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City Attorney Wins Undergrounding Case *Lawsuit would have ended program to bury utility lines*

A lawsuit to unravel the portion of the City's Utilities Underground Program that undergrounds utility lines in San Diego neighborhoods was short-circuited when a Superior Court judge granted the City's motion for summary judgment, dismissing the suit before it got to trial.

Had it succeeded, the lawsuit would have essentially stopped the neighborhood portion of the program in its tracks by forcing the City to return to SDG&E ratepayers more than \$200 million SDG&E collected from ratepayers and paid to the City for use by the Utilities Undergrounding Program. Much of that money has already been spent by the City on undergrounding projects in neighborhoods across the City, and most of the remainder is earmarked for specific neighborhood projects.

The neighborhood portion of the City's undergrounding program is financed from a special fund using money collected through a surcharge that SDG&E imposes on ratepayers and then pays to the City for the express purpose of funding the neighborhood portion of the Utilities Undergrounding Program. The program uses no funds from the City's General Fund, which pays for public safety, streets, parks and libraries.

The lawsuit asked that the surcharge imposed on ratepayers by SDG&E be declared an illegal tax imposed by the City without voter approval. The plaintiff, Jesse Willard Mahon, Jr., claimed to represent all persons and entities that are customers of SDG&E that paid the surcharge to SDG&E going back to March 2014.

Mahon had tried to settle the case with the City for \$210 million and agreement to abandon the neighborhood portion of the Utilities Underground Program. With this ruling, he gets nothing.

“By removing the SDG&E overhead system of poles and lines from our neighborhoods, we enhance their beauty, safety, and walkability,” City Attorney Mara W. Elliott said. **“Had plaintiff prevailed, our Utilities Undergrounding Program would have been thrown into chaos, and the huge payout he sought would have come at the expense of community services like parks, streets and public safety.”**

Superior Court Judge Judith F. Hayes agreed with the City Attorney that the surcharge is not a tax requiring voter assent. Instead, when SDG&E pays the funds to the City, SDG&E is paying a fee paid to the City in exchange for the right to use the City's rights of way to transmit electricity. The Court also ruled that the funds are payment to the City of a regulatory fee to support the City's Utility Undergrounding Program whose purpose is to mitigate the environmental and aesthetic impact of SDG&E's 100 years of operating an overhead system in the City.

The City was represented in court by Deputy City Attorney Meghan Ashley Wharton.

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