



SEATTLE CITY COUNCIL | DISTRICT 1

COUNCILMEMBER LISA HERBOLD

July 6, 2017

Dear Mayor Murray,

I am writing to inquire about the compensation program for the position of General Manager of City Light, established in June 2003 through [Ordinance 121176](#). The program includes two performance or incentive pay provisions. The first is a short-term performance payment of up to 8% of base salary that may be offered each year. The second is a long-term performance payment of up to 10% of base salary that may be offered at the end of each four-year confirmation term that is contingent on reconfirmation by the Council. Under the terms of the ordinance, the decision to offer these incentive payments rests with you, the Mayor.

A search of the legislative record indicates that this is the only instance of an incentive pay program for an executive level position in the City. There is little in the legislative record to indicate why the position of the head of City Light was singled out in this way; however, the recitals to the Ordinance suggest the Council may have believed such a program was necessary to attract and retain high quality applicants.

However, two constitutional issues arise when the compensation of public employees includes performance pay. Article 2, section 25 of the Washington Constitution prohibits granting extra compensation to public employees after the services being compensated have been rendered and Article 8, section 7 prohibits the gift of public funds.

In response to a request for an opinion on the constitutionality of public employee incentive programs in light of these two prohibitions, the State Attorney General's Office (AGO) issued an opinion that:

"Cities and towns of all classes have authority to establish and administer employee incentive programs for their employees, so long as the program and appropriately definite performance standards are established before the program the period covered by the program." (AGO 1995 No. 13)

The AGO clarified that "... incentives and awards should be provided only for meeting established performance standards or goals that exceed normal employment requirements".

In summary, such programs would pass the constitutional test so long as:

- The award is granted for performance above the expected normal employment requirements;
- The expectations for earning the award are established before the period covered; and

- The expectations are sufficiently clear and definitive that determining success in achieving them is not a matter of judgement.

A recent report in the media suggests that a performance pay award was requested by the Seattle City Light CEO based upon the Seattle City Light CEO's own assessment of how the Department did in meeting the goals as defined in a document entitled: Department Performance Expectations Report. I do not believe that the Department's performance can be a proxy for how an individual exceeds the normal employment requirements for that individual. I also question how an individual measures his or her own performance meets the legal standard advised by the Washington AGO for a measure of performance that is not a matter of individual judgement.

Can you please provide the previously established expectations for performance pay, how these expectations exceed the normal performance requirements, and how these expectations are measured in a way that is clear and definitive and not a matter of judgement?

Thank you in advance for your assistance in my efforts to get clarity for how the SCL Executive Performance Pay program adheres to the opinion of the Washington State AGO.

Sincerely,



Lisa Herbold
Seattle City Councilmember, District 1 West Seattle & South Park

CC: Kshama Sawant, Seattle City Councilmember
Larry Weis, Seattle City Light CEO