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March 21, 2024

Chairman Paul Rainwater
Governor's Task Force on the Sewerage & Water Board
State of Louisiana
Office of the Governor
P.O. Box 94004
Baton Rouge, LA 70804

Re: Follow-up on Discussion from March 14 Meeting

Dear Chairman Rainwater and Members of the S&WB Task Force,

The Bureau of Governmental Research (BGR) is writing to expand on the comments we provided to the Sewerage and Water Board Task Force at the March 14 meeting and explain why BGR supports strengthening City Council oversight of the S&WB rather than giving regulation to the Louisiana Public Service Commission. We hope this additional information is helpful as you continue to consider S&WB governance issues and work with lawmakers to craft legislative proposals that will support more effective City Council review of S&WB funding requests and City Council oversight of the utility.

Governance Problems and Potential Solutions

The S&WB has a hybrid governance structure that combines features of a State-created, stand-alone utility (e.g., a board of directors and separate operations from City of New Orleans government) with features of a municipal utility (e.g., the mayor serving as board president, and City Council approval of S&WB rates and taxes, plus a seat on the board).

Task Force members have observed that this structure misaligns incentives. It works against officials – whether the board of directors, the mayor, the council or the Legislature – taking ownership of problems facing New Orleans' water, sewer and drainage systems.

In [*Waterworks in Progress*](#), BGR found the S&WB's governance structure does not effectively align key roles and responsibilities for the benefit of the water, sewer and drainage systems and their customers. The structure offers little support to objectively evaluate the financial needs of the three systems. Instead, it invites political considerations from City officials to fill the void and

influence key decision making and funding. At the same time, the governance structure impedes effective coordination of infrastructure work and makes it difficult to hold S&WB and City officials accountable.

The governance structure also has contributed to decades of underfunding, the deterioration of critical infrastructure and a shift in infrastructure costs to current and future ratepayers. And because the Louisiana Legislature controls the laws that govern the S&WB, outside lawmakers exercise broad control over New Orleans' water utility issues. This makes it difficult to implement reforms in a timely manner.

To strengthen governance of New Orleans' water, sewer and drainage systems, BGR finds that the following key deficiencies should be addressed:

1. The City Council lacks a formal process to objectively evaluate funding proposals for the water, sewer and drainage systems, which elevates political concerns in funding decisions and threatens the financial sustainability of the systems.
2. The division of drainage responsibilities between the S&WB and the City's Department of Public Works undermines the performance of the entire system and impedes a holistic approach to the broader concept of stormwater management.
3. The S&WB and City government generally lack sufficient mechanisms to effectively coordinate infrastructure projects.
4. The composition of the S&WB's board of directors creates accountability concerns related to the mayor's prominent leadership role, a conflict of interest due to the City Council's participation on the board, and challenges in sustaining effective citizen representation.
5. The Louisiana Legislature's control over the S&WB's laws creates additional challenges when trying to address problems and implement reforms.

Ultimately, in BGR's view, fixing the misaligned incentives in the utility's governance will require New Orleans to choose one of two potential paths forward:

- Keep, but improve, the S&WB as a State-created, standalone utility that operates separately from City government, or
- Replace the S&WB with a City-created municipal utility.

Each path offers significant benefits over the current governance structure, but also introduces complications that must be carefully addressed. For example, the municipal utility option would require careful planning by City leaders and ultimately approval by the Louisiana Legislature and New Orleans voters. It also raises other considerations, including the City's competency, fiscal capacity, and overall readiness to move forward with such a significant undertaking. Because of this, BGR recommends further study of the two options, led by the mayor as the chief executive of City government and president of the S&WB's board of directors. The mayor should coordinate these efforts with the City Council and the S&WB, as well as seek public input.

Such a study has not been initiated, but BGR's report identifies several reforms that could yield significant near-term improvements, regardless of whether the S&WB remains a stand-alone water utility or is replaced by a municipal utility. It suggests that City and S&WB officials implement them with assistance from the Legislature as needed:

- The City Council should create a formal process to objectively evaluate funding proposals for the three systems. At a minimum, the council's process should provide for independent expert analysis of funding requests, offer opportunities for public comment, and establish clear timelines, requirements and criteria for evaluating and approving proposals.
- The City Council should also develop, with the assistance of the council's Utilities Regulatory Office, a comprehensive oversight process that relies on accountability mechanisms, instead of funding control, to improve performance. This process should include, among other things, a review of strategic and financial plans and reports, updates on operations, and regular monitoring of system performance. It should also enable the council to maintain objectivity and act with transparency.
- The mayor and City Council should work with the S&WB to verify the existence and size of the funding shortfall for the entire drainage system and develop a new funding source, such as a stormwater fee.

- Once a sufficient source of recurring funding has been secured, the mayor and City Council should transfer responsibility for the maintenance and repair of subsurface drainage from the Department of Public Works to the S&WB. This would give the S&WB, which already maintains the most complex parts of the drainage system, full control of the entire system to address pressing deficiencies. It would also not preclude an eventual transfer of drainage system responsibilities to a municipal utility.
- The administrations of the City and S&WB should enhance their existing practices and processes to improve workflow, which could include implementing a shared information management system. Either the S&WB or a municipal utility would need to effectively coordinate with other City departments and agencies, particularly concerning street and subsurface work.

BGR acknowledges that the City and S&WB have [responded to a New Orleans' inspector general report in 2022](#) that they are developing new methods of coordination. And Task Force discussion of resolving the division of drainage system responsibility has underscored the need for an accurate assessment of maintenance and repair costs and potential funding sources. BGR supports that effort.

BGR also urges the Task Force to consider supporting stronger processes for City Council review of S&WB funding requests and comprehensive oversight of the utility. The remainder of our letter will elaborate on those issues and the Legislature's potential role in addressing them.

Why Develop City Council Funding Review and Oversight Processes

In its examination of [water utilities serving the 75 largest U.S. cities](#), BGR found that New Orleans is the only one with a state-created water utility led by a board of directors that must obtain approval from the local government (i.e., City Council) to set rates. Six of the other seven state-created water utilities have authority to set their own rates, while one is subject to state utility regulation.¹ So why did BGR recommend developing the council's processes instead?

¹ The six state-created water utilities with ratemaking authority serve the cities of Boston, Louisville, Omaha, St. Paul, Orlando, and Jersey City. The water utility serving Indianapolis is regulated by the Indiana Utility Regulatory Commission.

Independent Ratemaking Authority. Ratemaking authority can enable a water utility to obtain sufficient funding for its operations, infrastructure and capital projects. It can also reduce the influence of outside politics on funding decisions. However, ratemaking authority can decrease a water utility's incentive to control costs and implement reforms. And when a water utility is governed by an appointed board, the public has no direct recourse through the election process to hold decision makers accountable.

Public Service Commission Regulation. While Louisiana law creates and primarily controls the S&WB, no State agency is charged with direct oversight of the utility. The Louisiana Public Service Commission would appear qualified for the job. It independently regulates private water and sewer companies that operate in Louisiana. Its portfolio includes a private company serving the Baton Rouge area, although many others are small water and sewer utilities.

The commission and its rate approval processes are governed by a five-member board of commissioners elected statewide. In addition, an experienced staff carry out the work of the commission.

Even if the commission were to regulate the S&WB, there would be some drawbacks to giving another State-created agency authority over the S&WB:

- Oversight by the Public Service Commission would take place in Baton Rouge. This would make it more difficult for New Orleans residents and businesses to voice their concerns regarding the water utility.
- Placing the S&WB under the authority of the Public Service Commission would give five elected commissioners, three of whom represent areas outside of New Orleans, significant control over S&WB matters. In addition, based on the boundaries of the commission's districts, New Orleans would be represented by two independently elected commissioners. This would require additional collaboration between the two to ensure that the needs of the S&WB and the New Orleans community at-large are accurately represented.
- Pursuant to Louisiana Constitution Article 4, Section 21(C), giving the Public Service Commission authority to regulate the S&WB would first require approval from New Orleans voters. This would require the difficult task of convincing voters to remove oversight

from their directly elected City Council members, whom they regularly contact with S&WB complaints.

For these reasons, BGR finds that the City Council is in a better position to oversee the S&WB and hold it accountable for its performance. In recent years, the council has expanded the capabilities and expertise of its Council Utilities Regulatory Office. Continuing to enhance these in-house functions could help the council carry out funding, oversight and other responsibilities associated with either the S&WB or a newly created municipal utility.

Examples of Council Review and Oversight Processes in Other Cities

BGR's survey of the 75 largest U.S. cities found that city councils approve rate increases in nearly two-thirds (47) of those cities. In most cases, the utilities are departments of the city government, but the cost-of-service studies and the development of a rate structure to recoup those costs are similar in their principles to what an independent utility does.

BGR found that other cities have more formal processes to support their councils in evaluating funding proposals. These processes include, for example, annual review of system finances against performance criteria, periodic assessment of the adequacy of current rates and future needs, independent review of the utility's funding requests, and opportunities for public input.

Public input could occur simply by taking public comment at City Council proceedings. But in some cases, city councils have established an advisory board of citizens to review funding requests and offer recommendations. BGR has no position on whether a citizen advisory board should be created in New Orleans.

BGR did not find specific requirements for either council members or citizen advisors to obtain specific training or expert advice in best practices for water utility ratemaking. But such training would appear to be essential to have a meaningful, objective review of any funding proposal. Further study would be needed to determine whether any of the processes used by other cities to evaluate and approve rates could be a model for New Orleans to follow.

Some examples from other cities to consider:

<p>Dallas</p>	<ul style="list-style-type: none"> • The city council establishes financial management performance criteria for a municipal utility department. These metrics are reviewed annually, along with cost-of-service studies that the council requires every two years. • The council considers rate adjustments as part of the annual budgeting process. According to bond rating agency Fitch, the Dallas city council “has a very long history of adopting recommended rate adjustments.”
<p>San Diego</p>	<ul style="list-style-type: none"> • The city council created an Independent Rates Oversight Committee to provide nonbinding recommendations on policy issues related to oversight of utility department operations.
<p>Los Angeles</p>	<ul style="list-style-type: none"> • The city’s Office of Public Accountability independently evaluates rates proposed by the city-created governing board for the utility, prior to city council approval.
<p>Columbus (OH)</p>	<ul style="list-style-type: none"> • The council-established Sewer and Water Advisory Board reviews rates annually and makes recommendations to the city council.
<p>Portland (OR)</p>	<ul style="list-style-type: none"> • The city council established a public oversight panel consisting of 11 community members. It advises the council on utility operations, budgets and financial plans, capital spending, rate setting and other topics. • The panel is staffed by employees of the City Budget Office to ensure timely and

	independently managed access to information.
Sacramento	<ul style="list-style-type: none">• A Utility Rate Advisory Commission recommends rates to the city council for approval.

Developing the New Orleans City Council’s Oversight Framework in State Law

The Task Force should consider ways in which Louisiana law can support more effective City Council review of S&WB funding requests and its oversight of the utility.

Current law does not offer much direction to the City Council in evaluating and approving the S&WB’s rate proposals. It requires that the S&WB hold at least three public hearings to discuss the new rates and provide transcripts of each hearing to the City Council.² But it does not set forth the information that the S&WB should provide to the council, how the council should evaluate it, or how the council should reach a decision. Nor does State law establish a process for ongoing City Council monitoring of the S&WB’s finances, except for a list of periodic S&WB reporting requirements.

Because Louisiana law governs the S&WB, the City Council’s oversight and ability to hold the S&WB accountable are limited to those areas specified in State statutes. Thus, unless the council has specific power in State law, it cannot mandate that the S&WB comply with a council decision or force the S&WB to make specific changes.

Since 2013, the Legislature has taken a piecemeal approach to strengthen the council’s oversight of and authority over the S&WB. For example, the Legislature has added requirements for the S&WB to provide the council with quarterly updates on operations, contracting activities, system performance, performance metrics of employees and contractors, and coordination efforts with Public Works.³

From 2014 to August 2017, however, the S&WB did little to fulfill the new requirements, and the council received criticism for its lax oversight. During the same period, the council’s Public Works

² La. R.S. 33:4096(A)(2). A similar provision exists for sewer rates at La. R.S. 33:4121(A)(2).

³ La. R.S. 33:4091.

Committee held only a handful of meetings relative to the S&WB.⁴ The City Council played a more active role in overseeing the S&WB after the 2017 flooding events. Council members reinforced the S&WB's existing reporting requirements, outlined what information the reports should contain and demanded their timely submission.⁵ And in 2018, the Legislature significantly expanded the content of the quarterly reports and clarified the S&WB's obligation to present its reports to the council's Public Works Committee. The committee, which also hears presentations from the City's Department of Public Works, can request additional information from the S&WB and require S&WB top management to appear before the council.

In 2022, the Legislature, at the request of the City Council, granted the council new powers to audit the S&WB's finances and accounts, issue subpoenas for S&WB documents, and open investigations into any catastrophic failure of the city's sewerage and drainage infrastructure.⁶ The Legislature also gave the council authority to establish billing dispute procedures, reduce or modify a S&WB bill, as well as waive late charges or accrued interest. The City Council passed an ordinance to establish a billing dispute resolution procedure.⁷

Thus, while the extent of council oversight has grown, it remains a piecemeal approach. It lacks significant guidance on handling S&WB funding requests. It also lacks a cohesive and consistent process for ongoing oversight of the S&WB and its infrastructure systems.

The Legislature can develop a more comprehensive framework that better positions the council to exercise independent oversight of the S&WB. It can encourage a goal-oriented approach that keeps the utility focused on efficient and effective operations, promotes sound decision making, balances the interests of ratepayers, and builds trust in the utility's management. It can focus on setting standards of behavior and holding the utility accountable for performance.⁸

The creation of a formal process to evaluate funding proposals, coupled with a stronger framework for oversight, would enable the

⁴ See BGR, *On the Ballot: Sewerage & Water Board Governance Change*, December 8, 2018, p. 6.

⁵ New Orleans City Council, Ord. 27,654 M.C.S., adopted January 11, 2018; Joint Letter from New Orleans City Council members to the Sewerage and Water Board, May 10, 2018; New Orleans City Council, R-18-182, adopted May 24, 2018.

⁶ La. Acts 2022, Reg. Sess., No. 711.

⁷ New Orleans City Council, Ord. 29,278 M.C.S., adopted October 6, 2022.

⁸ Beecher, Janice A., *Economic Regulation of Utility Infrastructure*, prepared for the Lincoln Institute of Land Policy, May 2013.

City Council to rely more on accountability mechanisms – and less on control over funding sources – to promote improvement of the water, sewer and drainage systems. We suggested key components for those new processes in our March 14 comments, which are attached for your reference.

Thank you for the opportunity to expand on our comments. If you have any questions or would like to discuss further, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Rebecca Mowbray". The signature is written in a cursive style with a large, looping flourish at the end of the name.

Rebecca Mowbray
President and CEO

Samuel Zemurray Chair in Research Leadership
Bureau of Governmental Research

Attachment