

## COMMUNITY ENERGY ACTION NETWORK

February 10, 2023

Jeff Kavar, Chair and Members of the Franchise Compliance Review Committee  
City of San Diego  
c/o Sustainability and Mobility Department

By email: Megan Ong [mong@sandiego.gov](mailto:mong@sandiego.gov)  
Heather Werner [hwerner@sandiego.gov](mailto:hwerner@sandiego.gov)

### **RE: Issues for consideration by the Franchise Compliance Review Committee**

Dear Chairman Kavar and Committee Members:

I am writing on behalf of the Community Energy Action Network to share some observations, concerns and make requests of the gas and electric Franchise Compliance Review Committee (CRC).

First, congratulations and thank you for accepting to serve and carry out the tasks and duties specified for the CRC in each of the Gas and the Electric Franchise Agreements.

#### APPOINTMENT OF ALL COMMITTEE MEMBERS

One of the key tasks for the Mayor and City Council specified in Section 6 of each of the franchise agreements is to make nominations and appointments to this five (5) member special temporary committee by July 2022—two nominations by the Mayor and three nominations by the City Council. As of today, it is my understanding that only two of the three required City Council appointees have been nominated and appointed.

All four of the members that have been appointed were present at the first meeting held on January 18. Actions were taken to elect a chair person and vice chairperson, set meeting schedules, and to prioritize tasks to determine a work plan for the designated period of review was also discussed.

While these actions are probably within accepted City guidelines to conduct CRC meetings for a required minimum quorum of three of a five member board needing to be present to conduct business, it is unfortunate that this committee has not had and does not have the required number of members available to carry out the substantial duties you have been assigned. This is a disservice to you and to the City you have agreed to serve in this volunteer capacity, to the public and ratepayers who are required to pay franchise fees, and to the gas and the electric franchisees whose compliance you are assigned to review.

## CONFLICT OF INTEREST REVIEW

In a May 28, 2021 News Release It was represented to the public in a statement by Councilmembers Sean Elo-Rivera, Joe LaCava and Monica Montgomery Steppe in an outline for an “Energy Independence Plan” that *“as stated in the agreements, members of the CRC will not have a conflict of interest. Upon CRC member nominations from the Mayor and City Council , the Environment Committee will publicly interview the members as an informational item and ensure there are no conflicts of interest among those nominated. ”* It has been confirmed to me that such a review was not conducted at any meeting of the Environment Committee nor at the full City Council meetings where nominations were considered for confirmation of the present committee members.

I appreciate that the public was able to provide public comment on the issues in the January 18 CRC agenda, including the election of a chair and vice chair. And I especially appreciate that the Vice Chair, upon putting forth his nomination for consideration by the board indicated he would “be happy to have the public comment on that if they would like”. Upon a second to his nomination, Committee Staff Liaison asked if there was “any further comments from the committee members or the public.”

Unfortunately a line of questions from a public member regarding a potential for conflict of interest relationship to the franchisee that was directed to the Vice Chair and which he was attempting to answer was interrupted by City staff calling a “point of order “ stating that public comment on selection of a Vice Chair had been closed. The Chairperson, nor the Deputy City Attorney present did not consider that point of order and the question was not able to be addressed at the meeting.

## MECHANISM FOR MEMBERS OF THE PUBLIC TO COMMUNICATE TO THE CRC AND GUIDANCE REGARDING EXPARTE COMMUNICATIONS

Both the gas and electric Franchise agreements at Section 6 require that the committee “shall meet publicly and comply with the Ralph M. Brown Act and shall establish a mechanism by which members of the public may communicate with the Review Committee concern the Franchise (s).” For the first meeting of the Committee City staff provided the necessary framework for compliance and provided additional recommendations that would meet both the Brown Act requirements under which the committee is required to operate and any other requirements or procedures set forth by City Council ordinance or policy.

The Committee extended the opportunity for public comment on each item under consideration (with the exception previously noted closure of public comment by City staff of a Q&A regarding potential conflict of interest) and for non-agenda public comment both for the public present at the meeting site and via the virtual site. The follow up, providing video recording of the meeting and other information to the record on the Franchise website and the responsiveness of staff to further public inquiries is much appreciated.

Two issues which the Committee may wish to seek counsel advice regard the location of the meetings and the issue of exparte communications and communications between Committee members outside of the public meetings. The location of the committee meetings on the 18<sup>th</sup> floor of a relatively constrained conference training room accessed from a door requiring phone access when more accessible and public meeting facilities exist at the City is not conducive to engagement of the public for purposes of communicating to the committee on the franchises .

On the issue of communications of the committee members outside of the publicly noticed meetings, the City has engaged an independent auditor to communicate with staff designated by the franchisee. It would be in the public's interest and confidence in the Committee's report results for the Committee to seek and provide to the public the guidance they receive from the City Attorney regarding exparte communications with the franchisee or agents of the franchisee and any communications between committee members outside of the committee meetings.

#### CITY COMPLIANCE WITH FRANCHISE AGREEMENT TERMS

In addition to the issue of Committee appointment requirements, there are action dates set forth in the Franchise Agreements and the Energy Cooperation Agreement including setting forth procedures for conduct of the undergrounding of electric utilities which is paid for through fees and surcharge fees directed to the franchisee and to the City respectively. I urge the Committee, once properly and fully constituted to include a review of compliance with those items as a part of their report to the Mayor and City Council.

#### SUMMARY AND REQUESTED ACTION

Given the deficiencies I have listed above including the lack of appointment of all Committee members by July 2022 as required by the Franchise Agreements and the Council resolution provided to the Franchise website, I request you consult with the City Attorney regarding the ability of the CRC proceeding with any further meetings actions until there is appointment of all members of the committee and that appointments have been properly vetted for conflict of interest regarding any relationships with the franchisee.

Thank you again to the Committee and Staff for providing the opportunities to participate in this important evaluation of the implementation of the gas and electric franchise agreements.

Sincerely,

/s/

Jay Powell, Principal,

Cooperations – In the Public Interest, for the Common Good

Cc Mayor Todd Gloria

City Attorney Mara Elliot

Council President Sean Elo Rivera and City Councilmembers