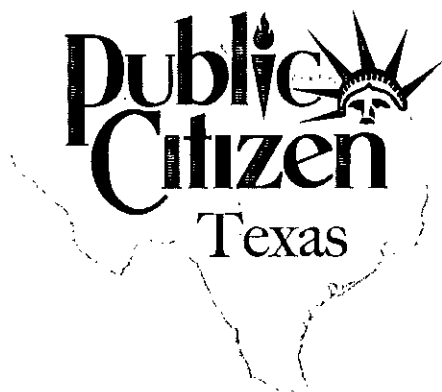


Late Backup



Public Citizen's Texas Office Award Winning Advocacy

Tom "Smitty" Smith, State Director

Heinz Foundation 2009 15th Annual Heinz Award

American Wind Energy Association "2008 Achievement in Advocacy Award"

CATTEE (Clean Air Through Energy Efficiency) "2008 Gregg Cooke Award for Excellence in Environmental Leadership"

Campaign for People's "Thomas Paine Award"

U.S. EPA's "Award of Excellence"

2001 Austin Chronicle Best of Austin "Best People's Lobbyist"

Public Citizen Texas office

Air Quality 2006 Conference "Outstanding Non-Profit Organization Award"

Public Citizen's Solar Austin Campaign

Livable City "Vision Award"

Interstate Renewable Energy Council "Innovation Award"

2004 Austin Chronicle Best of Austin "Best Grassroots Effort"

Texas Renewable Energy Industries Association "Special Recognition Award"

Memo to the Council

Problems with the Governance Ordinance

By Tom "Smitty" Smith of Public Citizen

512-797-8468

As you know – we oppose the shifting of the governance of Austin Energy to an "independent board".

There is no rush to approve this ordinance, and there are a number of various serious flaws with the ordinance in front of you that should be resolved before you vote on it:

1. The ethics standards are far too weak, and the existing city code is not tough enough to catch people with business interests, **The more appropriate section of state law designed to prevent conflict of interest is sections 171.002 and 171.004 of the Texas local government code which says:**

Sec. 171.002. SUBSTANTIAL INTEREST IN BUSINESS ENTITY. (a)

For purposes of this chapter, a person has a substantial interest in a business entity if:

(1) the person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or

(2) funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.

(b) A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

(c) A local public official is considered to have a substantial interest under this section if a person related to the official in the first degree by

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consanguinity or affinity, as determined under Chapter 573, Government Code, has a substantial interest under this section.

Sec. 171.004. AFFIDAVIT AND ABSTENTION FROM VOTING REQUIRED. (a) If a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and **shall abstain from further participation in the matter...(much more)**

2. There is no requirement that the appointees' personal financial disclosures will be made publicly available prior to the appointment, so that you and the public may vet them

2—7-72 7 B) Any non-elective City officials covered by Section 2-7-71 (Definitions) who are appointed or hired shall file an initial statement of financial information for the previous calendar year 30 days prior to being hired or appointed

3. The ordinance doesn't really solve the long-running problem of the Council and the EUC not getting adequate information from Austin Energy.
 - a. AE sometimes doesn't want to provide requested information so they drag things out or provide information that is not really responsive
 - b. The City Manager may want to withhold information at times

The ordinance does provides that the board has to comply with sections 551 and 552, the Open Meeting and Records Act- but these provisions only require the utility to provide information within 10 days and has a big loophole for "comparative matters." An appeal can mean a delay the release of key information until after the vote.

4. The proposed ordinance perpetuates the City Manager's control over the hiring and firing of the General Manager, an issue of concern raised by almost all of the former General Managers and EUC commissioners. It reads:

(B) The electric utility shall be managed and operated by a general manager, who shall report to and may be removed by the city manager.(see pg 8 sec 15-13-50)

5. The amount of an expenditure that can be approved without Council approval should be limited to \$10 million. Council Member Tovo found that historically only 7 projects would have triggered the \$100 million threshold.

6. The language in section 15-13-31 (C) on expenditures is not clear enough to assure that PPAs are include within the \$100 million cap and only applies to "capital" expenditures- thus a PPA for a wood burner, a nuclear plant, or a new coal plant could sneak through without Council approval.
7. The ordinance does not guarantee continued similar transfers to the General Revenue Fund, which was an element previously discussed for inclusion in the ordinance. Lowering it could significantly harm revenues needed for Austin's parks, libraries and public safety.
8. The ordinance says no council members may serve on this board (see section 15-13-21 (A)) – We think the board should be composed of council members (see below)
9. 15 or so potential conflicts with the City Charter have been identified by the city manager- leaving the ordinance vulnerable to litigation.

What do we recommend instead?

1. A subcommittee of council to serve as the Board with a representative included for outside the City Limits- and adopt the rest of the ordinance
2. An election in November of 2014 on this issue after you've taken time to do adequate study and drafted a ballot proposition to put this before the voters in November of 2104
3. Less preferable, but an option that could be considered, is a hybrid board –with a majority of council members, a representative from outside the city limits, a low income advocate, a business leader, and an environmental representative.

