

2024

Franchise Compliance Review Committee Report

COMPLIANCE PERIOD: JULY 8, 2021 TO JULY 7, 2023

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1. 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.

1.1. Overview of the Process Leading to the Current Franchise Agreements

The City's previous Franchise Agreements were for 50-year terms with the last Agreement 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 recommended the new Agreement to the City Council highlighting-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

1.2. 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.

2. 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 Kavar
Marcela Escobar-Eck

Council appointees: 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**.

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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. It was reported that about 96% of the City’s customer base has 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 and June of 2024 to receive audit information from the independent auditor. At the May 9th meeting, the Independent Auditor presented a substantially final draft of their audit report and the FCRC was able to ask questions. At our June 3rd meeting, the FCRC received the final audit report from the Independent Auditor. It is important to note that this first independent audit only covers the first two years of the Franchise Agreement through July 7th 2023 and the final audit was received by the FCRC almost a year later in June of 2024. The second independent audit will cover Franchise Agreement performance from July of 2023 through July of 2025. 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].

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Development of the FCRC Report to the City Council: The independent audit report was initially expected to be completed in the fall of 2023 and the FCRC would develop and present our report to the City Council 60 days thereafter - in early 2024. Due to delays in the City onboarding an independent auditor and in turn the delayed receipt of the independent audit in June 2024, the FCRC was asked if we could endeavor to develop our report while waiting for the final audit report to be delivered. This was in part driven by a desire for the FCRC to present the audit and the FCRC report to the Environment Committee in June 2024 and to the City Council in July 2024. Given these circumstances, the FCRC used our best efforts to develop this first FCRC report at our meetings on May 9th and June 3rd. The final FCRC report was approved in substantially final form on June 3, 2024.

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3. Public Comment Overview

The FCRC convened 12 noticed public meetings in accessible places between January of 2023 and June of 2024. As noted in Section 2, all meetings were Brown Act compliant and allowed for public comment in person or online. Meetings were also video-recorded and posted on the City's website so the public could watch at their convenience.

Understanding that part of our charge was to facilitate communication with the public regarding the Franchise Agreements, this section of the report endeavors to summarize some of the recurring public comment themes heard at the FCRC meetings. These themes, summarized by City staff, are provided in Appendix A along with all written comments submitted to the FCRC for consideration through our final public meeting on June 3, 2024.

Commented [OM1]: Following the outline developed during the April 11 meeting, Section 3 would discuss an overview of public comment. As drafted, this seems to be woven into the section above. Would the Committee members like to leave the report as written and consolidate Sections 2 and 3?

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4. Comments Regarding the Independent Auditor's Report

On May 9, 2024, the ~~FCRC Franchise Compliance Review Committee (FCRC)~~ received a draft of the independent auditor's report, along with a formal presentation. ~~This report is report~~ summarized the auditor's assessment of San Diego Gas & Electric's (SDGE's) compliance with the franchise agreement. The FCRC's review focused on ensuring the audit aligned with the Committee's and the auditor's roles as outlined in the Agreements. The Committee then provided comments on the initial findings.

The independent auditor received the FCRC's questions/comments at our May 9, 2024 public meeting and provided a revised final audit report to the FCRC on June 3, 2024, on May 28, 2024.

Below is a summary of the comments regarding the independent auditor's report provided by the committee:

General:

- This audit was conducted using a limited sample size. To enhance the analysis, the next phase 2 audit should consider employing a more extensive sample.
- To ensure continuous improvement, SDGE should provide a response outlining how they will address recommendations prior to the commencement of the Phase 2 audit.
- During the auditor's presentation, it was noted there was a significant volume of communication, with over 700 comments and responses exchanged during the audit between the auditor and SDGE. To improve audit efficiency in the future, we recommend analyzing these communications to identify areas for streamlining the process for the phase 2 audit.
- The Auditor initially identified deficiencies in Items 3 and 4 of the report. However, SDGE has since implemented corrective actions to address these noted items. The final report should clearly acknowledge this resolution to ensure transparency.
- The draft audit report identified four key findings. The auditor is currently collaborating with the city to obtain a management letter that will provide additional franchise performance related

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comments. This management letter should be appended (attached as a separate document) to the final audit report and made publicly available.

- We recommend that the auditor conduct a more in-depth review and provide detailed comments on Section 10A of the franchise agreement.

Administrative MOU

- The agreement requires SDGE to utilize the category projects portal which has since been identified as needing improvement. The City and SDGE staff collaboratively developed a new process that eliminates the need for the portal. To ensure transparency and reflect this change, the franchise agreement should be amended to remove the outdated requirement and outline the new process collaboratively developed by the City and SDGE.

Utility Underground MOU

- The absence of a publicly available undergrounding project master plan, which would coordinate projects with the City's initiatives, hinders transparency. The FCRC's recommendations section also notes this deficiency.
- The limited sample size of undergrounding project data identified in this report necessitates a more comprehensive review during the Phase 2 audit.

Energy Cooperation Agreement (ECA)

- Finding #4 of the independent auditor's report highlights the need for periodic updates and revisions to the Energy Cooperation Agreement (ECA) to ensure its continued effectiveness. This is noted in the FCRC's recommendations section.
- Section 8.B of the Energy Cooperation Agreement (ECA) requires SDGE to support the City's affordable housing initiatives. However, the auditor's review found that SDGE provided only snapshots of affordable housing data to City staff, limiting transparency and effective collaboration. While this might have satisfied the requirement as identified in the agreement, the agreement should be amended to explicitly require SDGE to provide comprehensive and up-to-date data on its efforts to support the City's affordable housing initiatives. SDGE and the City should establish a clear process for ongoing communication and collaboration regarding affordable housing initiatives. This is noted in the FCRC's recommendations section.

5. Other Recommendations to City Council

This committee was tasked with providing recommendations to ~~C~~city ~~e~~Council following our review and investigation into the franchise agreement between SDG&E and the ~~e~~City. The recently updated City of San Diego Climate Action Plan ("CAP") has aggressive goals to reduce greenhouse gas "GHG" emissions and accelerate the clean energy transition. As an inducement to enter into a long-term franchise agreement~~s~~ with SDG&E in 2021, the parties entered into an Energy Cooperation Agreement ("ECA") alongside the ~~f~~Franchise ~~a~~Agreement~~s~~ in an effort to ensure SDG&E acts as a partner to the ~~e~~City as it pursues its Climate Action Plan goals. A review and assessment of the parties' performance of this ~~ECA~~agreement~~s~~ was included in the scope of this committee, but the agreement itself is difficult to assess because many of the provisions are aspirational and difficult to enforce. We also learned more about

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SDCP and its broad mandate as a new regional organization tasked with procuring renewable energy and the interplay between SDCP, the eCity, and SDG&E.

The committee recommends that the city council take the following actions:

1. Convene the Cooperation Agreement Summit (as described in section 3 of the ECA) (“CAS”) as soon as possible to comprehensively revise the ECA to meet the current needs and policy objectives of the city. Such revision should impose enforceable and easy to measure obligations on SDG&E to ensure SDG&E acts as an active partner to both the city and San Diego Community Power (“SDCP”) in their efforts to meet the city’s CAP goals. The current ECA is vague and ambiguous at times, making it difficult to assess compliance by SDG&E, particularly in the areas that are the most impactful to the city meeting its CAP goals.
 - a. In particular, the committee recommends revisions and additions be made to section 5 of the ECA, Clean Energy Collaboration Opportunities. One thing we have learned during this process is how impactful and important SDCP is to the city achieving its overall energy transition goals. As such, we recommend that SDCP has a seat at the table at the Cooperation Agreement Summit to ensure the agreement is structured to meet SDCP’s goals and that it imposes enforceable and easy to measure metrics on SDG&E to ensure compliance. As part of this CAS, the committee also recommends the city explore facilitating a stand-alone enforceable agreement between SDCP and SDG&E. With the city at the table, SDG&E would have more incentive to take positions and agree to take or not take certain actions to the long-term benefit of SDCP and the city’s CAP progress.
 - b. The committee also recommends that the city investigate whether SDG&E has taken actions to undermine SDCP and the exploration of municipalization by the city and incorporate provisions in the next ECA that prevent SDG&E from taking actions opposite the city’s stated clean energy goals and that undermine the city’s efforts to explore municipalization.
 - c. The committee also recommends forming a working group with stakeholders from the environmental community, SDG&E, SDCP, and city staff to do a review of the ECA and make recommendations on additional areas that are appropriate for regulation as part of this agreement.
2. Improve the Franchise Review Committee process
 - a. Begin the process and committee earlier to give the committee more time to gather information and provide findings. 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.
 - b. Fill the committee early and to its fullest. 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.

- c. Convene a hearing with the franchise review committee and environment committee members at the outset of the process so the committee can ask questions and learn about concerns the current council has going into the review process.
 - d. 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?
3. Improve the public portal on undergrounding
- a. As part of franchise review committee presentations and meetings, we were given the opportunity to access the Undergrounding mapping information provided by the city's web portal below:
<https://webmaps.sandiego.gov/portal/apps/Cascade/index.html?appid=929e10afa0b64837a21e49e3df343149>
 - b. The portal provides information on the process of undergrounding and project level updates for active projects. The portal gives a color-coded map of the various neighborhoods and the phased approach to undergrounding projects.
 - c. Recommendation: While the information given is helpful and provides a general overview of each neighborhood, including more details about currently under-construction streets and a master plan timeline for future location would be beneficial. This would give consumers a more accurate picture of upcoming projects, both in the near term and beyond. A 10-year master plan of projects is a typical approach to planning work. This allows for flexibility based on schedule and budgeting changes but identifies timelines and scoping.

6. Recommendations on the 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.

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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 significant/sufficient lead time for either municipalization or to solicit 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. The Council may also wish to consider the formation of a Citizens Public Power Feasibility Study Task Force as a means of involving interested citizens to provide input to staff and City consultants in preparing the Phase 2 Report. The Committee understands this was recommended for consideration by staff at the Rules Committee meeting in October of 2021.

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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.

Appendix A - Public Comment Themes from the Franchise Compliance Review Committee

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Public Comment Themes from the Franchise Compliance Review Committee

In 2021, the San Diego City Council passed O-21327 and O-21328, which awarded the Gas and Electric Franchises to SDG&E. Section 6 of both ordinances established the Franchise Compliance Review Committee (Review Committee). Further outlined in Section 6(a), “[t]he Review Committee, which shall meet publicly and comply with the Ralph M. Brown Act, shall establish a mechanism by which members of the public may communicate with the Review Committee concerning the Franchise.”

Below is a list of the themes and topics the public raised during the Review Committee’s meetings. Also linked below are the written public comments that have been submitted to the Committee.

- General Franchise Comments
 - Vacant Council-appointed seat on the Franchise Compliance Review Committee
 - Concerns regarding increased SDG&E rates and SDG&E profits
- Underground MOU
 - Concerns regarding visibility and ease of public access to the status of undergrounding projects
 - In support of increasing transparency of undergrounding project timelines and project costs
- Energy Cooperation Agreement
 - Considerations regarding positions SDG&E has taken on the NEM 3.0 proceeding in relation to the commitments made within the ECA.
 - In support of increasing specificity of the actions in the Energy Cooperation Agreement Implementation Plan
 - Concerns regarding SDG&E interconnection timeline

Attachments:

- [Feb. 13, 2023, Public Comments](#)
- [Apr 19, 2023, Public Comments](#)
- [May 31, 2023, Public Comments](#)
 - [May 31, 2023, Public Comments Attachments](#)
- [Jul 6, 2023, Public Comments](#)
- [Aug. 29, 2023, Public Comments](#)
- [May 9, 2024, Public Comments](#)

Appendix B - FCRC Questions for SDG&E and
SDG&E's Responses

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Appendix C - FCRC Questions for SDCP and SDCP's
Presentation

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