

Date: May 6, 2024

To: Megan Ong, Program Coordinator, Sustainability and Mobility  
Department

From: Jeff Kavar, Franchise Compliance Review Committee

Subject: Draft FCRC Report Sections for Committee Consideration

At the FCRC meeting on April 11<sup>th</sup>, I offered to preliminarily draft Sections 1, 2, 3, and 6 in accordance with the report outline below. I have also included a few suggestions/recommendations for Section 5 which I previously submitted for the last meeting. Would you please post these draft report sections for discussion at our FCRC meeting on May 9<sup>th</sup>. Thank you!

### **FCRC Report Outline**

Section 1 – Introduction: Origin and charge of the FCRC

Section 2 – Overview of what has this inaugural FCRC has done to date

Section 3 - Public Comment Overview (submitted written comments in an appendix)

Section 4 - Comments and thoughts regarding the independent auditor's report

Section 5 - Other comments or recommendations the Council may wish to consider

Section 6 - Recommendation on automatic renewal of the secondary term

## **Draft Report Sections 1, 2 and 3:**

### **Introduction**

The City of San Diego's (City) franchise agreements grant San Diego Gas & Electric (SDG&E, an investor-owned utility) the right to operate within its right-of-way to transmit and distribute electricity and gas to consumers. These franchise agreements for gas and electricity (Agreements) were recommended by the Mayor and approved by the City Council on June 8, 2021, with an effective date of July 8, 2021.

The Agreements have primary terms of 10 years (to July 2031) that will be automatically renewed/extended for another 10 years (to July 2041) subject to the provisions delineated in Section 15 (electric) and Section 13 (gas) of the Agreements. As noted in Sections 15(d) and 13(d) of the Agreements, the City reserves the right to void the automatic renewal no sooner than the ninth year (July 2030) of the agreements. As noted in Sections 15(e) and 13(e), the City also has the right to terminate the Franchise if the City Council, or the electors of the City, adopt an ordinance that authorizes the City to municipalize the provision of electric or gas services in the City pursuant to Section 104 of the City Charter or other applicable law.

### **Overview of the Process leading to the Current Franchise Agreements**

The City's previous Franchise Agreements were for 50-year terms concluding on June 1, 2021. Anticipating the end of the previous Agreements, the City initiated a lengthy process endeavoring to negotiate a better deal for the City in the new/current Agreements. This process included two Invitations to Bid, considerable negotiation with SDG&E, public outreach, and feedback from Councilmembers and citizens/ratepayers. Some organizations and members of the public suggested the City consider terminating the Franchise and alternatively pursuing a municipal public power corporation (municipalization). Others opposed this approach for a variety of reasons. Ultimately, the Mayor recommended, and City Council approved (with a 6-3 vote in favor) the new Agreements on May 25, 2021.

The Mayor recommended the new Agreements to the City Council as a better deal for San Diegans but also acknowledged it did not include everything that the City or SDG&E had hoped for. He noted that Councilmembers had requested the new agreements include more money, a shorter term, with easy off ramps (options to terminate or pursue municipalization). The Mayor stated that in addition to more money, the new deal would advance the City's Climate Action Plan goals and distribute environmental benefits more equitably, all while being more transparent and having more accountability measures than before. In recommending the new deal to Councilmembers, the Mayor described it as "a re-set of our relationship with SDG&E that acknowledges our collective priorities are climate action, transparency, and accountability."

With respect to better accountability and financial transparency measures, the Chief Operating Officer highlighted the following:

- Biannual audits by an independent auditor
- \$5 million performance bond
- Options for liquidated damages
- Increased insurance requirements
- Citizen-focused Franchise Compliance Review Committee

### **Charge of the Franchise Compliance Review Committee (FCRC)**

The roles and responsibilities of the FCRC, and the independent auditor, are provided for in Section 6 of the Agreements. The FCRC is to consist of five (5) members: three (3) appointees selected by the City Council and two (2) appointees selected by the Mayor. The FCRC is to be created and established by City Council resolution every two years.

Section 6 provides that the FCRC shall meet publicly and comply with the Ralph M. Brown Act. The Committee is to establish a mechanism that allows members of the public to communicate with the FCRC concerning the City's Franchise Agreements with SDG&E. The independent audit report is to be completed and provided to the FCRC no later than sixty (60)

calendar days before the outside due date of the FCRC's report to the City Council.

The FCRC is charged with reviewing the independent auditor's report, and then providing the auditor's report along with its own written report and recommendations to the City Council within 180 calendar days of the end of each two-year period of the Franchise term. The FCRC report is to provide a recommendation to the City Council on the question of automatic renewal for the secondary 10-year term of the Franchise, based on compliance with the Franchise and Energy Cooperation Agreements.

**Activities of the FCRC to Date:**

FCRC Members: Four of five public members were appointed to the FCRC in the spring/summer of 2022 with one replacement member being appointed in April 2023. The public member appointees are:

Mayor appointees:        Jeff Kawar  
   Marcela Escobar-Eck

Council appointees:     James Tomasulo  
   Jared Quient  
   (Vacant Position)

Public Meetings/Communication: Given extensive delays in onboarding the City's independent auditor, the FCRC did not convene its first public meeting until January of 2023. The Committee has since conducted 12 Brown Act compliant public meetings through May of 2024. All FCRC meetings have allowed for public participation/comment in person or online. In keeping with our charge of facilitating communication with members of the public, the FCRC has welcomed public comment and held our noticed public meetings in accessible places. Most of our meetings to date have been held in the Mary Hollis Clark Conference Center on the first floor of the downtown public library.

We have received excellent staff support from the Sustainability and Mobility (SUMO) Department. They have established a City web page for

the FCRC (<https://www.sandiego.gov/sustainability-mobility/energy/sdge-franchise/crc>) that includes meeting agendas and minutes, docketed materials, and video replays of all our meetings to date. In response to a request from the FCRC, staff have endeavored to summarize major and recurring comments/concerns shared during the public comment portion of our meetings. This staff summary of public comments, along with all written comments submitted to the FCRC for consideration, is provided in **Appendix A**.

Initial Meeting Agendas: The FCRC initially discussed the nature of the City's Franchise Agreements with SDG&E. Acknowledging the complexity of the Agreements, we planned our initial meeting agendas to receive presentations from City staff regarding the four major component parts of the Agreements (financial obligations, Administrative MOU, Utilities Undergrounding MOU, and the Energy Cooperation Agreement).

Agendas Involving SDG&E: SDG&E was invited to make an informational presentation to the FCRC on July 6, 2023 regarding their efforts and activities to comply with the City Franchise Agreements. In response to SDG&E's presentation, FCRC members discussed and developed a list of written follow-up questions for SDG&E. SDG&E responded in writing to these questions and returned to the FCRC to answer questions on August 29, 2023. FCRC questions for SDG&E and SDG&E's responses to these questions can be found in **Appendix B**.

Presentation from San Diego Community Power (SDCP): Since May of 2022, San Diego residents have had the choice of purchasing electricity from either SDCP or SDG&E. Over 90% have elected to purchase their electricity through SDCP. SDG&E facilitates customer billing for SDCP and must otherwise work cooperatively/collaboratively with SDCP to comply with certain provisions in the Franchise Agreement. SDCP was invited to present and respond to questions from FCRC on November 2, 2023. A copy of FCRC questions and SDCP's PowerPoint presentation is provided in **Appendix C**.

FCRC Review and Development of Report Workplan:

The FCRC used its first two meetings of 2024 to recap Franchise related information received and discussed in 2023. Further clarification was requested regarding the status and timing of the independent auditor's audit report. A tentative work plan and timeline for FCRC report development was developed anticipating further progress and delivery of the independent auditor's report.

Receipt of Draft and Final Audit Report from the Independent Auditor:

The FCRC scheduled two meetings in May of 2024 to receive audit information from the independent auditor. The Committee is concurrently working to draft the FCRC report to the City Council. [this paragraph to be completed pending receipt of the final and feedback from FCRC members].

**Draft Report Section 4 - Comments and thoughts regarding the independent auditor's report:**

**PENDING RECEIPT OF FINAL AUDIT REPORT - Jim**

**Draft Report Section 5 - Other comments or recommendations the Council may wish to consider:**

[Jared's Input]

Support for the next FCRC: [my prior suggestions below]

- The Ordinance and Resolution creating the FCRC calls for the City Council to appoint three members, yet this Committee has operated with only two City Council appointees. Understanding that finding good appointees can be challenging, recommend the City Council begin the appointee solicitation process well in advance of the next FCRC so the Committee can be fully appointed as contemplated.
- With capable staff support, this FCRC endeavored to make our meetings accessible to the public in person and online. Meetings were videotaped, recorded, and posted online for public review. Despite best efforts by staff and the FCRC, we repeatedly heard from the public that there were meeting room and audio/visual challenges that made online participation challenging for those members of the public who participated online. Recommend staff be provided with a meeting room and equipment resources to help the next FCRC improve audio and video for online public participation. Could the FCRC use the Council Committee Room, or other meeting rooms better equipped for audio/video, for FCRC meetings?
- The hiring of the Independent Auditor and the delivery of their final report was significantly delayed for this FCRC. We recommend the next independent audit be delivered much earlier to the next FCRC. This will allow the next FCRC (and members of the public) a more reasonable timeframe to review and comment on the final audit report.

## **Recommendation on Automatic Renewal of the Secondary Term**

This report is to provide a recommendation to the City Council on the question of automatic renewal for the secondary 10-year term of the Franchise, based on compliance with the Franchise and Energy Cooperation Agreements. It should be noted that the Agreements stipulate the City Council's right to void the automatic renewal cannot occur before the ninth anniversary of the effective date of the current Franchise (July 2030). The City could terminate the Franchise at any time if the City Council, or the electors of the City, adopt an ordinance that authorizes the City to municipalize the provision of electric or gas services in the City pursuant to Section 104 of the City Charter or other applicable law.

Given that a renewal decision cannot be made until 2030, the FCRC believes it is premature to make a recommendation about renewal for a secondary 10-year term. The FCRC has not received information to date that would lead it to recommend the City Council void the automatic renewal provision in 2030. We also understand that future FCRCs will have the benefit of more SDG&E performance data which will better inform their recommendations to the City Council about automatic renewal.

The FCRC recommends the City Council continue to closely monitor SDG&E's compliance with the numerous provisions of the Franchise Agreements by soliciting feedback from involved City staff and the public; requesting annual Franchise compliance presentations from SDG&E and involved City staff; and reviewing the findings of the independent audit and FCRC reports every two years.

By diligently monitoring SDG&E compliance and continuing to obtain information about potential alternative options for energy distribution, the City is best positioned to take action should there be a need or desire to discontinue the current Agreements. Any future decision to void automatic renewal or otherwise terminate the Franchise Agreements will require sufficient lead time and information about other potential/viable franchisees.

In July 2023, the Environment Committee received a highly informative report (Phase 1 report) related to the City's Public Power Feasibility Study.



This report was presented by staff and a City consultant team headed by NewGen Strategies & Solutions. The Phase 1 report provided several interesting preliminary findings including:

- Municipalization is feasible depending on the purchase price (?)
- Will take 10 years to operationalize a Municipal Electric Utility (MEU)
- MEU would NOT be a City department and not provide gas service
- Municipalization is not easy and involves potential benefits and risks
- Requires substantial resources, long-term commitment, & political will
- The process makes the City an informed and effective counterpart

A decision to pursue municipalization will require even more lead time to thoughtfully plan for significant financial, legal, labor, and asset acquisition/maintenance challenges. The FCRC commends the City's acquisition of the Phase 1 report and recommends the City Council continue to budget for staff/consultants to complete the Phase 2 report currently targeted for release in the summer of 2025. As noted in the last of the bulleted findings above, gathering more information about the viability (including potential benefits and risks) of municipalization makes the City a more informed and effective counterpart. The City is a better negotiator and better able to make good decisions on behalf of its residents and businesses when it better understands its options.