

From: Liza Tucker <liza@consumerwatchdog.org>  
Subject: Please Post Consumer Watchdog report on Office of Public  
Accountability To The CSC Website  
Date: April 11, 2018 at 4:19:27 PM PDT  
To: raphael.prieto@lacity.org, bdelacruz@chpc.net, rev.macshorty@gmail.com,  
elva@preventioninstitute.org, slowtony@gmail.com, lchuckray@gmail.com, Jack  
Humphreville <JackH@TargetMediaPartners.com>  
Cc: Jamie Court <jamie@consumerwatchdog.org>, Liza Tucker  
<liza@consumerwatchdog.org>

Dear Raphael and Members of the OPA Citizens Selection Committee,

We write to share our report, The Price of Pickel: The LADWP's Ratepayer Advocate Comes With A \$7 Billion Price Tag, with each member of the Committee and to ask that this report be posted on the Committee website.

Thank You and All Best, Liza Tucker

<http://www.consumerwatchdog.org/sites/default/files/2018-03/ThePriceOfPickel-LAYOUT-final.pdf>

Liza Tucker  
Consumer Advocate  
Consumer Watchdog  
2701 Ocean Park Blvd, Suite 112  
Santa Monica, CA 90405  
(310) 392-7931, Direct Line  
(626) 372-1964, Cell

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MARCH 2018

# THE PRICE OF PICKEL

THE LADWP'S  
RATEPAYER WATCHDOG  
COMES WITH A  
\$7 BILLION PRICE TAG

BY LIZA TUCKER



# THE PRICE OF PICKEL

*LADWP's Ratepayer Watchdog is Costing Ratepayers Nearly \$7 Billion*

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**BY LIZA TUCKER**

The Los Angeles Department of Water and Power (LADWP) is the largest, most powerful municipal utility in the country. For its first 110 years, the LADWP had virtually no independent voice to hold an opaque, mismanaged, and occasionally corrupt bureaucracy accountable. Voters finally revolted in 2011, approving a Charter Amendment that established the utility's Office of Public Accountability and led to the appointment of its first ratepayer advocate. Six years later, that ratepayer advocate, Fred Pickel, is falling down on the job by putting political expediency before the interests of ratepayers.

While he was supposed to advocate for ratepayers, Pickel has endorsed or remained silent about questionable DWP decisions that cost ratepayers nearly \$7 billion. The \$6.93 billion price tag for Pickel's consent include rate hikes of more than \$1 billion despite DWP's cash reserves of \$1.6 billion, hefty pay raises for DWP workers who are among the highest paid utility workers in the nation, surcharges on power bills that are not used to improve utility services, and billions to refurbish unnecessary natural gas power.

Pickel is a utility consultant who touts himself as a power purchaser and expert in risk management assessment and information system integration. Eric Garcetti appointed him in 2012 at a salary of \$276,000. His job is "to shed greater light on the DWP's operations and finances and to serve as an independent watchdog..." according to his office's mission statement. That includes analyzing proposed rate hikes, reviewing annual budgets and long-term planning, and dealing with customer complaints.

The whole point of creating a ratepayer watchdog is to have a voice for ratepayers when things are awry. "The job of a ratepayer advocate comes with a bully pulpit and Pickel has not used it effectively," the Los Angeles Times wrote in 2015. "He seems to understand that the utility's various scandals and challenges are the result of deep-rooted problems, from the entrenched power of the DWP union to political micromanaging by City Hall. These are problems that can be fixed only if there is

constant public pressure on the utility and city officials, which starts with an outspoken ratepayer advocate expressing a sense of urgency.”

Since that editorial urging Pickel to speak out, Pickel endorsed the billion-dollar rate hike, \$280-million in union pay raises, and the shouldering by ratepayers of potentially billions of dollars for a water diversion scheme backed by Governor Jerry Brown that will bring no new water supplies to Los Angeles.

He also authored the ballot summary for voters of a 2016 city measure that would have largely freed DWP from City Council approval of rate hikes and city contracts. He failed to disclose that his 5-year contract would have automatically renewed—with a raise—if voters had passed the measure. Voters rejected it in part because of Pickel’s deception, which was exposed by the Los Angeles Times prior to the election. Last month, the City Council made an end run around that outcome, voting for a new law allowing the DWP to enter into power and water contracts for up to \$5 million, from \$150,000, without approval. Pickel backed the changes that let elected officials off the hook for any bad contract decisions.



## **The report finds:**

- Pickel endorsed power and water rate hikes of \$1.1 billion between 2016 and 2020 without questioning whether other monies might be available to offset rate hikes on burdened ratepayers when the utility holds \$1.6 billion in cash reserves.
- Pickel endorsed a new 5-year IBEW contract in 2017 hiking salaries by 13-22 percent for a total \$280 million when DWP employees are among the highest-paid utility workers in the country and earn two-and-a-half times more on average than other workers in comparable L.A. jobs. But he raised no red flags on unfunded DWP worker pension and post-retirement medical liabilities calculated at \$3.8 billion by an independent watchdog.
- Pickel has not weighed in against spending \$731 million through 2020—and a total of \$2.4 billion by 2025—to refurbish vastly overbuilt and polluting natural gas power plants. But he criticized a successful solar program to pay large-scale commercial and residential developers for power sold back to DWP at a fraction of that tab for being too expensive.
- Pickel stayed silent on illegal transfers to city coffers of “surplus” power rates of about \$1 billion since 2012 to be used for purposes other than utility services. The annual transfers amount to an illegal tax under 2010’s Prop 26, which mandates that the public must vote on the use of rates for purposes other than improving utility services.
- In 2017, Pickel endorsed as “affordable” for ratepayers a plan to shoulder up to \$140 million annually during drought years to fund Governor Jerry Brown’s controversial North-South water diversion project, though ratepayers will not see additional water supplies from the scheme that subsidizes massive agricultural interests.
- Pickel has failed to improve customer service that ranks at the bottom of major Western regional utilities, starting with failing to fend off a massive, but avoidable, software billing scandal in 2013. The \$193 million system is costing at least \$20 million to fix, while a legal settlement calls for DWP to pay ratepayers back \$67.5 million for rampant over-billing.

PRICE OF PICKEL 2012-2020	AMOUNT
Power & Water Rate Hikes	\$1.1 Billion
Gas-Fired Power Plants	\$731 Million
IBEW Contract	\$280 Million
Unfunded Pension Liabilities	\$3.8 Billion
“Surplus Rate” Transfers	\$1 Billion
Billing System Fiasco Fix	\$20 Million
TOTAL	\$6.93 Billion

[Source: LADWP, Media Reports]

## RATE HIKES

Pickel backed average power rate hikes of about 10 percent over 2012 and 2013 and found power and water hikes of 21 percent over five years through 2019 “just and reasonable.” He noted that the proposed rate increases were “less than what is needed,” assuming 1.6 percent growth in demand for retail power.

But demand for power in Los Angeles is going down. According to the California Energy Commission, DWP’s highest year of power consumption since 1990 came in 2008. Electricity consumption fell after that due to slow economic growth, efficiency gains, and a dramatic fall in natural gas prices and has not come back to 2008 levels. According to the energy commission, DWP is likely to experience a fall in peak demand of 3.7 percent by 2026. Such falling demand does not merit *even higher* rate hikes than approved, especially when the utility is holding \$1.6 billion in cash reserves.

Pickel also endorsed an average water rate hike of 20 percent over five years, saying it was “less than needed” to address infrastructure improvements without questioning whether other monies could be redirected to that purpose.

## NATURAL GAS-FIRED POWER PLANTS

Pickel has not spoken out against the rebuilding of natural gas units at the Scattergood, Harbor, and Haynes power generating stations that will cost \$731

million through 2020, totaling \$2.4 billion by 2025. Pickel’s tacit position is that the plants are needed for “reliability.” In the face of a 2012 rate hike to cover refurbishment of these old coastal plants, Pickel said, “As you look at DWP rates and say, ‘gee, why are they low?,’ I think part of the reason is rates have been held down too long and we’re underinvested in some areas that will affect reliability.”

*“The job of a ratepayer advocate comes with a bully pulpit and Pickel has not used it effectively.”*

*Los Angeles Times*

At the same time, Pickel resisted a DWP program to pay large-scale commercial and residential developers for solar energy fed into the grid if they invested in rooftop solar to help meet state mandates for renewable energy. He told the Harbor Alliance of Neighborhood Councils in 2013 that solar projects installed on LA industrial and large-scale residential rooftops and on land parcels were “problematic” because 20-year contracts to buy the electricity were set at an “inflated” price.

“At this price, the ratepayers are being used to subsidize the commercial and industrial solar industry,” he said, criticizing the program for costing ratepayers a modest \$230 to \$300 million over two decades, or about \$11 million to \$15 million a year. His pro-active lobbying of neighborhood councils against solar incentives was the only such instance of being so publicly vocal on ratepayer issues since his appointment. The City Council nevertheless voted for the pilot program. Such so-called “feed-in tariff” programs are considered a generator of economic activity and jobs by both businesses and advocates.

Pickel has also never taken a stand on virtual net metering, a solar program in which subscribers such as renters living in apartment buildings get credit on their bills for excess energy produced by their share of community solar systems installed offsite. Environmental justice communities and advocacy groups support such programs as a way to keep costs down for low-income Los Angeles residents and as a way to transition more quickly to clean energy and growth in green jobs. Pickel’s staff has resisted offering such programs, using the excuse that billing for them would be too complicated, according to some community advocates.

Rather than resisting solar programs, Pickel should be advocating for more of them and for more installation of battery storage, instead of refurbishing old gas-fired

plants. The state is expected to generate at least 21 percent more electricity than it needs by 2020 because of natural gas power plant building sprees overall, based on *Los Angeles Times* investigations. DWP has built into natural gas power plants more than twice the extra capacity the state requires to meet unforeseen demand, according to the consultancy Synapse Energy Economics.

Plummeting costs for battery storage for solar and other renewable energy in California could rapidly nullify the need to refurbish gas plants such as DWP's. The California Public Utilities Commission recently approved an order requiring Pacific Gas & Electric to use batteries or other clean power to keep the lights on instead of meeting peak demand with three gas-fired plants.

## **FAT UNION RAISES**

After Pickel's appointment, Garcetti broke his campaign promises to hold down costs at the utility and deny big raises to the International Brotherhood of Electrical Workers (IBEW) Local 18, a major campaign supporter. Pickel caved in and supported the contract's double digit raises as "in the reasonable range given the overall economy..." The new contract worth \$280 million over five years granted six raises to IBEW workers who are already among the highest paid utility workers in the country.

Nor has Pickel raised red flags about unfunded worker pensions. The DWP reports a \$1.8 billion liability for pensions and post-retirement medical benefits, with an implied funding ratio of 88 percent. The funded ratio should exceed 120 percent of promised benefits so that the pension fund can withstand any economic downturn, according to Jack Humphreville, Chair of the DWP Advocacy Committee and a columnist for CityWatch. He calculates the DWP's unfunded pension liability at \$3.8 billion, or 77 percent funded, by using a more conservative and realistic rate of return on DWP investments.

## **ILLEGAL ELECTRIC RATE TRANSFERS TO CITY HALL**

Pickel has never protested an 8 percent power surcharge on ratepayers' bills that is used to pay for basic city services rather than improvement of utility services. This so-called "transfer" fee is in addition to a 10 percent city utility tax. In 2016, that utility tax amounted to \$366 million dollars on top of the \$264 million in power surcharges for a total of more than \$630 million paid into city coffers. In 2017, the



transfer fee totaled \$242 million. Under Prop 26, passed in 2010, any fee on utility services that does not go toward their provision is a tax that two thirds of taxpayers must approve at the ballot box. But the DWP “transfer fee” has never been put to a vote.

As Humphreville wrote: “DWP could use this cash to update its infrastructure, fund its ambitious capital expenditure program, or invest in renewable energy projects. Alternatively, the Department could reduce the Power System’s ever increasing debt load (now approaching \$9 billion) or pay down some of its unfunded retirement liabilities. This money could also be used to offset the 20-25% increase in our power rates that went into effect last year.”

Such utility transfers have sparked lawsuits in Glendale and in Redding. A class action lawsuit against the illegal Los Angeles tax was settled this year. However, the settlement does not determine the legality of the tax and allows it to continue. Under its terms, the DWP will set up a \$52 million settlement fund of which the lawyers get \$15 million. The fund is chump change compared to the roughly \$1 billion illegally transferred since 2012. The transfer will continue at a slightly lower level.

An objection to the settlement filed by Consumer Watchdog in February 2018 on behalf of DWP ratepayer and Consumer Watchdog Executive Director Carmen Balber was rejected by an L.A. Superior Court judge. Consumer Watchdog argued that ratepayers were snookered into accepting a settlement without knowing a key material fact—that a transfer of \$242 million dollars was negotiated and occurred while they were deciding whether to opt out of the settlement. This omission of material fact from the Notice to ratepayers about the settlement amounted to a violation of due process. In addition, those who did not opt out gave up their right to sue over transfers made earlier than the period the lawsuit covered.

## **JERRY BROWN’S WATER DIVERSION PLAN**

Pickel also pronounced a Brown-backed project to divert Sacramento River water South via tunnels to be built under the San Francisco Bay Delta “affordable” at less than two dollars a month on average single family water bills of \$60. His office estimated that in the driest years, ratepayers could pay up to \$140 million a year more for water.

Pickel claimed that DWP plans to reduce the amount of imported water by expanding local water supplies “will minimize the WaterFix costs to Los Angeles ratepayers.”

But Pickel lowballed the project’s cost as between \$18 billion to \$26 billion and failed to flag it as a boondoggle because it will not increase water supplies to Los Angeles. “Financing these tunnels, estimated to cost from \$25 billion to over \$50 billion, would be a colossal waste of public dollars for a project that will not bring any new water to Los Angeles,” wrote four nonprofit advocacy groups, including Consumer Watchdog, to the City Council in 2017.

DWP and other Southern California water agencies plan to slash in half their water imports from the Delta in favor of local groundwater storage projects, recycling, and repair of water mains. “Nevertheless, Los Angeles ratepayers and taxpayers would be subject to pay construction and debt service costs of the tunnels regardless of the amount of water DWP purchases from Metropolitan,” the advocacy groups wrote. “According to a Standard & Poors analysis, ‘The majority of the cost increase will be debt service, which must be paid regardless of hydrological conditions, the amount of water delivered, or the amount of water sold.’”

Los Angeles is the Metropolitan Water District’s largest water purchaser. Metropolitan would be allocated about one quarter of the project’s total cost. That puts Los Angeles on the hook for billions of dollars. But if agricultural water contractors refuse to pay for the project, Metropolitan will raise rates even more sharply. The Westlands Water District, the largest irrigation district in the nation, voted last year against financing the project when San Joaquin farmers rebelled at the high cost of the project.

Subsequently, in a surprise twist, the Metropolitan Water District offered to pour an extra \$6 billion into the project, after pledging about \$4 billion initially to cover a 25 percent share of the project’s cost, which was also lowballed. If that scheme goes forward, it will upend Pickel’s calculations even more.

## **THE BILLING SOFTWARE FIASCO**

In 2013, 18 months into Pickel’s tenure, the DWP ignored internal warnings that a new ratepayer billing software system was not ready for rollout. Pickel was not involved in the project and was blindsided by the disastrous rollout when his job is to protect ratepayers.

The system spat out erroneous bills for water and power sometimes totaling thousands of dollars. Some people were overcharged, others were undercharged, or didn't receive bills for months at a time—and were socked with enormous bills that they could not possibly pay when they did get them.

Audits performed in 2014 by TMG Consulting and 2015 by the State Auditor found that the principal reasons for the disaster were premature launch, and an underprepared utility that repeatedly ignored internal warnings. The billing disaster led to a class action lawsuit against the City of Los Angeles, which promised quick settlement. But a judge rejected the preliminary settlement, heavily criticized by advocates for favoring the utility over ratepayers, four times before it was finally approved. Pickel signed off on each and every settlement iteration, vouching for it in the courts, even though judges repeatedly deemed it insufficient.

The \$67.5 million settlement finally reached at the end of 2016 paid lawyers \$19 million up front and promised \$2.5 million to a utility consultant hired to oversee the straightening out of the billing system whose costs had ballooned. The utility consultant asked with the utility's blessing to be paid an extra \$1 million. Pickel's silence continued, save pronouncing that the settlement provides ratepayers with "reasonable restitution."

He did not weigh in on the settlement that guaranteed the lawyers would collect their millions before ratepayers saw any compensation. Moreover, the settlement allowed the DWP, responsible for the billing errors in the first place, to determine the amounts of refunds. It did not include independent third-party review of DWP's accuracy. Nor did it allow anyone to intervene on behalf of mis-billed ratepayers who were routinely forced into billing plans with large down payments or terminated when they refused to enter them. Back bills going back years were not forgiven. Payment of ratepayer claims has only just begun—more than four years after the fiasco, according to court records.

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## FLAWED CUSTOMER SERVICE

The billing scandal cost ratepayers their nerves and sometimes their health. Customers who found lawyers to intervene elicited special customer service attention to their cases—and often admissions of fault when their stories hit the newspaper. One couple who live in a small Van Nuys condo got a water bill for more than \$50,000 after months of not getting a bill at all. Another, a retired Northridge teacher who got a bill for nearly \$17,000 landed in the emergency room because of the upset.

The ratepayer advocate was publicly absent as the billing scandal unfolded and the public was most in need of an advocate. Ratepayers who contacted the DWP's customer service department were never told of the existence of the ratepayer advocate or Office of Public Accountability, did not get immediately transferred to field inspectors who could review their bills, and were pressured to enter into payment plans featuring big down payments or face termination. Videos made of phone calls between mis-billed customers and the DWP from Consumer Watchdog's offices show this disregard for ratepayers, though DWP customer service representatives were informed that the conversations were being recorded.

In the wake of the mis-billing settlement, the utility’s hapless ratepayers continue to endure terrible customer service and continue to complain to Consumer Watchdog and to outside attorneys of ongoing billing errors. These include massive “estimated” bills after months of missed bills, and termination of services when customers are unable to pay. A report Pickel issued in 2015, after the State Auditor’s report, blamed an ossified, inflexible DWP bureaucratic structure for the fiasco, but has not led to any visible improvements.

*“The  
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In 2017, the DWP issued a meaningless “Customer Bill of Rights” that outlined “rights” so basic as to be expected automatically. These rights included sending customers their bills within a few days of a meter read, or automatic review of a bill if usage suddenly spikes three times higher than average. Mayor Eric Garcetti and DWP Manager David Wright held a press conference to roll out the Bill of Rights. No review of the Bill of Rights by Pickel is posted on the Office of Public Accountability website and he does not appear to have made public comments.

The “Customer Bill of Rights” did not include needed reforms that would help protect ratepayers from this and future billing fiascos. Those missing pieces include a customer’s right to redress without termination of service until it is proven that a bill is not wrong, independent third party review of billing problems outside of the DWP bureaucracy, and forgiveness of back bills that go back years.

Every year since 2012, when Pickel was appointed, the DWP has come in last among major Western power providers in customer satisfaction surveys on customer service, communications, quality, reliability, price, billing and payments, and corporate citizenship, conducted by the respected marketing information services company J.D. Powers. Nothing at the moment suggests that will change.

## **CONCLUSION**

Rather than advocating for ratepayers, Pickel has advocated for the utility’s and the City Council’s self-interests. Now that Pickel’s five-year, \$1.38 million contract has expired, and he is working month-to-month while the City Council and its

advisors consider his reappointment or replacement, the moment has come to act decisively to restore public trust.

The Office of Public Accountability must not reflect entrenched interests and endorse the practice of business as usual. The head of the Office of Public Accountability must be replaced with a person of political independence, deep public service experience, willingness to raise the alarm on fiscal problems, a vision on how to empower local communities and push the utility to make a faster transition to clean energy, and a commitment to the protection of consumers.

For the Office of Public Accountability to be a success, it must put ratepayers' interests first. The City of Los Angeles needs an advocate, not merely an analyst whose bread the private sector has buttered and who favors the utility and its insiders at every turn. The ratepayer advocate should vocally spotlight politicians' use of ratepayers as cash cows to cover for the city's fiscal mismanagement and to reward political supporters. At every opportunity, the ratepayer advocate should be questioning whether the policies and practices of the DWP serve the interests of ratepayers, and he or she should fight to change them if they do not.

L.A.'s Mayor and City Council should replace Fred Pickel and hire a ratepayer advocate who puts ratepayer's wallets and environmental concerns ahead of the utility's and city's political expediencies. They should overhaul the Office of Public Accountability and grant the office investigative powers. If they fail to do so, they will be complicit in the fiscal and environmental cost to the public that will be the consequence.

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