



City of Arts & Innovation

City Council Memorandum

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TO: HONORABLE MAYOR AND CITY COUNCIL DATE: JANUARY 11, 2022

FROM: CITY MANAGER'S OFFICE WARD: ALL
CITY ATTORNEY'S OFFICE

SUBJECT: UPDATE ON THE PARTICIPATION OF THE CITY OF RIVERSIDE PUBLIC UTILITIES (RPU) DEPARTMENT IN THE SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

ISSUE:

Receive an update on the participation of the Public Utilities Department in the Southern California Public Power Authority and provide direction on several items related to the City's involvement with the Southern California Public Power Authority.

RECOMMENDATIONS:

That the City Council:

1. Receive an update on the Public Utilities Department participation in the Southern California Public Power Authority;
2. Determine whether to retain outside counsel and an investigator, reporting directly to City Council, to investigate all professional service contracts with the Public Utilities Department within a date range as determined by City Council for potential contract steering, potential conflicts of interest; or other matters as determined by the City Council and
3. Provide direction to the City Attorney, City Clerk and City Manager on several Inquiry Options identified in the report.

BACKGROUND:

The Southern California Public Power Authority (SCPPA), headquartered in Glendora, California, is a joint powers agency governed by the Joint Exercise of Power Act (aka, JPA, and per Gov. Code sections 6500) and comprised of 11 municipal utilities and one irrigation district. Formed in 1980, SCPPA was created for the purpose of undertaking the planning, financing, development, acquisition, construction, reconstruction, improvement, enlargement, betterment, operation or maintenance of one or more projects defined in the Joint Powers Agreement. SCPPA members leverage economies of scale pricing due to the aggregated buying power of the Joint Powers Agency related to these projects.

SCPPA is a public agency subject to the Brown Act and the California Public Records Act. The SCPPA Board of Directors is comprised of the Chief Executive Officer of the electric utility of each of the 12 member agencies. Per the JPA Agreement, elected or appointed officials are not members of the SCPPA Board of Directors. Their Board meetings are open to the public and Board meeting minutes are available on its website. SCPPA is also subject to an independent financial audit.

On August 26, 1980, the Riverside City Council adopted a resolution to join SCPPA and approved the SCPPA Joint Powers Agreement (Attachment 1). The SCPPA Joint Powers Agreement can only be amended by the unanimous approval of the governing bodies of each member agency. SCPPA's members consist of the municipal utilities of Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles, Pasadena, Riverside, Vernon and the Imperial Irrigation District. Together they deliver electricity to over two million customers in the Southern California basin, spanning an area of 7,000 square miles, and with a total population that exceeds five million.

On August 14, 2007, the City Council unanimously approved the use of SCPPA for the procurement of energy efficiency (EE) and conservation programs and services (Attachment 2).

A City Council action taken on February 21, 2017, directs how Riverside is to procure services through SCPPA and report SCPPA costs and activities (Attachment 3). This includes:

- Task Order expenditures greater than \$50,000 require Board and City Council approval
- SCPPA Agendas and Minutes shall be posted in Board of Public Utilities meeting agendas and packages
- Semi-annual report of SCPPA activities shall be provided to Board and City Council on SCPPA activities and expenditures

DISCUSSION

Requested Changes to SCPPA Policies:

In 2019, Public Utilities began to work through a number of issues that remained unresolved by the 2017 City Council action. In response to public claims and questions by Councilmembers that the SCPPA Joint Powers Agreement (JPA) does not permit the activities of developing and implementing energy efficiency programs, despite the Riverside Council's 2007 action to approve procurement of energy efficient programs through SCPPA, Public Utilities staff did the following:

- Raised the issue at the April 16, 2020 SCPPA Board (Attachment 4).
 - Led to an August 20, 2020 action to have SCPPA to engage its legal counsel to review the scope of the SCPPA JPA (Attachment 5).
- Voted "No" or "Abstain" on items relating to energy efficiency programs
- Requested SCPPA staff present all Request for Proposals (RFPs) to the Board of Directors for approval prior to initiating the solicitation process

SCPPA Board supported a legal review of the question and a formal response from its outside legal counsel, Norton, Rose Fulbright (Attachment 6). The result of their analysis was that SCPPA energy efficiency programs are permitted under the JPA primarily because energy efficiency is a mandated procurement for electric utilities even before generation is procured for its customers.

This response from SCPPA was reviewed by Riverside staff and legal counsel; however, no formal Riverside response was developed. All other 11 member agencies supported the SCPPA response except for Riverside. Instead, the City of Riverside took the following action:

1. Stopped the procurement of energy efficiency programs through SCPPA in total.
2. Through City Council direction, hired external auditing firm Eide Bailly, LLP. to conduct a Forensic Review of the City's participation in SCPPA from 2009 through 2018, including an analysis of all Resolutions and contracts authorized under SCPPA.
3. Conducted its own RFP process for a commercial energy efficiency audit program, which was approved by City Council in December 2021.
4. Riverside's new energy efficiency programs are in development with a target of April 2022.
5. Returned funds held in a Project Reserve Account at SCPPA back to the Public Utilities account to protect its custody and help to clearly report on financial statements the monies held in reserve.
 - a. Board of Public Utilities (September 2019) received report on withdrawal of Project Stabilization Fund (\$11.4M) held at SCPPA and use of proceeds to reduce annual budgeted costs for Riverside SCPPA generation projects.
 - b. Funds held in Riverside account at SCPPA returned to Riverside in December 2019/January 2020; account at SCPPA closed February 2020.
6. Decided that future energy supply projects would not be procured through SCPPA unless there was a convincing economic reason to do so. Public Utilities staff, in December 2019, successfully conducted an RFP for a solar renewable energy project that resulted in a Power Purchase Agreement with Camino Solar approved by Board of Public Utilities and City Council. The Coso Geothermal project, approved by City Council in January 2021, was a Power Sales Agreement through SCPPA because of the advantageous terms Riverside received with the project partners (cities of Banning and Pasadena) allowing Riverside to take less energy from the project in years 1-5 and more energy in years 6-20 when the City projects to need it.

Current Participation in SCPPA:

Riverside continues to have representation on the SCPPA Board of Directors and has raised the issue of agencies that request SCPPA to conduct an RFP for a Master Agreement with only one agency intending to contract for the service (Attachment 7). In instances when joint project collaboration is not intended, Riverside has either "abstained" or voted "no" on the item.

Additionally, Riverside raised the issue of indemnity. For contracts that agencies elect not to participate in a specific Task Order, Riverside has asked for a "Hold Harmless" contract provision to be expressly added to the contract to protect those agencies that do not participate from any future litigation or liability. SCPPA legal staff reviewed the request and opines that a Task Order and its liability is the responsibility of the agency that contracts for it, and there exists updated language that protects those agencies that do not. Riverside agrees that the updated language is improved and valuable but does not subscribe that there are sufficient and necessary language protections for all contract matters. For this reason, Riverside will not participate in energy efficiency or cyber security programs until changes are made. A primary example for the need of this protection is the recent charges in the LADWP matters involving a SCPPA approved cyber security project in which no Task Orders were issued.

The following ancillary services are utilized by Riverside on a case-by-case basis.

- Industry specific training
- Participation in working groups on industry specific matters (operational, administrative and legislative)

The following is a list of the twelve energy projects (generation, transmission, renewables) that Riverside has contracted through SCPPA, including dates of the contracts.

- Palo Verde Nuclear Generation Station (1981)
- Hoover Dam Hydro-Uprating Project (1986)
- Southern Transmission System (1983)
- Mead-Adelanto Transmission Project (1992)
- Mead-Phoenix Transmission Project (1992)
- Columbia II Solar (2013)
- Kingbird B -Solar (2013)
- Summer Solar- Solar (2013)
- Antelope Big Sky Ranch-Solar (2013)
- Antelope DSR 1-Solar (2015)
- Loyalton Biomass (2018)
- Coso Geothermal Energy Project (January 2021)

Future Participation in SCPPA:

The question remains about the future of Riverside's role and participation in SCPPA. To date, Riverside is still represented on the Board of Directors, but no energy efficient program Task Orders are utilized. The Joint Power Authority agreement was signed by Riverside in 1980 for a term of 50 years – meaning that the agreement's term is through 2030. To date, only one project (Southern Transmission System) still has outstanding debt associated with the cost of the project.

A legal review would be necessary to consider whether Riverside has the ability to withdraw from SCPPA; however, it is the recommendation of the Public Utilities General Manager that Riverside only participate and vote on matters in which Riverside has a direct financial or operational interest.

Retired RPU General Manager and Los Angeles Department of Water and Power DOJ Investigation:

Former RPU General Manager David H. Wright agreed to plead guilty to a federal criminal charge of accepting bribes while employed as the General Manager of Los Angeles Department of Water and Power (LADWP), according to a December 6 press release issued by the U.S. Attorney's Office for the Central District of California. The release states that Wright accepted a bribe from a lawyer in exchange for Wright's official action to secure a three-year, \$30 million no-bid LADWP contract for that lawyer's company.

Wright left RPU in 2013 after working for the City from 1988 to 2013, and served as General Manager of LADWP from September 2016 to July 2019, when he resigned at the direction of the Mayor of Los Angeles. Wright and the attorney agreed by early 2017 that, in exchange for Wright supporting the \$30 million no-bid contract for the attorney's firm, Aventador Utility Services LLC, the attorney would give Wright a job as CEO of Aventador that would pay him \$1 million per year

and include a luxury company car once Wright retired from LADWP, according to the release.

In the plea agreement, Wright also admitted he participated in several other corrupt schemes while the head of LADWP, as outlined in the U.S. Attorney's Office for the Central District of California December 6 press release. The release identifies the other corrupt schemes and makes no mention of any corrupt acts by Wright while employed by RPU.

The news release can be found at: <https://www.justice.gov/usao-cdca/pr/former-head-ladwp-agrees-plead-guilty-bribery-charge>

Another former LADWP executive, David F. Alexander, agreed to plead guilty to a federal criminal charge for lying to the FBI about a job offer. According to a December 13 press release from the Department of Justice, Alexander secretly solicited and agreed to accept the job offer in exchange for providing "guarantees" of additional LADWP contract money to the same lawyer from whom Wright accepted a bribe.

In February 2019, SCPPA issued a request for proposal (RFP) for a cybersecurity services contract at the request of Wright, who was still LADWP's general manager. Alexander, the RFP's primary drafter, knew the SCPPA RFP process was intended to be a competitive, neutral and transparent process. But he manipulated that process with the goal of securing future cybersecurity work for Aventador, which later changed its name to Ardent Cyber Solutions LLC., according to the release.

On April 18, 2019, the SCPPA Board approved a multi-award contract for Ardent and two other vendors valued at a total of approximately \$17 million. In June and July of 2019, Alexander further manipulated in Ardent's favor an RFP process from LADWP for the award of a three-year, \$82.5 million cybersecurity consulting services contract.

More information can be found at: <https://www.justice.gov/usao-cdca/pr/ex-ladwp-executive-agrees-plead-guilty-lying-fbi-about-agreeing-accept-job-exchange>

Cursory Review of City Records:

Upon hearing about this recent news involving retired Public Utilities General Manager David Wright, the City Manager's Office began a cursory review of City records in collaboration with the Finance Department and Public Utilities Department. Both departments conducted system searches based on any possible City business with the following four companies which were mentioned in the two press releases by the Department of Justice:

1. Aventador Utility Solutions
2. Cyber Company
3. Ardent Cyber Solutions
4. Newco

Based on these searches, one of the company names discussed above surfaced in City records, Ardent Cyber Solutions. This company name came up in two queries in the City's Legistar system with the Board of Public Utilities agendas as follows:

- Board of Public Utilities Agenda for 6/10/2019

- General Manager’s Report, Item 31 regarding SCPPA Monthly Agenda and Minutes from April 18, 2019 (Attachment 8)
 - April 18, 2019 SCPPA Board Agenda Item 6A – Resolution 2019-31: Approval of Master Professional Services Agreement with Ardent Cyber Solutions, LLC to provide Cybersecurity Services to SCPPA Member Agencies.
 - April 18, 2019 SCPPA Board Minutes reflect that Mr. Dave Wright moved to approve these resolutions which were unanimously approved by the Board of Directors.
 - April 18, 2019 SCPPA Board Minutes reflect that Public Utilities General Manager Todd Corbin (Board Member) and Public Utilities Deputy General Manager Danny Garcia (Alternate) were present for the meeting.
- Board of Public Utilities Agenda for 8/12/2019
 - General Manager’s Report, Item 18 regarding SCPPA Monthly Agenda and Minutes from May 16, 2019 and July 18, 2019 (Attachment 9)
 - April 18, 2019 SCPPA Board Minutes were repeated as an attachment to the May 16, 2019 SCPPA agenda.

In addition to the cursory review of records, in May 2018, the City of Riverside’s Chief Innovation Officer (CIO) was asked to join a newly formed SCPPA Cybersecurity working group to represent the City of Riverside as a SCPPA member. The CIO attended less than a dozen meetings both in person at the SCPPA Glendora Office and virtually over the past 3 ½ years.

In early 2019, an item was brought up to the working group regarding lack of cybersecurity staffing within the SCPPA member agencies with the need to bring in external resources for vulnerability assessment services, incident response, security awareness training and other cybersecurity needs. The City of Los Angeles expressed an immediate need for these services and the Chair of the working group, David Alexander from LADWP, took the lead to draft an RFP for a Cybersecurity consulting panel to assist member utilities in the event of an emergency through the SCPPA agreement. The CIO does not recall seeing the RFP or contributing to the content, but he was aware that an RFP was being drafted. In July 2019, the results of the RFP were shared via email (Attachment 10). The City of Riverside and RPU did not hire or pay for Cybersecurity services to SCPPA or the Cybersecurity consulting panel selected through this RFP.

Budget Engagement Commission Participation

On February 14, 2017, David Wright was appointed by the City Council to the City’s Budget Engagement Commission (Attachment 11). Former Mayor Rusty Bailey nominated Mr. Wright for the city-wide resident seat. During his short tenure, Mr. Wright attended seven of nine BEC meetings that were held. On October 3, 2017, Mr. Wright resigned from the Budget Engagement Commission which was formally approved by the City Council on October 24, 2017 (Attachment 12).

Inquiry Options

At the conclusion of the December 7, 2021, City Council meeting, considering the recent developments involving retired RPU General Manager David Wright and the City’s involvement with SCPPA, Councilmember Conder identified specific items go to City Council Committee for future inquiry, consideration and direction, followed by Councilmember Perry suggesting that the

discussion should come to the full City Council; Councilmember Conder concurred with Councilmember Perry's recommendation. In response to the Councilmembers' items for future consideration, the City Manager, City Attorney and City Clerk are requesting direction from the City Council on the following items:

1. Provide direction to the City Manager, prior to finalizing the Eide Bailly SCPPA audit, on whether to require that Eide Bailly expand its original public engagement scope to speak with Mr. Jason Hunter and investigate, document, and report out any specific evidence provided by Mr. Hunter.
2. Provide direction to the City Attorney, City Clerk, and City Manager to query, document, and investigate all professional service contracts with RPU, within a date range as determined by City Council, for potential contract steering and potential conflicts of interest and/or provide direction to the City Attorney to facilitate an independent investigation reporting directly to the City Council of all professional service contracts with RPU, within a date range as determined by City Council, for potential contract steering and potential conflicts of interest or other matters as determined by the City Council.
3. Provide direction to the City Attorney, City Clerk, and City Manager on whether to review and discuss Measure MM (Attachment 13) and clarify its intent/expressed purpose and investigate exceptions to its intent/expressed purpose related to professional service contracts not requiring City Council approval.
4. Provide direction to the City Attorney on communications with the Department of Justice, Attorney General, District Attorney and other applicable legal bodies regarding the City's participation in SCPPA.
5. Provide direction to the City Manager, City Attorney and RPU General Manager on whether to prepare and submit a letter to SCPPA requesting a full investigation of potential contract steering and potential conflicts of interest within a date range as determined by City Council.

STRATEGIC PLAN ALIGNMENT:

This item contributes to Strategic Priority No. 5 *High Performing Government* and Goal No. 5.3 – enhance communication and collaboration with community members to improve transparency, build public trust, and encourage shared decision-making.

This item aligns with each of the five Cross-Cutting Threads as follows:

1. **Community Trust** – This report provides a straightforward, comprehensive overview of the Southern California Public Power Authority (SCPPA), participation level the City of Riverside Public Utilities within SCPPA, and a cursory review of previous RPU General Manager actions. By ensuring transparency in reporting, the report assists in building trust within the community.
2. **Equity** – The SCPPA Joint Powers Agreement allows Riverside Public Utilities aggregated buying power and provides a pathway to delivery affordable electricity to Riverside residents, and collectively to over two million customers in the Southern California basin.

3. **Fiscal Responsibility** – Riverside Public Utilities ensures transparency of procurement processes with by including SCPPA agendas and minutes in Board of Public Utilities meeting agendas and packages, requiring Board and City Council approval of Task Order expenditures greater than \$50,000, and providing a semi-annual report of SCPPA activities and expenditures to the RPU Board and City Council.
4. **Innovation** – Riverside Public Utilities participation in SCPPA provides the City of Riverside an opportunity to participate in innovative renewable energy projects including the Coso Geothermal project. Through partnerships with the cities of Banning and Pasadena, Riverside has secured future energy resources.
5. **Sustainability & Resiliency** – Participation in SCPPA continues to enhance the City's preparedness for the future through 12 contracted SCPPA projects that include generation, transmission, and renewables.

FISCAL IMPACT:

There is no fiscal impact associated with this update; however, there could be fiscal impacts depending upon the direction provided by City Council.

Prepared by:	Al Zelinka, FAICP, City Manager Phaedra A. Norton, City Attorney
Certified as to availability of funds:	Edward Enriquez, Chief Financial Officer/Treasurer
Approved by:	Kris Martinez, Assistant City Manager
Approved as to form:	Phaedra A. Norton, City Attorney

Attachments:

1. Joint Powers Agreement
2. City Council Report 8/14/2007
3. City Council Report 2/21/2017
4. SCPPA Board Minutes 4/16/2020
5. SCPPA Board Minutes 8/20/2020
6. Norton, Rose Fulbright Formal Response
7. SCPPA Board Minutes 10/17/2019
8. BPU Agenda/Minutes 6/10/2019
9. BPU Agenda/Minutes 8/12/2019
10. Cyber Security RFP
11. City Council Report 2/14/2017
12. City Council Report 10/3/2017
13. Measure MM Impartial Analysis and Argument
14. Presentation