



August 19, 2014

To: Portland Utility Oversight Blue Ribbon Commission
From: Janice Thompson, CUB's Consumer Advocate for Portland Public Utility Customers and member of Utility Oversight Blue Ribbon Commission
Re: A Triangle Model for Effective Utility Oversight

INTRODUCTION AND CUB BACKGROUND

The Citizens' Utility Board of Oregon (CUB) has been in the trenches of private energy and telecommunications oversight for thirty years. CUB's experience informs this discussion of a triangle model that highlights three elements needed for effective utility policy, management, budgeting, and rate setting oversight.

CUB was created in November, 1984 when Oregon voters adopted Ballot Measure 3 because they wanted a consumer advocate in utility ratemaking. At that time there were groups such as the League of Women Voters and AARP interested in residential ratepayer protection, but they didn't have the time or resources for consistent and long-term advocacy. The Oregon Legislature refused to establish an independent analysis group within state government to intervene on behalf of residential ratepayers before the Public Utility Commission (PUC) even though this action was taken in many other states at that time. This legislative refusal led to use of the citizen initiative process and the creation of CUB.

Historically, CUB's focus has been looking out for residential customers of private telephone and energy utilities regulated by the Oregon PUC. Over the last thirty years CUB has saved ratepayers more than \$5.8 billion in rate refunds, rebates, and reductions. CUB also gets involved in policy matters before the PUC and works in Salem to protect residential ratepayers in legislative discussions and actions.

CUB advocates for a fair and equitable approach to ratemaking that keeps utilities viable while protecting the interests of individual ratepayers. CUB takes a least cost-least risk approach to capital improvements and other management decisions. CUB's advocacy also reflects values such as environmental protection. We have been a leader in legislative advocacy for renewable energy, conservation, and other efforts to address climate change.

CUB is a membership-based organization and this provides organizing capacity that can be called upon in legislative discussions and advocacy campaigns. CUB is a respected source for reporters and press relations is another avenue for CUB's public education and advocacy. CUB's funding comes from our work in private utility rate cases, grants, and individual members. Our intervener status with the Public Utility Commission also ensures access to information, including confidential data.

CUB's consumer advocacy for residential customers of Portland's water, sewer, and stormwater management services is independent. It is informed by full access to information from the Portland Water Bureau (PWB) and Bureau of Environmental Services (BES). CUB does not work for the City Council and no city funds are paid to CUB. The City Council has approved the use of city funds to print inserts in utility bills that provide the opportunity for ratepayers to voluntarily join CUB. CUB offered to pay for this printing that costs about \$12,000 annually, but the City Attorney recommended payment by the City to ensure control over inserts in utility bills. The CUB insert does not affect the cost or timing of City's utility bill mailings.

OVERSIGHT OVER WHAT?

Budgets and rates are integrally linked to policy making and the utility management decisions that flow from those policies. A narrow focus just on budgets and rates misses the more significant opportunities to influence the policies that govern program development, operating decisions, and other elements of utility management. This is why this paper does not solely focus on rate setting process oversight, but rather highlights the need for comprehensive oversight of utility policies and management that, in turn affect budgets and the rates charged to raise the needed revenue.

An important note is that utilities have significant assets that must be wisely maintained and face regulatory and system resiliency issues that result in major capital construction projects. As a result, capital improvement planning is a particularly important element in utility management, budget development, and rate setting.

In most other political jurisdictions the "oversight over what" allocation would be that policy decisions are made by a legislative body, such as a city council, while management decisions would be the purview of an administrator, like a city manager. Or, the utility agencies could be in an executive branch under a mayor and the city council would set policy and provide legislative oversight.

Portland's commission form of government, however, gives the City Council both legislative and administrative responsibilities. This means that the Blue Ribbon Commission's discussion of oversight improvements must consider how the City Council sets utility policies and how it manages utility operations as well as determining utility budgets and rates.

OVERSIGHT TIMING AND COORDINATION

One timing issue in the Portland budget process is that capital improvement projects have enormous impact on budgets. However, the planning process for major construction projects typically occur on timelines that frequently don't dovetail with the oversight of the Budget Advisory Committees or BACs that typically only meet for four to six months relatively early in the budgeting process. This means that the BACs are frequently providing input primarily on operating budget issues without much opportunity to advise on capital improvement projects. The Portland Utility Review Board (PURB) meets year-round which could make it, or a replacement advisory group, an appropriate player to review capital improvement planning.

The PURB was created by Mayor Katz in the early 1990's as BES began its Consolidated Sewer Overflow program that included significant capital improvement projects resulting in upward pressure on rates. The current BAC process began at Mayor Tom Potter's direction. It doesn't seem that development of the BAC process recognized the likelihood of confusion about the respective roles of PURB and the BACs for BES and PWB. Clarity on this point is a suggested topic for discussion by the Blue Ribbon Commission.

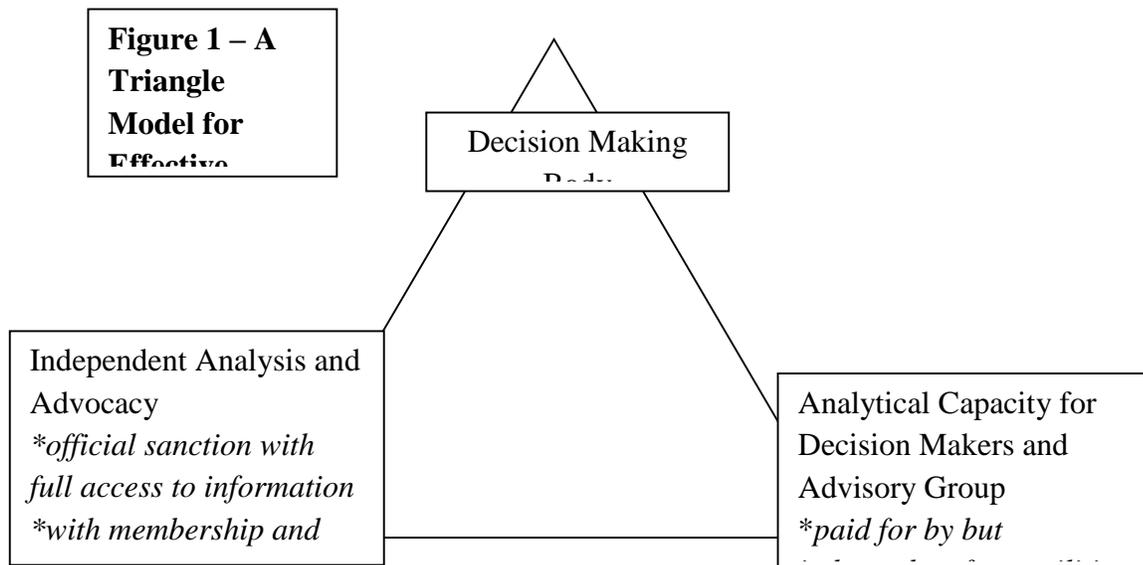
Another timing issue is that the PURB is involved early in the budgeting and rate setting process, but is not consulted or involved when the Commissioner-in-charge and Mayor are making their final budget decisions at the end of the process. This timing concern also applies to BACs as was noted in the 2014 letter from the advisory committee that worked with BES on that agency's budget and rate setting discussions.

These timing concerns are discussed in a June 2011 report, officially titled "Sewer/Stormwater/Water Rate Approval Process," but frequently called the RedOak Study.* This study is a good starting point for Blue Ribbon Commission discussions about the timing of public participation and other utility oversight steps.

A TRIANGLE MODEL - THREE ELEMENTS OF EFFECTIVE UTILITY OVERSIGHT

Figure 1 illustrates a triangle model for effective utility oversight that includes the following elements:

- Decision making body
- Analytical capacity for decision makers and advisory group(s)
- Independent analysis and advocacy



* The Public Utility Review Board identified the need for this report and the City Council directed the PWB and BES to pay for this independent review of best practices in rate setting procedures. The catch, of course, is that the City Council took no action based on this report.

Decision making body

Water, sewer, and stormwater management services across the country are provided by a wide variety of decision making bodies that include:

- Government agencies with rate setting done by a city or other governmental council for whom utility oversight is just one of many responsibilities. A legislative body like a city council would focus on policy, budgets, and approving rates while management would be done by the administrative branch such as a mayor or a city manager.
- Independent organizations whose rates are set by elected boards focused solely on utility services.
- Utility boards whose members are appointed by one or more elected officials. Frequently a mayor makes these appointments with confirmation required by a city council. At the state level, such as with the Oregon PUC, the governor appoints commission members subject to senate confirmation.

In each of these categories and other organizational configurations, there are water and wastewater utilities with high rates and utilities with low rates - indicating that the structure of a utility's decision making body is not a primary factor in rates charged to customers. This raises the question of whether or not proposals that just focus on the decision making body at the top of the effective oversight triangle are best suited to address concerns about Portland's water and wastewater utility rates.

However, the 2011 RedOak report identified as quite atypical compared to other utility government bodies, the option for a Portland Commissioner-in-charge to unilaterally amend the final budget. It should be noted that budget approval requires votes from three council members. Nevertheless, this Portland specific dynamic is presumably contributing to proposals to re-structure the decision making process, particularly since changing the commission form of government has been repeatedly voted down by Portlanders.

CUB is not inherently opposed to a change in the decision making body or its procedures. But a change in who is making budgeting and rate setting decisions should not be viewed as the only reform needed. CUB is particularly concerned about ensuring vigorous analysis of utility policy, management, budget, and rate setting procedures and decisions. This is why this paper focuses on how Portland can strengthen the two oversight elements at the bottom corners of the effective oversight triangle.

In general, it is critical to understand that no matter who plays the decision making role at the top of the triangle, the other two elements are still needed.

Analytical capacity for decision makers and advisory group

It is of utmost importance that decision makers get analytical input from a source they control and operates independently from the utilities. It is appropriate, however, for utilities to pay for providing this analytical capacity to the decision making body.

For example, the Oregon PUC has analytical staff that reviews rate cases and other requests from private utilities. Part of the regulatory process is that the private utilities make payments that support the analytical capacity of the PUC. These payments are then recovered by the utility from their customers so ultimately this is a ratepayer expense. The Commission occasionally forms advisory groups that are typically staffed by PUC employees.

The Portland City Council gets financial analysis from the City Budget Office (CBO).¹ For example, one CBO analyst reviews the budget requests of the Bureau of Environmental Services and another analyst reviews the Portland Water Bureau budget materials in reports written for the City Council. These two analysts, however, have several other city agencies in their portfolio. The recent CBO analysts reviewing the utility bureau finances have not had particular expertise regarding utility practices and procedures.

Historically analysis about PWB and BES was provided to the City Council by a Utility Review Team (URT) housed within what is now called the CBO. The URT was formed in early to mid-1990's and had the capacity to provide financial analysis as well as technical expertise about utility operations and practices. The URT had two high level financial analysts with significant utility experience and a third team member with similar expertise but less experience. The strength of this team waned over time with staff changes and this approach to providing specific utility financial analysis seems to have ended around the middle of the last decade. A change to a more generalist approach with analysts covering a range of city agencies has reduced the consistency in who is writing budget analysis memos on BES and PWB for the City Council. The result is that the analysis of financial and policy issues facing the utility agencies, though very commendable, does not appear to be at the level could be achieved under the URT approach.

Advisory groups also require analytical support to increase the effectiveness of their oversight. For example, when the PURB was first created it also received financial and technical analytical support from the URT. Indeed, originally the PURB was provided with funding to hire consultants for independent analysis. The funding level was evidently around \$100,000 but this was phased out relatively early on. The capacity of the PURB, however, continued to be bolstered due to its support from the URT.

The effectiveness of the PURB has ebbed and flowed over time. One factor is presumably reductions in its access to analytical capacity, particularly staff with utility expertise like the URT. Another factor, however, could be the narrow focus of the PURB on rate setting and uncertainty about what role this advisory group could play in assessing city utility policies and management so that it is better positioned to advise on budgets and rates that follow from policy and operational decisions. The PURB also has rigid membership requirements that though presumably intended to ensure broad representation, may have fostered unhelpful parochial thinking.

The effectiveness of the utility bureau BACs is likely affected by these groups being recruited and staffed by PWB and BES. Though no different from BACs of other city agencies, this feature of the utility BACs doesn't comply with the triangle model's priority on advisory groups receiving analytical support independent of the utilities they are assessing.

To summarize, both the City Council and any advisory group or groups needs high level analysis of public utility operations, capital improvement planning, budgeting, and rate setting. Unlike the current BAC process, the goal should also be that this analytical support be provided to advisory group(s) by staff separate from the two utility bureaus. Strengthening the PURB, or a replacement advisory group, and recreating the URT could be steps considered by the Blue Ribbon Commission.

¹ This role was formerly filled by the Financial Planning Division of the Office of Management and Finance.

These steps, however, do not eliminate the need for the City Council to listen and heed advice from a URT and any advisory group or groups. Ensuring that the City Council listens to its advisors is one reason for the third element of the effective utility oversight triangle, independent analysis and advocacy.

Independent analysis and advocacy

The group playing this role in the effective oversight triangle should be officially sanctioned with full access to information from the utilities. In addition to using utility supplied data, however, this group can look more broadly for outside information. It is also helpful if this group has membership and organizing capacity as well as media relations prowess to assist it in ensuring that the decision making body pays attention.

At the state level before the Oregon PUC and in the Legislature, this role is played by CUB in regard to private energy and telecom utilities. Other groups are also helpful in bringing residential ratepayer concerns to the attention of Oregon rate setters and policy makers and their input is frequently provided in coordination with CUB. CUB is the Oregon group, though, that has consistently been involved with full access to information and with an official sanction via the 1984 ballot measure. Though CUB focuses on the interests of residential ratepayers its work has earned respect since CUB balances its ratepayer advocacy with an assessment of utility viability based on comprehensive analysis.

In Portland there have been independent groups expressing concern about utility decisions and rates, but they typically have focused on one particular project or neighborhood or had a narrow financial interest such as the Industrial Customers group that operated for several years in the last decade. There has not been an independent group consistently reviewing utility policies, management, budgets, and rate setting in Portland in a sanctioned manner with full access to information. This gap in the effective utility oversight triangle for Portland has been addressed with the City Council naming CUB as an official advocate for residential ratepayers along with full access to information from BES and PWB. As in its work with the PUC, CUB's analysis in Portland considers overall utility viability.

LINES OF COMMUNICATION

The PWB and BES provide information to the entities in each corner of the effective oversight triangle. Based on CUB's experience with the PUC's analytical staff there may well be interaction between CUB and any possible new version of the URT and PURB. Some future URT and PURB would obviously also provide information to the City Council or possible new decision making body as would CUB. The only group, however, that tells PWB and BES what to do is the City Council or any possible new governing group for Portland's public utilities.

A CONSIDERATION REGARDING GARBAGE AND RECYCLING RATES

Moving the responsibility for advising the City Council on garbage and recycling rates from the PURB to the Planning and Sustainability Commission is suggested for consideration. Currently the PURB advises on these solid waste rates even though those services are provided by a

network of private garbage haulers and there isn't a solid waste and recycling utility comparable to BES and PWB.

The work with private haulers to develop suggested rates for garbage and recycling collection is done by Bureau of Planning and Sustainability staff. That bureau has its ongoing advisory group, the Planning and Sustainability Commission. It seems worth considering, then, to have the Planning and Sustainability Commission take on this particular PURB function and be the advisory group to the City Council on solid waste rate setting.

QUESTIONS TO CONSIDER

CUB's hope is that this triangle model and discussion of three key elements of effective utility policy, management, budget, and rate setting oversight is helpful to the Blue Ribbon Commission. To jump start Commission discussion we suggest consideration of the following questions:

1. Should the Utility Review Team approach be revived?
2. Should the PURB – or some replacement advisory group – have more input towards the end of the budget process when the Mayor and the Council work to finalize budget details?
3. Should the PURB – or some replacement advisory group – become the BACs for PWB and BES?
4. Should the PURB – or some replacement advisory group – take on a capital improvement planning advisory and monitoring role?
5. Should the PURB – or some replacement advisory group – have a more explicit policy and management advisory role, including but not limited to capital improvement planning? Other city bureaus have ongoing advisory groups and in several cases these advisory groups become the BACs during the budget process.

A replacement advisory group would likely need to have two subcommittees. One subgroup would specialize in PWB and one subcommittee would focus on BES. Another possible subcommittee could be one to advise and monitor capital improvement projects for both PWB and BES.

In general, the last three questions outline different scopes of responsibility for a new advisory group and possible subcommittees. Pulling any subcommittees back together to work as one committee, however, is critically important during the budget and rate setting process since Portland consumers of water and wastewater services get one bill. In other words, the overall rate impact of both bureaus must be considered in finalizing new rates for each of the City's utilities.