

Item 46
2/14/13

Late Backup

RESOLUTION NO.

WHEREAS, Austin is the largest city in the United States whose municipal electric utility is governed directly by its city council;

WHEREAS, the City Council has proposed studies of alternative governance in 1994 and 1999, and the Electric Utility Commission has recommended changing to an independent board in 1996, 2002, and 2012, and conducted extensive public hearings on this topic over the years;

WHEREAS, City Council through prior resolution directed the City Manager to study the various governance models of public power utilities, with a focus on Texas-based utilities, and consult with former Austin Energy general managers, the Texas Public Power Association, the American Public Power Association, and other sources considered appropriate;

WHEREAS, City Council, through the same resolution, directed the Electric Utility Commission 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;

WHEREAS, the EUC believes that an independent board can increase both the transparency and accountability of the management of Austin Energy, and that an independent board will also allow a mechanism for all Austin Energy customers, not just Austin citizens, to be represented on the governing board of Austin Energy; and

WHEREAS, transparency and public accountability in the management of Austin Energy are of paramount importance, and an independent board can be composed to reflect these values; and

WHEREAS, the EUC recommended that the transfer of management and control to an independent board of trustees be concluded prior to the end of 2013, subject to an interim transition plan; **NOW THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN THAT:

The City Manager is directed to craft an ordinance that would create and define the powers and duties of an independent board of trustees, to be called the Electric Utility Board, to oversee Austin Energy, having the following characteristics:

- **Membership.** The board shall consist of seven members, one of whom shall be the Mayor.
- **Terms.** Each member shall serve four-year terms. Terms shall be staggered to ease turnover effects.
- **Meetings.** The board shall meet at least once monthly and shall establish committees to meet between regular meetings on specific areas.
- **Public Participation.** All meetings of the board and committees shall be subject to the Texas Open Meetings Act, shall require a quorum, and shall allow for public comment under reasonable guidelines that encourage public involvement.
- **Removal.** A member shall only be removed before the end of a term by a two-thirds super-majority vote of Council.
- **Selection.** Board members shall be nominated by a subcommittee of the City Council after a professional search process and confirmed by the Council. City Council will be responsible for the selection and retention of the professional search firm. The City Council will

confer with elected officials representing the service area outside of the Austin City limits prior to confirming an appointment of at least one board member designated as a customer residing outside of the Austin City limits.

- **Qualifications.** Qualifications required for Board members will be developed in conjunction with the professional search firm retained to identify Board candidates. A minimum of one Board member shall be a customer residing outside of the Austin City limits.
- **Compensation.** Compensation will be determined by City Council.

The powers and duties of the board shall be drafted to delegate to the board the fullest amount of governance and oversight power over Austin Energy that is consistent with Texas Local Government Code Chapter 552 Subchapter G and the City Charter, provided that the Council shall retain discretionary final authority to approve the board's recommendations regarding electric rates and charges, major capital projects and transactions in excess of \$100mm, debt issuance, eminent domain proceedings, and the sale of real property. The board shall present five-year capital and strategic plans for Council approval and for public comment, including a review and update of the generation plan, every two years.

To the extent that the City Charter and/or State law imposes limitations on the board's powers to govern and oversee Austin Energy, the City Manager shall identify those areas of conflict.

The City's current general fund transfer policy shall be maintained.

The ordinance shall create a process for an independent evaluation of any proposed base rate increase. The process must allow any affected ratepayer, including a ratepayer who resides outside of the municipality, to be granted party

status on timely request and may group ratepayers for purposes of participation in accordance with common or divergent rate class interests, including the particular interests of residential ratepayers outside the municipality. The process must provide for effective participation by residential ratepayers with limited financial resources. The process shall allow for adequate discovery and exchange of relevant information. The process shall include the appointment of:

(1) an independent hearings examiner to preside over the public process and provide a proposal for decision to the governing body regarding just and reasonable rates based upon the evidence, briefs, and comments provided by the parties; and

(2) an independent consumer advocate to appear as a party or otherwise, as a matter of right, on behalf of residential and small commercial ratepayers.

The ordinance shall establish a public process for the evaluation and vetting of proposed generation capacity purchases greater than 10MW and more than 5-years in duration, and require a competitive procurement process for such purchases.

The ordinance shall create and define the duties of an advisory panel in place of the Electric Utility Commission to advise the board on all matters concerning Austin Energy Advisory Panel members will be appointed as follows: each City Council member shall appoint one member to the panel and the remaining four members will be appointed by consensus of the Advisory Panel. Board members shall be subject to the ethics and financial disclosure requirements of City Code Chapter 2-7.

The ordinance shall create and define a transition period and plan that, as a part, will ensure that employee wages, benefits, civil service eligibility and pensions will not be adversely affected and that the utility will continue to fulfill its mission to *deliver clean, affordable, reliable energy and excellent customer service.*

The City Manager shall report back to Council at the March 21, 2013 council meeting.

ADOPTED: _____, 2013 **ATTEST:** _____
Jannette S. Goodall
City Clerk