announcements Regarding Public Forums on the Austin Electric Utility	
Appendix E—Agenda and List of Participants in the Public Forums	

Appendix F—June 4, 1996, EUC Recommendation Concerning the Establishment of an Independent Board

Appendix G—Austin City Council Resolution No. 990913-05

Appendix H—January 14, 2002 EUC Recommendation Regarding the Establishment of an Independent Board to Govern Austin Energy

Appendix I—July 23, 2012 Recommendation by the EUC Regarding Governance of Austin Energy

Appendix J—Section 1502.070 Texas Government Code

Appendix K—Sections 552.121-124 of the Texas Local Government Code

Appendix L—Excerpts from the CPS Energy May 23, 2012, Official Statement

Appendix M—San Antonio City Ordinance Providing for the Appointment of Board of Trustees by Quadrant

Appendix N—Examples of Notice Issued by CPS Energy Seeking Candidates for Trustee Position

Appendix O—CPS Energy Board of Trustees Agenda and Focus

Appendix P—Questions and Answers Regarding the Greenville Board of Trustees

Appendix Q—Greenville Charter Provisions for its Electric Utility Board

Appendix R—Information on the City of Georgetown’s Advisory Board

Appendix S—City Charter Provision of the City of Boerne’s Utility

Appendix T—City Charter Provisions of the Brownsville Public Utilities Board

Appendix U—City Charter Provision of the Lubbock Electric Utility Board

Appendix V—Excerpts from the Ordinance Creating the Kerrville Public Utilities Board

Appendix W—City Charter Provisions and Ordinances of New Braunfels Utilities

Appendix X—Excerpt from TPPA Survey of MOUs in Texas

Appendix Y—List of MOUs in Texas

Appendix Z—Utilities Board Bylaws of Colorado Springs

Appendix aa —Seattle City Council Energy and Environment Committee Information

Appendix bb—Information on Seattle City and Light Review Panel

Appendix cc—Tacoma City Charter Provisions on the Powers and Duties of the Public Utility Board

Appendix dd—Jacksonville City Charter Provisions on JEA

Appendix ee—Riverside City Charter Provisions on the Board of Public Utilities

Appendix ff—Information on Memphis Light, Gas and Water Division

Appendix gg—Riverside City Charter Provisions and Other Information on the Eugene Water and Electric Board

Appendix hh—2010 Governance Survey by the APPA

Appendix ii—Interviews of Former General Managers of Austin Energy

Appendix jj—Fitch Ratings-U.S. Public Power Rating Criteria

Appendix kk—Moody’s Investor Services-Rating Methodology for U.S. Public Power Electric Utilities with Generation Ownership Exposure

Appendix ll—Standard & Poor’s Ratings Services Criteria of Publicly Owned Utilities

Appendix mm—Fitch Ratings-U.S. Public Power Peer Study

Appendix nn—Fitch Ratings-Rating Report of Austin Electric Fund

Appendix oo—Moody’s Investor Service-Ratings Report for Austin’s Electric Utility Revenue Refunding Bonds

Appendix pp—Cruz, Nuno, Sanford V. Berg, and Rui Cunha Marques. 2011 “Managing Public Utilities: The American Way” University of Florida, Dept. of Economics, PURC Working Paper

Appendix qq— A December 1994 Document titled “Electric Utility Independent Board”

Appendix rr—Excerpts from the 1995 Price Waterhouse “Strategic Assessment”

Information was also gathered thru interviews of representatives of the MOUs cited in this Study.

Austin City Council Resolution

On June 7, 2012 the City of Austin City Council passed Resolution No. 20120607-038 directing the City Manager “to study and compile a list of the various governance models of public power utilities that serve customers located outside of the regulating municipality. The study should include municipally-owned utilities from across the country with a focus on Texas-based utilities.” The City council further directed the Electric Utility Commission (EUC) “to evaluate the models presented by the City Manager, including at a minimum the impacts on local control and public participation, effects on bond ratings, legal and municipal charter issues, and impacts on utility and regional finances.” Council also directed the City Manager and EUC to “consult with former General Managers of Austin Energy, the Texas Public Power association (TPPA), the American Public Power Association (APPA), and other sources they consider appropriate to inform their understanding of the issues and enhance the analysis.”

The City Manager was directed to present his report to the EUC no later than August 31, 2012. The EUC was directed to report its findings and input to the City Council no later than October 31, 2012.

The Resolution is attached as Appendix A.

Past City Council and Electric Utility Commission Actions Regarding Governance

September 29, 1994—Council passes a resolution directing “the City Manager to work with the Electric Utility Commission to develop and report on options for an independent Electric Utility governing board.” Item 47 of the Council Minutes (Appendix B)

February 14, 1996—Price Waterhouse issues the City of Austin Electric Utility Department Competitive Performance Review. (Appendix C)

April 29, 1996, May 8, 1996—The EUC announces a series of Public Forums to discuss and develop recommendations identified in the Competitive Performance Review of the Electric Utility by Price Waterhouse. (Appendix D)

May 13-14, 1996—Public Forums regarding Utility Governance are held at Town Lake Center over a two day period for about three hours each evening. The forum consisted of panel participants, EUC members, and public input. (A list of participants may be found in Appendix E) The transcripts of the Public Forum may be found at the City of Austin website under Boards and Commissions.

June 4, 1996—The EUC forwards a Memorandum to the City Council, citing the Price Waterhouse Competitive Performance Review and the Public Forums, recommending Council hold a Charter election to establish an independent board to govern the Austin Electric Utility. (Appendix F)

September 13, 1999—City Council passes a Resolution stating among other items that the “City may initiate a public education and input process that may culminate in a City Charter amendment election to consider governance options for its electric utility, including establishing a partial powers governing board using the San Antonio model. This board model will retain for City Council the powers of eminent domain, rate setting, debt issuance and budget approval.” (Paragraph 5 of Appendix G)

January 7, 2002—The EUC Forwards a Memorandum to Council recommending Council hold a Charter election to establish an independent electric utility board to govern Austin Energy. (Appendix H)

July 23, 2012—The EUC Approves the following motion: “Resolved, the Austin City Council should hold a Charter election in the fall of 2012 to determine whether an electric utility board should be established to govern the utility.” (Appendix I)

Background

Governance Models in Texas

There are three basic governance models of MOUs in Texas. These are 1) city council governance by elected officials 2) a board of trustees with not more than five members, one of which must be the mayor (Section 1502.070 of the Texas Government Code-Appendix J) and 3) a board of trustees where the City Council may prescribe the number of members for appointment to the board. In addition, the Council may delegate to the board virtually all of its powers including the power to establish rates, the power of eminent domain, and to issue obligations. (Section 552 of the Texas Local Government Code-Appendix K)

There are other local variations for governance of MOUs discussed below. The Austin City Attorney will opine as to the legality of governance models available to be considered by the City of Austin.

Austin, Texas

Austin, Energy

Austin has a City Manager form of governance. The City Council governs the electric utility department, Austin Energy (AE). However, there is a citizens’ advisory committee called the Electric Utility Commission (EUC). The EUC typically meets at 6:00 p.m. once a month, unless otherwise determined by the Commission. It has 7 members that serve three year staggered terms and are appointed by Councilmembers. The Commission has members from outside the City limits, as membership includes persons from within the service area. The EUC responsibilities include reviewing and analyzing all policies and procedures of AE, rate structure, fuel costs and charges, new generation facilities, budget, the general fund transfer, and strategic planning. Austin Energy has approximately 417,000 customers.

San Antonio, Texas

CPS Energy

City Public Service Board of San Antonio was created in 1942 under the predecessor Texas statute to Section 1502.070 of the Texas Government Code. The Board oversees the electric and gas systems. The electric system has approximately 725,000 customers. The Board of Trustees consists of 5 members, one of which is the Mayor, who serves in an ex-officio capacity. The Mayor is a voting member of the Board and is responsible for keeping the City Council “...fully advised and informed at all times of any actions, deliberations, and decisions of the Board and its conduct of the management of the Systems.” (Appendix L-Excerpts from the May 23, 2012 Official Statement) The other four members of the Board represent each quadrant of the service area (which contain areas outside the City limits) and must reside within the CPS Energy quadrant that they represent. (Appendix M) Although there is no requirement that ratepayers outside the City limits have a representative on the Board, the current Chair of the Board resides outside the City limits. The trustees serve a term of five years and are eligible to serve an additional term.

The Board meets once a month but will occasionally meet more often to hold special meetings on such issues as rates, transmission projects, etc., in order to receive public input.

Board Trustees recommend replacements for vacancies to the City Council but Council may only vote to approve or reject the nomination. It may not approve a Board member different than nominated by the Board. In other words, if Council rejects a nomination the Board would then forward a new nomination to the Council for its consideration. Reappointments also require approval by City Council. City Council has the right, upon passage of an ordinance, to change the method of selection and appointment to the Board. Examples of a public notice that has been used to seek out interested candidates to apply for a position on the Board are attached. (Appendix N) Board Trustees are required to complete a financial disclosure statement to assure there are no conflicts of interest. Board Trustees receive an annual stipend of \$2000 with the Chair receiving \$2,500. Trustees are reimbursed for reasonable expenses.

The Board appoints and employs all officers and employees. CPS Energy provides pension, employment benefits and post employment benefits to its employees, which are operated completely separate and independent from the City’s plans. CPS Energy self funds its pension and health care plans. CPS Energy has its own oversight committee for its pension plan consisting of a Board member, the CFO and the CEO. In addition, CPS Energy is also completely independent regarding use of City services in that it does not utilize any City services such as HR, financial, fleet, etc.

The Bond Ordinance states that “...the Board of Trustees shall have absolute and complete authority and power with reference to the control, management, and operation of the Systems...” However, pursuant to the bond ordinance the San Antonio City Council retains the authority to approve the issuance of bonds, notes or commercial paper, exercise eminent domain and set rates. The Council also has the authority to review Board action concerning policies adopted related to research, development and planning. Neither the Board nor the Council set the amount of the General Fund Transfer; rather it is contained in the Bond Ordinance authorizing issuance of the bonds.

A Citizens Advisory Committee was created in 1997 by CPS Energy "...to enhance its relationship with the community and to address the City Council's goals regarding broader community involvement with CPS Energy." The Committee meets monthly and provides "...recommendations from the community on the operations of CPS Energy for use by the Board and CPS staff." The Committee has 15 members consisting of one representative, nominated by City Council members, from each of the 10 districts in San Antonio, and five at-large candidates interviewed and nominated by the Committee. The Board appoints all members to the committee who may serve up to three two-year terms.

During 2010 the Board of Trustees authored a document containing its vision and values, Board of Trustees' job description and activities, roles of the chairman and vice-chairman, relations with management and with the City, and role of the Mayor. (Appendix O) The document may be instructive if the Board option is pursued by the Austin City Council.

The City of San Antonio has a City Manager form of government.

Greenville, Texas

Greenville Electric Utility System

The voters of the City of Greenville voted to amend the City Charter and create an Electric Utility Board in 1988. The Greenville Electric Utility System (GEUS) Board of Trustees was created pursuant to Sections 552.121-.124 of the Local Government Code referenced above. The Board oversees the electric system, provision of cable services and internet access. GEUS has approximately 13,000 electric customers. The history and reasons behind the creation of the Board, as well as additional information regarding the Board, are contained in Appendix P. However, in an excerpt from a memo by the City Manager to the Utility Study Committee explaining why the organization of the electric system should be changed, some of the reasons he stated included "... (1) political interference, (2) lack of consistent policy direction, (3) lack of consistent management at the top, (4) failure to operate the system on a business like basis, has resulted in inefficiently operated and controversial electric utility system..."

The City and GEUS share a common benefit structure, such as payroll, insurance, retirement, and workers compensation, but GEUS's personnel policies differ somewhat. For example vacation and time off policies differ. In addition, the employee compensation is governed by the Board and is independent of the City compensation structure.

The Board of Trustees consists of 5 persons appointed by a majority vote of the City Council. The Mayor serves as a non-voting, ex-officio sixth member of the Board. The term of office of each member is 3 years and members may serve no more than 2 terms. The members of the Board receive no compensation, but are reimbursed for reasonable expenses. In order to be a Board Member one must be a qualified elector of the City (therefore customers from outside the City limits may not be on the Board), cannot owe the City any past due monies, must be a customer of the utility, and cannot be a councilmember or be related to a councilmember.

The Board actively recruits candidates and seeks diversification in its members. The Mayor and Board Chair submit qualified candidates names to the Board of Trustees. The Mayor forwards a single recommendation from the Board to fill each vacancy to the City Council which may only confirm or reject the candidate. If the candidate is not confirmed then the Board must begin the selection process again.

It was decided the Board should be appointed rather than elected in an attempt to take as much politics out of the Board as possible. The Board does not micromanage but sets policy and general guidelines.

The Board meets once a month with meetings beginning at 6:00 pm.

The Board hires/fires the General Manager and employees are employed by the Board. The General Manager is responsible for hiring and firing all employees. The retirement system for GEUS employees is the same as the City's (Texas Municipal Retirement System) and managed by the City for GEUS.

The City and GEUS provide some services to each other with the costs for the services determined by an annual cost allocation study.

Under the City Charter the Board of Trustees has "full and complete power and authority in all matters relating to the System". This includes the authority to issue bonds, exercise the power of eminent domain, and to set rates. (Appendix Q)

The City of Greenville has a City Manager form of Government.

Georgetown, Texas

Georgetown has a City Manager form of government. The Assistant City Manager of Utilities reports to the City Manager. Georgetown has been looking at the option of forming a board but has taken no action. The utility serves approximately 21,400 electric customers. It also has customers outside the City limits.

A seven-member Advisory Board makes recommendations to the City Council regarding the Energy Services Division of Georgetown's utilities. That advisory board makes recommendations regarding capital improvement projects and priorities, utility services, resource supplies and other Council-assigned projects. Advisory Board membership consists of at least two councilmembers with the remaining members having expertise, in among other matters, construction standards, electricity and environmental engineering, if available. Members voluntarily serve and advise on the budget and once approved the utility is not required to seek City Council approval for items that were included in the budget. Board members must reside inside the City limits or within the ETJ. The Advisory Board meets once a month, on a Friday at 2:00 pm. (Appendix R)

The utility uses City services and the employees are City employees.

Boerne, Texas

Boerne has a City Manager form of government. The City Charter states that the “City Council shall act as the Board of Directors of all utilities owned and operated by the City”. (Appendix S) Boerne has approximately 4,800 electric customers. A Committee meets once a month on utility matters that makes recommendations to the City Council. The Committee consists of the Mayor, a councilmember that is rotated monthly, and staff. It is an internal meeting but there are public participation opportunities through other Councilmembers, staff and Council meetings. The City serves customers outside the City limits. There has been no negative reaction from rating agencies or the public in their manner of governance.

Brownsville, Texas

Public Utilities Board of the City of Brownsville

The City Charter indicates that “In connection with the management and operation of the various systems, and the expenditures and application of the revenues therefrom, the Utilities Board shall be vested with all the powers of the City with respect thereto...” (Appendix T) The Board oversees the electric, water and sewer systems. BPUB has approximately 47,000 electric customers. The most recent City Ordinance provided the Board authority to increase rates up to 5% over a five year period in whatever manner it chooses. For example, a 1% a year rate increase for 5 years or a 4% rate increase one year and a 1% increase two years later, etc. The Board chose to implement a 5% rate increase in one action, so now any further rate increases must be approved by the City Commission. The City Commission has also retained the authority to issue debt and exercise the power of eminent domain. The General Fund Transfer is approximately 8% of gross revenues and is established with close coordination between the Board and the City Commission.

The Charter provides for 7 members, including the Mayor as an ex officio voting member. The 6 members of the Board, appointed by the City Commission, serve 4 year terms with the ability to serve an additional term. The City Commission, by a majority vote, has the authority to remove a member of the Board without cause. A person must be a legal resident and qualified voter to be appointed to the Board. The Board holds a regular meeting once a month at 5:00 pm. All regular meetings of the Board are open to the public. The utility serves customers outside the City limits. Brownsville has a City Manager form of government.

Lubbock, Texas

Lubbock Power and Light

The City of Lubbock has an Electric Utility Board consisting of nine members appointed by the City Council and required to be citizens and eligible voters of the City. Their charge is to govern, manage and operate the electric utility. The Board members serve 2 year terms. There are term limits. The Board appoints the Director of Utilities and a General Counsel. The Director hires all employees except for those working for the General Counsel. The Board determines the amount of the General Fund Transfer. The City Council retained the right to establish rates, the power of eminent domain, issuing debt, and

approving the budget. There are approximately 99,000 electric customers. There are no customers outside the City limits. The Council, by a majority vote, may remove a Board member for cause.

Lubbock has a City Manager form of government. The Board was created in 2004. (Appendix U)

Kerrville, Texas

Kerrville Public Utility Board

The Kerrville Public Utility Board (KPUB) was created in 1987. The Ordinance states generally that “the complete management and control of the System...shall be vested in the Board...” The City has retained the authority to set residential rates, issue debt and exercise the power of eminent domain. The Board has the authority to set commercial rates. The General Fund Transfer is 4% and established by the Board. The Board employs the general manager and all other employees. There are approximately 21,600 electric customers.

The Board consists of 5 members, including the Mayor, who is an ex officio voting member of the Board. Terms are 5 years with the ability to serve another term. However, members can serve an unlimited number of non-consecutive terms if the member has not served for two years preceding the term for which such member is appointed. A vacancy is filled by the City Council from nominations of at least three persons for each position to be filled by the majority vote of the remaining members of the Board. Board members must be a citizen of the United States, reside or conduct business in Kerr County, and a customer of the system. Board members may be removed from the Board with cause by a majority vote of City Council. (Appendix V)

All meetings of the Board are required to comply with applicable open meetings laws and at least annually the Board is required to hold a meeting for all customers of the system to “discuss the general condition of the system and such other matters as the Board shall determine”. Board meetings are held once a month on Wednesday at 8:00 am.

The utility serves outside its City limits and has a city Manager form of government.

New Braunfels, Texas

New Braunfels Utilities

The City of New Braunfels has a Board, which was created in the original bonds that were issued in 1942. The City Charter provision authorizing creation of the Public Utilities Board of the City of New Braunfels is very broad and provides a great deal of flexibility for the City Council relating to the powers and duties given to the Board in the ordinance creating it. After creation of the Board the City Charter gives the City Council authority to “...at any time by ordinance to such effect, amend, modify, or change the terms and provisions of any such ordinance creating such board, and may abolish such board or change the duties of such board or of the members thereof, all as the City Council may deem best.”

Under the City Charter, the City Council has the authority to create the Board at any time “... for the purpose of managing, controlling, and operating...” the system. The Board oversees the electric, water and sewer systems. There are approximately 30,200 electric customers. The Charter further provides that the Board will consist of 5 freeholders of the City, one of which will be the Mayor, leaving all other matters related to the powers and duties and issues such as compensation and manner of selection of the Board members to the Ordinance creating the Board. (Appendix W)

In accordance with the latest Ordinance, all members of the Board, except the Mayor, are appointed by a majority vote of the City Council for five-year terms. There are no term limits. A person interested in a seat on the Board submits an application to the City Clerk who forwards it to the Council for consideration. The Council typically seeks Board members with business backgrounds. The Board of Trustees appoints the CEO of the systems and an attorney or attorneys. The CEO appoints all employees. However, the employees are City employees. But they are in a separate pension system (Texas Municipal Retirement System) from the City. In addition, the utility has its own separate salary structure and hiring procedures.

The members of the Board, except for the Mayor, receive an annual compensation of “not less than \$1200”, according to the City Charter. Board members currently receive compensation of \$100 a month. Under the Ordinance the Board has “complete authority and control of the management and operation of thesystems.” The Board makes recommendations for approval by City Council regarding setting of new rates. The City Council has also retained the authority to issue debt and exercise the power of eminent domain.

The City has a City Manager form of governance. There are customers outside the City limits.

City of Garland

The City of Garland has a City Manager form of governance. The City Council governs the electric utility. There is no advisory commission or board over the utility. The utility has approximately 68,000 customers and no customers outside the City limits.

Survey of Municipally Owned Electric Utilities in Texas by the Texas Public Power Association

Formed in 1978, the Texas Public Power Association (TPPA) represents the interests of public power providers in the State of Texas including municipally owned utilities (MOUs), river authorities, joint action agencies, and other consumer-owned electric systems.

The TPPA conducted a survey (Appendix X) of its 72 MOU members (Appendix Y) during April/May of 2012 on various issues including utility governance. With approximately 92% of the MOU load responding, the survey found that 68% of the MOUs were governed by City Councils and 32% were governed by Boards. City Council governance was more common among the smaller systems. Examples of small systems are Boerne, Floresville and Seguin. However, it was more common for large and mid-sized systems to be governed by a Board—half are so governed. The two large systems are Austin and

San Antonio. Examples of mid-size systems are Brownsville, Kerrville and New Braunfels. The survey also found that 25% of MOUs have a citizen advisory body without governance powers.

The survey found that MOU Board members typically have a longer term of service and are more likely to be subject to term limits than Council members. The average term for a Councilmember was 2.4 years while that of an MOU Board member was 3.6 years. Term limits existed in 66% of the Boards while only 32% of City Councils were subject to term limits.

The median annual compensation for Board members is \$300 while that of Councilmembers is \$1025.

The survey found that for systems which have a Board, 88% of the time the City Council retains the rate setting, bond issuance and eminent domain authority. Only the Greenville Electric Utility System performs all three at the Board level. The Kerrville Electric Utility Board sets commercial but not residential rates.

Most Boards set the utility budget, determine salaries of key MOU executives, enter into purchased power agreements, and authorize utility investments.

Council governed utilities typically retain authority in all matters, although 42% of them ceded authority to the City manager to hire and set the salaries of key MOU executives.

The survey also found that 82% of surveyed MOUs serve customers outside their city limits. On average about 12.8% of a MOU's customers live outside the city. Some of those MOUs serve within other cities and of those who do, 88% pay a franchise fee to those suburban cities, averaging 3.4%.

Governance Models Outside of Texas

Colorado Springs, Colorado

Colorado Springs has a strong mayor form of government. In addition to their city-wide duties, the City Council sits as the Board of Directors of the MOU, with the Council holding a meeting dedicated to utility matters at the offices housing the electric system once a month, as the Board. The Mayor sits as an ex officio member of the Board. (Appendix Z) The City has from time to time considered whether to change the governance to a separate Board but to date has taken no action. The utility has approximately 211,000 electric customers and does not serve any electric customers outside the City Limits.

Seattle, Washington

Seattle City Light

Seattle has a strong mayor form of government and serves customers outside the City limits.

City Council is the governing body over the utility. Seattle City Light has approximately 398,000 customers. The Energy and Environment Committee (a committee consisting of councilmembers) reviews and forwards recommendations to the full council for consideration. (Appendix aa) The Budget Committee, also a committee of councilmembers, reviews the utility budget and forwards

recommendations to Council for consideration. The Seattle City Light Review Panel is a citizens' advisory panel consisting of members from City Light's customer groups. Five members are nominated by the Mayor and four are nominated by the City Council, serving three year terms. (Appendix bb) The Panel and all 9 councilmembers, while studying strategic planning, recently considered, among other issues, the governance issue. The City undertook an in-depth strategic planning process that included a review of cost of service and rate design, with extensive stakeholder and public input over a two year period. As a result, the timing of the utility's budget and rates was changed to occur before consideration of the City's general fund budget. A decision was made not to make any changes in governance.

Tacoma, Washington

Tacoma Public Utilities

Tacoma has a City Manager form of government. Forty-five percent of its electric customers reside outside the City limits. Since Board members must reside within the City limits the customers outside the City limits are not allowed to be on the Board. The City has a five member Board that meets twice a month in meetings that are open to the public for viewing and comment. The meetings are televised. The Board members are appointed by the City Council and serve five year terms without pay. The Board has the "full power to construct, condemn and purchase, acquire, add to, maintain, and operate the electric...systems". The Board oversees the electric, water and railway systems. The electric system has approximately 169,000 customers. The Board makes recommendations regarding the incurring of indebtedness, issuance of bonds and the fixing of rates and charges for utility services, subject to approval by Council. The Board also submits an annual budget to Council for approval. In addition, the Charter requires that a "management survey" be made of the utility, which report and recommendations are made public. The Board uses City services and appoints a director of utilities. All employees participate in the City retirement system. The Board determines salaries of employees. (Appendix cc)

Jacksonville, Florida

JEA

JEA was created by Florida State Laws and is authorized to "own, manage and operate a utilities system within and without the City of Jacksonville." In 1998, the City Council approved a charter amendment to change the name of the Jacksonville Electric Authority to its acronym, JEA. The Charter gives JEA "...all powers with respect to electric..." that "...could have been...exercised by the City of Jacksonville." The Board oversees the electric, water, sewer and natural gas systems and has approximately 418,000 electric customers. The JEA Board has 7 members appointed by the Mayor, subject to confirmation by the Council, for 4 year terms and may serve no more than two consecutive terms. The members must be a resident of the City for 6 months prior to appointment. Jacksonville has a strong mayor form of government. The mayor can remove a member with or without cause, but removal must be approved by two-thirds of Council. Board members receive no compensation but may be reimbursed for reasonable expenses. The Board must meet at least once a month. The Board powers include the right to invest monies not required for immediate use, to enter into purchase power agreements, to exercise

eminent domain, to issue bonds and to establish rates. However, JEA is required to first publish notice and hold a hearing in the City of Jacksonville on any proposed rate change. JEA submits its proposed budget to the Council for approval. The JEA is not required to use any services (except for legal services) of the City, but if it does JEA will use the services on a “cost-accounted basis”, mutually agreed upon by JEA and the City. Currently, JEA uses the services of the City’s General Counsel, but no other City services.

The Board appoints a CEO who then appoints an Executive Management Team. Employees that are “appointed” (CEO, Executive Management Team, and others) have their compensation and benefits determined by the JEA Board. The rest of the employees, who are part of the bargaining unit, have their compensation set by the City Council. All employees of JEA participate in the City of Jacksonville pension plan. The City Council has the authority to repeal or amend any provision of the Charter by a two-thirds vote. (Appendix dd)

Riverside, California

Riverside has a City Manager form of government. The electric utility has approximately 106,000 customers. The utility does not provide any electric service outside the City limits.

The City Council appoints members to a Board of Public Utilities, which consists of nine citizen-volunteers to four year terms without compensation. The Board members may serve one additional term. The Board meets bi-weekly and oversees utility policies, operations, revenues, expenditures, planning and regulatory compliance. The Board reviews all actions by the utility before they are sent to City Council for final determination. Board meetings are open to the public and are held at 8:30 a.m.

The Board makes recommendations to the City Manager and to City Council on the budget for final approval. The Board establishes rates, subject to approval by Council. The City Manger interviews and then seeks concurrence from the Board, regarding the hiring of the General Manager. If the Board does not concur then the City Manager will interview another candidate to bring forward to the Board. All other employees of the utility are City employees sharing the same benefits and retirement plan. The utility uses all the typical City services any department of the City would use. (Appendix ee)

Memphis, TN.

Memphis Light, Gas and Water

Memphis has a City Manager form of government. The utility serves 430,000 electric customers and has electric customers outside the City limits. The Memphis Light, Gas and Water Division is governed by a five-member Board of Commissioners who are nominated by the Mayor and approved by the City Council. Board members must live in the service area, which allows membership from customers outside the City limits on the Board. Members of the Board serve three year terms. The Commissioners meet twice a month on Thursday at 1:30 p.m.

The Board is responsible “for doing all things necessary to supply MLGW’s service area with electricity, gas and water”. However, the Commission must have the approval of the City Council before purchasing

real estate, exercising the power of eminent domain, setting rates and establishing the annual budget. The President and CEO (who reports to the Mayor) of the utilities is nominated for a five year term by the Mayor and approved by the City Council. The utility employees are not City employees and a separate retirement system is maintained by the utility. Salaries that are over a certain dollar amount are approved by the City Council. The utility does not use any City services, but recently coordinated with the City by sending out a joint request for proposal for health care services, in an effort to keep costs down. (Appendix ff)

Eugene, Oregon

Eugene Water and Electric Board

Eugene has a City Manager form of government. The citizens of Eugene elect a five-member Board of Commissioners who serves four year terms, without pay. Four of the members are elected from four different wards in the City, and although not required by the Charter, the fifth member, who is a resident of the City, is in an at large seat that represents the ratepayers outside the City limits. The elected Water and Electric Board, as a form of governance for Eugene, has been in place since 1911. The Commissioners meet at 7:30 p.m. once a month, with opportunity for public comment on any issue to the Board. The utility has approximately 87,000 electric customers, including some customers outside the City limits.

The Board is responsible for operation of the water and electric utilities, delegated by the City Charter to the Board. The CEO is hired by and reports to the Board. The CEO hires all the employees, who are not employees of the City. The Board's authority includes approving the annual operating budget, establishing rates, issuing bonds and exercising the power of eminent domain. The utility does not use any City services, so for example, has its own fleet services and HR sections. The utility and the City both utilize the Oregon State Retirement System, but maintain separate records. (Appendix gg)

2010 Governance Survey by the American Public Power Association

The American Public Power Association (APPA) was created in 1940 and is based in Washington D.C. It is the service organization for the nation's more than 2,000 community owned electric utilities serving more than 46 million Americans.

The APPA's Governance Survey was completed in August 2010 and is their latest survey on governance. The purpose of the survey was to determine the type of control local governments exercise over publicly owned electric systems. (Appendix hh)

Of the 1,900 electric systems surveyed 658 completed them, but not all respondents responded to every question. Public power systems that sell primarily at wholesale were excluded from the survey. Since most survey respondents were utilities with a small number of customers, most survey results were presented by customer class size. The survey broke the customer class size into those that were less than 5,000 customers, 5,000 to 20,000 customers, 20,000 to 50,000 customers and greater than 50,000 customers.

This Study will focus on the customer size class greater than 50,000 (large utilities) to more closely align with Austin Energy's customer base of more than 400,000 customers. Ninety-three percent of respondents were MOUs, with the other seven percent consisting of state-owned utilities or political subdivisions, such as public power districts, county-wide utilities, public utility districts, and irrigation districts.

Forty-four percent of large utilities are governed by boards that are appointed. Twenty-four percent are elected to their boards and thirty-two percent are governed by City Councils. For all classes, fifty-nine percent of the time the boards are appointed by the mayor, but eighty-five percent of the time the mayor's choice must be approved by the city council.

Eighty-five percent of all classes of utilities with boards have either residency or service territory requirements for board members. In other words, a board member must be either a resident of the city and/or a customer of the utility.

For all classes of customers for utilities governed by a board, 29% of board members have a term of 1-3 years, 27% have a term of 4 years and 44% have a term of 5 or more years. City Councilmembers, on the other hand, have a term of 1 to 3 years 37% of the time, 4 years 63% of the time and 0% for 5 years or more.

Term limits for governing bodies (the study did not distinguish between boards and city councils) for the large utilities were imposed 47% of the time.

The study found, that in general, cities that governed the utility with city councils were more likely to have a citizens' advisory board than those with a board. And that the larger the utility the higher the chance the city would have a citizens' advisory board, regardless of the type of governing body, with 38% of cities with large utilities using a citizens' advisory board.

All elected boards for large utilities were compensated. Sixty-seven percent of appointed boards for large utilities were compensated. The median compensation for boards that are elected in large utilities is \$12,720 and \$2,400 for appointed boards.

The study surveyed which governing body (city council or board) has final authority on at eight specific actions: setting rates, approving the utility budget, setting salaries of key employees, issuing long-term bonds, making financial investments for the utility, approving purchase power agreements, exercising the right of eminent domain and hiring and firing utility personnel.

In general, the study found that where the board is the primary governing body for a large utility, the board has authority over all the actions except for issuing long-term debt. Where the city council is the primary governing body, for large utilities, the city council typically has final authority over all eight actions except for making financial investments for the utility and hiring and firing utility personnel. (See pages 5-8 of the survey)

The survey indicated that 64% of the 613 MOUs that responded to the survey serve customers outside the city limits and that 5% of those respondents with boards include a representative from outside the city limits.

Interviews

Former General Managers of Austin Energy

Five former General Managers (GMs), going back to 1984, were contacted for an interview regarding the issues raised by the City of Austin Resolution. One former General Manager declined to be interviewed. Juan Garza, Roger Duncan, Milton Lee and John Moore were interviewed. Summaries of the interviews are attached as Appendix ii.

All four of the GMs believe Austin Energy should be managed by a board. However, they had different thoughts on why there should be a board and what the powers and duties should be.

All four of the GMs stated that a major reason for recommending movement to a board was the frustration in dealing with the City bureaucracy. They also believed that a board, unlike City Council, would be more nimble, focused and contain the expertise necessary to manage the day to day operations of Austin Energy in a more business like manner.

The GMs agreed that there should be minimum qualifications required for board members. They all agree board members should have some level of business expertise including financial, accounting, regulatory and utility operations. All four GMs feel the board members should be reimbursed for their expenses. Three of the GMs believe compensation should be reasonable, more than token, to recognize the time and expertise involved, and one GM believes it should be minimal or token.

Term recommendations by the GMs range from 2-5 years, although the higher end of the range is more prominent. Three of the GMs would limit board members to two terms with the fourth recommending no term limits. There is a belief that the longer a member remains on the board the better opportunity to increase the level of expertise and experience of that board member. One GM believed there should be 5-7 board members while another suggested 7-9 members.

All of the GMs believe the City Council should have the authority to set rates, three GMs believe the Council should have the authority to issue bonds, and two GMs believe the Council should have the authority to exercise eminent domain and establish the amount of the General Fund Transfer.

Two of the GMs felt employees should be employees of the board. Another one believed the board should appoint the executive team and yet another generally stated he did not want to see the employees negatively impacted. One GM believed the employees should remain with the City pension plan if possible, while another believed they should either stay in the City pension plan or join the Texas Municipal Retirement System.

All four GMs believe the Board should contain a member from outside the City limits. Two of the GMs stated consumer interests should be represented on the Board.

Two of the GMs recommend that Austin Energy use a provider other than the City for all services, such as HR, fleet, accounting, etc. The other two hold similar opinions but expressed concerns regarding the ability to separate some services from the City such as billing for electric, water and wastewater, which is currently managed by Austin Energy, and the 311 call center.

All four of the GMs believed that public participation is very important, and should therefore continue if a Board is created. One GM stated that public participation is important, even if it is time consuming, and that if public participation was reduced by going to a board he would consider the process “flawed”. It was suggested that one way San Antonio assures public participation is through its Citizens Committee. Another GM believed the board meetings should be televised or aired via the internet. They also believed the meetings should be held at times and places convenient for the public.

One GM agreed that creation of a board would cause the loss of some local control but believed the board that is created would be a “local board”. Another felt there would be an “indirect” impact on local control. Finally one GM agreed there would be a lessening of local control but felt that loss would be outweighed by the efficiencies that are gained along with a unity of purpose and a more deliberate business like approach by a board.

Financial and Economic Consultants

Discussion with Dennis Waley and Dan Hartman, Managing Directors of Public Financial Management

According to the City’s financial advisors, moving to a board would be seen as a positive with the rating agencies. How an MOU is governed is important to the rating agencies. The less politics is injected into the process the more favorably the MOU is viewed by the rating agencies. The belief by the rating agencies is that a board will have more professionals making choices, be less political and more autonomous. However, they indicated that in their experience, the governance structure does not make a huge difference in the ratings of MOUs by the rating agencies. The chief focus of rating agencies is the ability or willingness of the governing body to raise rates in order to maintain the financial integrity of the system. It was the opinion of Mr. Waley that the Fitch rating criteria were the most straightforward. They also stated that the ratings agencies do look at issues other than rates managed by MOUs.

Discussion with Angelos Angelou, Principal Executive Officer of Angelou Economics and Jon Hockenyos, Managing Director of Texas Perspectives

Angelou Economics develops economic strategies for Cities, other political subdivisions and foreign entities, including site selection and on energy efficiency matters. Texas Perspectives is in the business of solving economic and public policy issues.

They both believe that governance of Austin Energy should be moved to a board. They believe a board, if done correctly, will be more efficient, make decisions faster, be more focused, less political, and contain more expertise. One cautioned that care would need to be taken in creation of the board since the devils are in the details. For example he stated it would come down to who is on the board and how the general fund transfer issue is handled. If handled incorrectly it could create big problems. In the end he

indicated it would depend on the performance of the board, which only time will tell. There was a belief that the board should contain business professional, not special interests, in order to assure more independence.

There was one view that the board's mission should be singularly focused to achieve the highest return to the City and run like a business. Further, that the board should consider out sourcing services required by Austin Energy as it would most likely be more efficient and cost effective.

There was one view that having a board would have a positive impact on credit ratings and impact Central Texas by allowing money to flow faster into the region. On the other hand, there was a different view expressed, that generally there would be no impact economically in the region resulting from the creation of a board.

One believed the City/Austin Energy has been successful in economic development, but could be less bureaucratic and use more expertise, while the other believes it hasn't been as successful as it could be. There was a belief that Austin Energy should have a place at the table in economic development activities at the City. In support of this belief he stated that, for example, \$100 of retail revenue brings in \$1 to the City while that same \$100 would bring in \$9.1 to the City from Austin Energy.

There was a belief that if a board is created it is important that public participation was accommodated and that a person from outside the City limits should be on the board.

Former City Manager

Discussion with Jesus Garza

Jesus Garza was the City Manager during the time that the 1996 EUC sponsored Public Forums on Utility Governance was held. Mr. Garza was asked why the issue of governance was never considered by the City Council after the Public Forums were concluded. He indicated, that as he recalled, he believed at the time the issue needed more study. However, given the existing environment the City Council operates in today, he believes the Council should give serious consideration to creating a board. He also believes it would be fair to have a person from outside the City limits on the board, so that their voice could be heard. He believes a board would strengthen the utility.

He also stated he believes the presence of Public Power has always played an important role in Central Texas and has served the community very well.

Rating Agency Public Power Rating Criteria

The rating criteria for public power utilities by the rating agencies of Fitch, Moody's, and Standard and Poor's were reviewed. The criteria for all three agencies are attached as Appendices jj, kk, and ll respectively.

The Fitch report, dated January 11, 2012, explains Fitch's approach to rating U.S. public power systems. The report looks at five key areas of operational and financial importance to the credit quality of MOUs

and cooperatives. The five areas are governance and management strategy, assets and operations, cost structure, financial performance and legal provisions, and customer profile and service area. On page 2 of the report Fitch indicates that “the strength of a utility’s ...governing body, usually an independent board of directors or elected city council, is a key credit consideration in...” its analytical process. And that “a high degree of board or city council understanding of a utility’s business strategy and the issues facing the utility is also important.” The report goes on to state that “Fitch assesses the willingness and ability of an issuer’s management and governing body to increase rates to ensure the measured, timely, and adequate recovery of total costs.”

On Page 3 of the report Fitch recites what it believes to be attributes of the governance and management area. The report divides the attributes into those that signify stronger, midrange and weaker governance and management. For example, stronger attributes would include a “management and board of directors with extensive experience” and “an objective, engaged board of directors that does not exert political pressure.” Midrange would include attributes such as a “generally stable management team and board of directors with modest turnover”. A weaker governance and management structure would include attributes such as “significant political pressure in the underlying municipality or in the member’s service area.” On page 14 of the report the type of governing body (e.g. board, city council, etc.) is listed as a key rating consideration.

The Moody’s report explains its rating methodology and approach to credit ratings for U.S. public power electric utilities with generation ownership exposure. The report is dated November 9, 2011. In its report Moody’s expresses its belief that electric utilities that own generation “...have a higher degree of business complexity than other essential services, such as water, sewer, and stormwater systems.” Moody’s attributes the complexity to the “...greater operating risk in an environment subject to ongoing regulatory changes.”

The methodology used by Moody’s includes the assignment of percentage weights to five broad rating factors. Moody’s lays out its summary table on page 5 of its report. Notably, and relevant to this Study, under the factor for “willingness to recover costs with sound financial metrics”, with a weighting of 25%, the issues considered include political risk, timeliness of recovery, rate-setting record, local government supportiveness and general fund transfer policy. Moody’s believes, in discussing rate-setting, that “the longer and more complicated the process, the more pressure the delay may put on a public power utility’s liquidity.” On page 9 the report also notes as a key factor, among other items, “...who governs the utility, who sets its rates, and who issues the revenue bonds...as well as the degree to which the general government is responsible for supporting the utility in times of financial stress.” The report noted that “local governments have a strong record of supporting their public power electric utilities in times of fiscal stress” citing, as an example, where Seattle used its liquidity to assist its MOU. Pages 10 and 31 of the report have a chart showing the impact on ratings this factor can have. For example, the chart shows that an Aaa rating (the highest) reflects a utility that has an “excellent rate-setting record; rates, fuel, & purchased power cost adjustments less than 10 days; No political intervention in past or extremely high support from related government; very limited General Fund Transfers governed by policy”. A Baa rating is one where rates may take 61-90 days to set and there is “persistent political intervention or below average support from related government...” The ratings go lower as political

intervention increases and the time increases to set new rates. Or another way to look at it, the quicker rates can be implemented without political intervention the higher the rating.

The ratings report for publicly owned electric utilities by Standard and Poor's Rating Services(S&P) is dated June 15, 2007. It recognizes the importance of a utility being able to operate in a dynamic energy industry and its impact on bondholders and lenders. In assessing the quality of management on pages 2 and 3 of its report S&P looks at "...the extent to which a utility's strategic plans are supported by local councils or boards of directors and the extent to which the governing body's actions are supportive of credit quality." Other criteria that S&P considers when reviewing the effectiveness of management include "a proactive and farsighted management approach that has the support of an informed board or council" and managements "...ability to operate within a governance and oversight structure."

Also attached to this study is Fitch's U.S. Public Power Study, which includes the financial performance and ratings of Fitch-rated public power utilities. Most Notably the ratings of ERCOT systems are contained on page 5 of the Study and of retail systems on page 11. (Appendix mm)

Rating Reports for Austin Energy

According to Dennis Waley the latest bond sale was in 2010. He also indicated that Moody's upgraded the combined debt in June 2012 in conjunction with the Austin Water Utility bond sale.

A review of the reports, with a focus on the governance issue, shows a consistent acknowledgement, that City Council will be required to approve any requested rate increase. In its July 7, 2010 rating, Fitch expressed a concern about Council's willingness to raise rates. It also stated that a key rating driver was "the Austin City Council and management's willingness to raise rates in a timely manner as necessary." (Appendix nn) And Moody's, in its May 24, 2010 report, stated it believed "...AEs close working relationship with the city and the importance of the utility's transfer to the city's general fund would indicate that all parties are likely to work towards the goal of maintaining the overall stability of the system." In the same report Moody's listed as a challenge "...rate setting subject to political constraints..." (Appendix oo)

All of the ratings reports cited above pre-date the June 7, 2012 action by the Austin City Council approving a rate increase for Austin Energy.

City of Austin Electric Utility Commission's Public Forums on Utility Governance

As discussed earlier the EUC held two forums over a two day period, on May 13-14, 1996, whose sole purpose was to focus on governance issues. Appendix E contains the list of participants. The transcript for the forum may be found on the City of Austin website under Boards and Commissions.

The participants discussed a wide range of issues relating to governance and received input from the EUC and the public.

There was a consensus by the panel that Austin Energy should be governed by a board. One participant believed it should be an elected board while the other participants felt it should be appointed. The

participant desiring an elected board believed it would cause an open discussion on the issues, while the participants desiring an appointed board believed an elected board would cause more politics to be injected into the process. It was felt that potential board members might make promises to voters in order to get elected.

It was generally believed that city government, in a bureaucratic political system, was ill suited to manage a competitive business. It was stated that the governing body needed to be nimble, focused and flexible. The governance structure of the utility should support, not constrain, the competitiveness of the utility. And that the bond markets, customers and employees should have confidence in the governance of the utility.

It was felt that the board should be diversified and contain a member from outside the City limits. Some members of the panel believed there should be more than five members on the board. It was mentioned that the focus should not just be on rates but that there are many issues the utility manages, so that a more holistic approach should be taken in the governance of the utility.

There was considerable discussion regarding the qualifications of the board members. Some members of the panel focused on professional qualifications such as a lawyer or an accountant while others focused on board members representing classes of customers. Compensation for board members was discussed with no apparent consensus. Some members suggested “reasonable compensation” without placing a dollar figure on the table.

There was significant discussion regarding the method of selecting the board members. The general consensus was that a “selection/recruiting committee” would be established to make recommendations to City Council. There was also a belief that terms should be staggered with some members suggesting no term limits.

There was considerable discussion on the impact that creation of a board may have on employees. There was a consensus that there should not be a negative impact and that the pensions should be protected. An AFSCME representative expressed concern regarding the impact creation of a board may have on employees.

Some EUC members made comments during the panel discussion. One believed there should be compensation, attendance requirements, and minimum qualifications to be a board member, such as an engineer, a lawyer, a banker, or a retired person. It was also felt there should be diversity of race, sex and where the board members reside within the service area. The EUC member believed the board should be appointed rather than elected. Another EUC member believed board members should be paid \$50 per meeting, there should be no term limits, that the board be diverse, including various rate classes, and that there should be a recruitment/solicitation of applicants for board members with approval for the board member by the City Council. Finally, the EUC member felt the present system cannot move fast enough. Another EUC member believed it was important to make sure there were no conflict of interest issues.

Discussion

Issues to Consider When Contemplating the Form of Governance

If the City Council is considering a model utilizing a board there are numerous issues to consider.

Powers of the Board

The TPPA survey found that most boards set the utility's budget, determined salaries of key executives, entered into purchase power agreements, and authorized utility investments.

The TPPA survey found that for systems with a board that 88% of the time the City Council retained rate-setting, issuance of bonds and eminent domain authority. Exceptions included:

- The GEUS Board performed all duties, including rate setting, bond issuance, and the exercise of eminent domain.
- The Kerrville KPUB Board performs part of the rate setting process function, with the Board setting commercial rates and the City Council setting residential rates.
- The Brownsville City Commission has delegated partial rate setting authority to the PUB Board, which on its own can increase rates no more than 5% over a 5 year period, with that authority expiring at the end of the 5 years or implementation of the rate increase, whichever occurred first.
- The San Antonio City Council has retained the authority to review CPS Energy Board actions concerning policies related to research, development and planning.
- In Georgetown once the budget is approved by Council the utility is not required to seek Council approval for items contained in the approved budget.

The APPA survey found that where the board is the primary governing body for a large utility, the board has authority over setting rates, approving the utility budget, setting salaries of key employees, making financial investments, approving purchase power agreements, exercising the power of eminent domain, and hiring and firing personnel. The City Council retained the authority to issue bonds. Where the City Council is the primary governing body the council typically had authority over all the actions described above except for making financial investments and hiring and firing personnel.

One notable difference between the TPPA and APPA surveys is that in Texas the Council typically retains the power to set rates but outside Texas the Boards typically are authorized to set rates.

Probably one of the more important powers for Austin is the setting of the amount of the General Fund Transfer. Two former GMs believed the Council should have the authority to set the level of the GFT while the other two believed the Board should set the level of the Transfer. One interviewee believed, without expressing a preference, the success of the Board Governance Model will depend not only on who is on the board but how the Transfer issue is handled.

All of the former GMs interviewed believed the City Council should retain the authority to set rates. Three of the GMs believed Council should retain the authority to issue bonds, and two of the GMs believed the Council should have the authority to exercise eminent domain and establish the amount of the General Fund Transfer. All other matters, for example running the day to day operations of the utility and purchasing, would reside with the board.

Selection of Board Members

Board members are appointed under Section 552 of the Texas Local Govt. Code. However, Section 1502.070 of the Texas Govt. Code does not specify the manner in which board members are selected to the board. That section of the Code states “a board of trustees named in the proceedings adopted by the municipality and consisting of not more than five members...” It is recommended the City Attorney review that section to determine the options for selecting a board member (appointed, elected or both). There was a general consensus that board members should be appointed in order to reduce the potential for politics to be injected into the process. It was also believed that an appointed board member would be more independent than an elected member. On the other hand, a member of the panel at the EUC Public Forums felt that electing board members would cause there to be a more open discussion regarding the issues facing the utility. The APPA survey found that a majority of large utilities governed by a board are appointed.

If board members are appointed, another issue is the process used to appoint them. For example, the current board may recommend a candidate to City Council, with the Council’s sole option to either accept or reject the candidate. Or, Council may be the sole decider with no recommendation from the board. Many of the people interviewed for this study believed a recruitment/selection committee would be a valuable way to seek out qualified board candidates. In addition, a public notice advertising a vacancy on the board, like that used by CPS Energy (Appendix N), may be a way to attract interested candidates.

The nature of the qualifications for board members is another consideration. Some believe there should be professionals on the board, such as accountants, persons with financial backgrounds, lawyers, persons with regulatory and utility operational experience, and persons with a business background. Diversity is an important consideration. Further, it has also been suggested that board members chosen from different geographic areas of the City will increase diversity, along with considerations of the race and sex of the candidate. Others focused on representation of the different customer classes on the board. It was also suggested that a consumer representative be on the board.

Another consideration is should the Mayor, or other Council members be on the board? This study did not find any boards with a Councilmember on the board, other than the Mayor. And then the question is should the position be voting (as in San Antonio) or non-voting (as in Greenville)? One of the reasons stated for a mayor to be on the board is to keep the lines of communication open between the two governing bodies.

There was unanimity that a customer from outside the City limits should be on the board. However, while 64% of the 613 responding utilities serve customers outside the city limits, only 5% of Boards included a representative from outside the City limits. Practices in this regard vary, with varying effects.

- Forty-five percent of Tacoma's customers reside outside the City limits but have no representation on its Board.
- Kerrville has customers outside its City limits and may have members on the Board from outside the City limits. Interestingly, Kerrville's rates were appealed to the PUC a number of years ago by ratepayers outside the City limits, despite their ability to be represented on the KPUB Board.
- Greenville, Brownsville, and New Braunfels have customers outside the City limits but Board members must be a resident of the City.

Terms of Board Members

Other considerations include how long the terms should be for board members and what type of term limits should be imposed.

The TPPA survey found that MOU board members typically have a longer term of service than councilmembers (3.6 years v. 2.4 years) but are more likely to be subject to term limits. A majority of the MOUs in Texas, with boards, have 4-5 year terms. A majority of the MOUs in Texas, with boards, allow the board members to serve one additional term.

The APPA survey found that for all utilities governed by a board that 29% have a term of 1-3 years, 27% have a term of 4 years and 44% have a term of 5 or more years. City Councilmembers served much shorter terms with no Councilmembers having a term for 5 or more years. The survey also found that term limits for governing bodies (the survey did not distinguish between boards and City Councils) for the large utilities were imposed 47% of the time.

Term recommendations by the GMs ranged from 2-5 years, although the higher end of the range was more prominent. Three of the GMs would limit board members to two terms while a fourth recommended no term limits. Their belief was that the longer a member stayed on the board the better the opportunity to increase the level of expertise and experience of that board member. Another consideration is whether approval by the board and/or Council is required before a board member can serve an additional term.

Number of Board Members

This study did not find any boards with less than five members. One GM believed there should be 5-7 board members another suggested 7-9 members. Several of the panel members in the 1996 EUC Public Forum felt there should be more than 5 board members to allow for broader representation. If the San Antonio model is utilized then no more than 5 board members are allowed. The Greenville model provides the flexibility to have more than 5 board members.

Employees

There was a general feeling that if the City went to a board that the employees should not be negatively impacted and that their pensions be secure. Some felt that the Texas Municipal Retirement system should be investigated as an option.

Two of the GMs believed the employees should be employed by the board while one felt the board should appoint the executive team.

Most of the boards investigated had the employees as employees of the board, including the CEO/General Manager.

If the board option is pursued then consideration should be given to contacting the City of Austin Employee Retirement System and the Law Department regarding the ability to transition to a pension at the board, or to the TMRS, or whatever other options may be available.

Use of City Services by a Board

All four of the GMs agreed that the board should not use City services because of the bureaucracy involved. However, two of the GMs expressed concern over separating some services such as utility billing or the 311 call center. There is a belief that outsourcing services will be more efficient and cost effective. CPS Energy does not use any services of the City. If a board is created and services of the City are reduced then consideration should be given to a transition plan.

Public Participation

Everyone interviewed believed that public participation is very important. One GM suggested that the board meetings should be televised or aired via the internet. Another GM suggested that the Citizens Advisory Committee utilized by San Antonio is another way to assure more public participation. The MOUs researched in this study vary widely on when their meetings are held. It would seem that it would be easier for the public to attend a meeting in the evening than during the day, for example at 1:30p.m.

Impact on local control

If local control is interpreted as involvement of City Council in running Austin Energy or the ability of the public to rely on elected officials to govern the utility, then there will be an impact on local control if a board model is pursued. The more authority ceded to a board, one could argue, the less local control by the City Council of Austin Energy. Also, if the board is appointed one could argue it is more difficult to impact an appointed board member than a City Council member that is running for office. On the other hand, one GM took the position that even though there would be a loss of some local control he would consider the board as being "local". Other GMs believed there would be an indirect impact on local control. However, one believed that that the loss of local control would be outweighed by the

efficiencies gained with a unity of purpose and a more business like approach by a board. Regardless, there would be no loss of local control as the term is typically understood, i.e. a transfer of city-level authority to state or federal officials.

Compensation of Board Members

Some MOU boards discussed in this Study receive compensation and others do not. All appear to be reimbursed for reasonable expenses. The TPPA survey found that the median annual compensation for board members is \$300 while that of Councilmembers is \$1,025. According to the APPA survey all elected board members for large utilities were compensated and 67% of appointed board members were compensated. Nationally, the median compensation for elected board members at large utilities is \$12,720 and \$2,400 for appointed board members.

At CPS Energy Board Trustees receive an annual stipend of \$2,000 with the Chair receiving \$2,500. Trustees are reimbursed for reasonable expenses. At GEUS the members of the Board receive no compensation, but are reimbursed for reasonable expenses.

Effect on Bond Ratings and Utility and Regional Finances

Moving to a board would likely be viewed as a positive by the rating agencies; however, the experience of the City's financial advisors is that the governance structure does not make a huge difference in the overall ratings of MOUs by the rating agencies.

Nevertheless, rating agencies consider the manner of governance a key credit consideration when rating an MOU. Their analysis includes looking at the experience level of the governing body, political intervention, objectivity, and timeliness of rate setting. The higher the experience level, the less political intervention, the more objectivity and quicker rates can be implemented the higher the governance attribute will be rated. The information gathered for this study suggests that governance by a board will result in a more experienced, less bureaucratic, more efficient, less political, and more focused governance structure.

The impact on regional finances of migrating to a board appears to be more nebulous. One point of view expressed was that it would make no difference while another stated a belief that utilizing a board will allow money to flow at a quicker pace into the region. A note of caution is that there was no study performed on this issue.

Miscellaneous Issues—but no less important

Other issues to consider are the removal of board members. Should it be for cause or without cause, and removal by whom? In Greenville only the voters can remove a board member. In other MOUs the City Council and/or the board has the authority to remove members. And how should cause be defined?

Another issue is how often should the board meet and when. Most boards meet at least once a month, with the flexibility to meet more often if necessary. When meetings are held can impact public participation, as discussed above.

Charter Authority versus Ordinance Authority

Some MOU boards have their powers stated in the Charter, others have their powers created by an Ordinance, and still others spread the powers across both documents. The more that is contained in the City Charter (or a bond ordinance) the more challenging it would be to change. The more authority Council has placed in an ordinance the easier it is to change the authority granted the board. Some might argue that it is better to have the authority of the board contained in the Charter, thereby making the authority more stable, and not subject to the desires of the particular Council in place at the time. However, another argument can be made that if the authority is contained in the Charter, and if there is a problem that needs to be corrected, it will take longer to resolve.

Pros and Cons of City Council versus Board Governance

The following Pros and Cons of governance are based on the materials reviewed and the interviews conducted for this report.

City Council

PROS

Direct accountability to citizens/ratepayers

Direct impact on planning and policy issues of the utility that impact the community

More integration/synergies/coordination on policy issues between Austin Energy and the other City Departments

CONS

Potential for politics to be injected into running the utility

Council members may not have business expertise and/or technical expertise of the utility operations and the industry

Council members must focus broadly on many City issues and may not give as much attention to the utility

No representation by ratepayers outside the City limits on the Council

Linkage to municipal government may be bureaucratic and not as nimble, flexible or objective

May focus on the City's financial needs, possibly with less focus on utility finances

Independent Board

PROS

Singularly focused on the utility

Members can be selected based on qualifications, for example with more business and technical expertise on utility operations and the industry, and with diverse community backgrounds.

Can enhance the business orientation of governance, running the utility in a more objective, nimble and flexible manner

Can reduce injection of politics into running the utility, particularly if appointed

If longer terms than Councilmembers then more stability and better long range planning

Allows explicit representation by ratepayers outside the City limits

Viewed by the rating agencies as a positive

CONS

Less direct control and involvement by Council

Can be less accountable to citizen/ratepayers if public processes are not well defined

Some synergies with other City Departments could be lost i.e., utility billing.

Transitioning to a Board would require attention to costs, transition time, and other issues.

A Board could be perceived as just another layer of management if Council retains some authority

Governance Models

There are three basic governance models available in Texas.

City Council Governance by elected officials: Georgetown, Garland, Boerne, Colorado Springs, Seattle, and Riverside are examples of this type of governance. Some of these cities also have an advisory commission or board, but Council has ultimate authority and governance over all matters related to the utility. Of course, this is the model used by Austin.

Some Cities vary the model to enhance the ability of elected officials to govern the utility. It appears that variations (like council committees) can work well. For example: The City Council for Colorado Springs sits as the Board of Directors for the utility once a month so it can better focus on utility matters. Georgetown has two members from Council on its advisory committee. Boerne has an internal committee meeting consisting of the Mayor, another councilmember that is a rotating position, and staff which makes recommendations to the Council on utility matters it addresses. Seattle utilizes Council committees which make recommendations to the Council.

One option to consider is for Austin City Council to utilize Council committees to bring more focus on utility issues. Council might also consider allowing ratepayers from outside the City limits to sit on those committees.

A board consisting of no more than five members, one of whom must be the mayor of the municipality. The City Council must retain the power to set rates, issue bonds and exercise the power of eminent domain: CPS Energy is a good example of this type of governance structure. A detailed description of the CPS Board of Trustees, its powers and how it interfaces with the San Antonio City Council is discussed above in the Section on Governance Models in Texas.

There has been much discussion in the press that the City of Austin should utilize the San Antonio model for governance. However, one issue to consider is that the statute governing the San Antonio model limits the number of board members to no more than five. During the preparation of this Study several persons have stated that a board with more than five members would be preferable. In addition, the San Antonio model requires the Council to, at a minimum, retain the authority to issue debt, set rates and exercise eminent domain. If the Austin Council is considering this model, it could not, for example, delegate to the board the authority to exercise eminent domain. Of course, under this model the Council could decide to retain authority over other matters relating to the utility, in addition to the three described above. For example, the council could decide that it would like to retain the authority to approve purchase power agreements or certain policy decisions regarding energy conservation.

A board where the City decides on the number of members on the board and on what powers to delegate to the board, including the power to set rates, issue bonds and exercise the power of eminent domain: Greenville's Board is a good example of this type of governance structure. A detailed discussion of the GEUS Board of Trustees, its powers and how it interfaces with the Greenville City Council, is contained above in the section of this Study on Governance Models in Texas.

The Greenville model, as some call it, is more flexible than the one San Antonio uses. In that model, the board may have more than five members and the City may delegate more powers to the board if it so desires. Austin could, for example set up a board where there are more than five members but otherwise choose to adopt every other feature of the San Antonio model.

Conclusion

The descriptions of the MOUs governed by a board, and each of their particular features, should be instructive when considering a governance model utilizing a board. Those were San Antonio, Greenville, Brownsville, Lubbock, Kerrville, New Braunfels, Tacoma, Jacksonville, Memphis and Eugene.

A review of the various governance models (City Council and Boards) used in Texas and across the country reveal that there are almost endless variations of each that are used by MOUs. And each MOU probably had good reason for choosing the model it did based on the desires of its citizens, ratepayers and City Council. Each MOU had to decide what was best for it depending on the issues it was dealing with at the time. The Models discussed in this Study are just a sample of how the 72 MOUs in Texas and the over 2,000 MOUs across the country govern their utilities.

Appendix pp, is a paper titled “Managing Public Utilities: The American Way”. On page 3 of the paper the authors note that “although there are many models for utility service provision, there is little consensus among practitioners and academics on what specific model is optimal for particular situations...Furthermore, local history matters: each municipality has its own unique way of managing utilities.”

Recommendations Going Forward

It is recommended that the Law Department be consulted on all legal matters related to this Study. It is further recommended that bond counsel and financial advisors be consulted as appropriate. Finally, stakeholders (customers, consumer advocates, employees and their representatives, etc.) should be provided the opportunity to provide input during the EUC/City Council process regarding consideration of the governance issue.