

# Memo

To: Mayor Khan and the City Council  
From: Larry Agran, Councilmember  
Date: June 1, 2022  
Re: **Request for a Special Meeting Regarding the Orange County Power Authority**

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Yesterday, on May 31, Orange County Power Authority's (OCPA) General Counsel Ryan Baron received a whistleblower complaint from CEO Brian Probolsky via counsel.<sup>1</sup> The letter is the latest in a series of troubling developments at OCPA.

The Orange County Power Authority has faced calls for transparency for more than a year. These calls have gone unheeded. For example, the following public records requests I made on March 24 remain outstanding:<sup>2</sup>

1. The number of small, medium, and large commercial customers OCPA [started serving] on April 1, 2022
2. The other account types OCPA is serving (e.g. residential customers) and the number of those customers OCPA is serving
3. The source of business data OCPA used to assemble its customers
4. OCPA's contingency plans in case more than 5% of residential customers and/or 10% of commercial customers opt out of its plans or opt "down" to the Basic Choice plan
5. Power Purchasing Agreements between Orange County Power Authority and other entities and the nature of those contracts, including the percentage that are medium-term (defined as 5 years or longer) v. long-term (defined as 10 years or longer)
6. Any and all reserve funds OCPA has created to address contingencies and other risk factors

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<sup>1</sup> Megan Leneck to Ryan Baron, May 31, 2022, in "OCPA CEO Brian Probolsky Files Whistleblower Complaint Against Board Members Mike Posey and Dan Kalmick."

<sup>2</sup> Larry Agran to Brian Probolsky and the Orange County Power Authority, March 24, 2022, in "Councilmember Agran Submits Public Records Request to Orange County Power Authority," <https://councilmemberlarryagran.org/news/councilmember-agran-submits-public-records-to-orange-county-power-authority>. For more information on the public record responses received from the Orange County Power Authority, visit <https://councilmemberlarryagran.org/meetings-memos>.

Moreover, on April 20, the California Public Utilities Commission cited the Orange County Power Authority for failing to procure enough power to meet Resource Adequacy requirements and penalized OCPA \$1,962,845.<sup>3</sup>

It is clear that the Orange County Power Authority requires immediate public attention and urgent oversight. I write this memo to request that the Mayor and/or two of my colleagues join me to call for and schedule a special meeting of the City Council on or before June 14. The purpose of the special meeting is to discuss: 1) directing the City Manager to commence a City audit of the Orange County Power Authority,<sup>4</sup> and 2) assessing the City's exposure to liability.

For convenience, I have appended all cited materials.

cc: City Manager  
City Clerk  
City Attorney

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<sup>3</sup> California Public Utilities Commission. "Energy Citations Issued." Citations Issued 2009-2021, California Public Utilities Commission, accessed June 1, 2022. <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/consumer-protection-and-enforcement-division/documents/ueb/ueb-energy-citations---updated-5-2-22.pdf>

<sup>4</sup> Per Section 4.1 of the "Form of Capital Loan Agreement," Attachment D of the "Orange County Power Authority Joint Powers Agreement" the City signed on November 20, 2020, "*Prior to January 1, 2023, the City may audit the Authority's expenditures of Pre-Launch Costs to confirm that such expenditures have been made consistent with the purposes of this Agreement (emphasis added).*"