



June 24, 2022

Brian Probolsky, CEO
Orange County Power Authority

Sent Via Electronic Mail To: bprobolsky@ocpower.org

Dear Mr. Probolsky:

At its special meeting on June 14, 2022, the City Council (**City Council**) of the City of Irvine (**City**) directed City staff to conduct a review to determine if the approach taken by Orange County Power Authority (**OCPA**) staff in agendizing items, scheduling special meetings and responding to Public Records Act requests is legal. Through this letter, we are requesting your assistance in providing background information related to those three items. We have included short background information on each topic, together with a few basic questions as to the first two items, and three simple Public Records Act requests as to the third item. We pose these questions and records requests in the hope that we can provide clear and complete responses to the City Council.

I. Questions Concerning the OCPA Agendizing Process

With regard to agendizing items, we are informed that the Board has adopted "[Orange County Power Authority Policy No. 012](#)" which constitutes the "policy and procedures for placement of agenda items for all meetings to be adhered to by board members requesting items to be placed on the agenda." On that topic, Policy No. 012 provides:

Any Board Member may initiate items for consideration on an Agenda. The item must be submitted in writing to the Chief Executive Officer at least ten (10) business days prior to the next regularly scheduled Board Meeting. This allows for review and research, if necessary, and facilitates for a meaningful discussion and appropriate action. Items submitted less than ten (10) business days before the scheduled regular meeting date may be postponed to a later meeting in order to allow sufficient time for consideration and research of the issue.

Items of a routine nature will be considered under the Consent Calendar. These items will be acted upon as one item. Any board member shall have the right to remove any item from the Consent Calendar for separate discussion. Recognizing the occasional need to rearrange the order of business, the reorder of business shall be done at the discretion of the Chair or by a majority vote of the Board.

With regard to Policy No. 12, we respectfully request responses to the following questions:

1. When was Policy No. 12 adopted by the OCPA Board of Directors?
2. Is Policy No. 12 currently binding and effective on OCPA staff?
3. Is Policy No. 12 currently binding and effective as to OCPA Board Members?
4. Since the adoption of Policy No. 12, is there any instance where a Board Member has submitted a writing to the Chief Executive Officer at least ten (10) business days prior to the next regularly scheduled Board Meeting, but the requested item did not appear on the next regularly scheduled Board Meeting agenda? If so, please identify that/those instance(s), and provide a brief explanation as to why the item(s) did not appear on the next regularly scheduled Board Meeting agenda.

II. Questions Concerning the OCPA Agendizing Process

We are informed that on or around June 1, 2022, Dan Kalmick, Farrah Khan, Susan Sonne, and Fred Jung attempted to call a special meeting of the OCPA Board of Directors, to occur on June 7, 2022 ("**Special Meeting Request**"). We are further informed that no such meeting was scheduled. According to media reports, the special meeting was not scheduled because, at the time of the request, Mr. Kalmick was not a member of the OCPA Board of Directors and that without Mr. Kalmick included in the request, there was not a majority of Directors willing to schedule the special meeting.

Given this background, we request the following information:

1. Was a request for a special meeting made by Mr. Kalmick, Ms. Kahn, Ms. Sonne, and Mr. Jung on or around June 1, 2022?
2. At the time of the Special Meeting Request, who were the members of the OCPA Board of Directors?
3. At the time of the Special Meeting Request, who were the alternate Directors of the OCPA Board of Directors?
4. What is the process for resigning from the OCPA Board of Directors?
5. When was Mr. Posey's resignation from the OCPA Board of Directors effective?
6. Who are the current members of the OCPA Board of Directors (as of the date of your response to this request)?
7. When was Mr. Kalmick's appointment to the OCPA Board of Directors effective?

III. Questions Concerning the OCPA Agendizing Process

At the June 14, 2022 City Council meeting, it was alleged that OCPA has not legally discharged its obligations under the California Public Records Act. To review that allegation, we respectfully request, under the California Public Records Act, that you provide the following categories of documents (all requests seek all writings¹ dated on or after January 1, 2021):

1. All writings that include a Public Records Act request received by OCPA.
2. All writings from OCPA claiming, granting, or securing an extension of the deadline to respond to Public Records Act requests.
3. All writings that include responses to Public Records Act requests received by OCPA. In responding to this request, we seek only the correspondence from OCPA to the requestor (not the documents furnished to each requestor).

We have tried to be clear in presenting these requests, but if any portion of any request seems unfocused or unclear to you, please let me know and I will work with you to refine and clarify the request. (See Government Code, section 6253.1.) As to timing, we respectfully request that you provide the requested documents within the time otherwise required by the Public Records Act. If a complete production cannot be made within that time frame, we request that you produce documents on a rolling basis as they become available. Please feel free to contact me at (310) 663-9837, or via email at ochi@cityofirvine.org, if you should have any questions.

Best regards,



Oliver Chi
City Manager

¹ For purposes of this letter, the term writing has the meaning assigned to that term in the California Public Records Act, namely: "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." (Cal. Gov. Code, section 6252(g).)