

COMMUNITY ENERGY ACTION NETWORK

May 30, 2023

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

BY EMAIL: mong@sandiego.gov and hwerner@sandiego.gov

RE: Comments on Franchise Compliance Committee May 31, 2023 Meeting Agenda Items

Chairman Kavar and Members of the Franchise Compliance Review Committee:

I am writing on behalf of Community Energy Action Network to provide written comments for your consideration regarding the following items docketed for the Franchise Compliance Review Committee Meeting on May 31, 2023.

Agenda Item III. Non Agenda Public Comment

The link to the Committee membership roster on the City Franchise website regarding the Mayor's appointment of Marcela Escobar-Eck to the Committee incorrectly lists her as a City Council appointment.

The third seat required to be appointed by the City Council remains vacant. The Franchise Agreement and the resolution authorizing the Committee specify that the Committee shall consist of FIVE (5) members. The Committee has not been properly constituted to fulfill its assigned duties.

Attached is a copy of the letter emailed to the Mayor, City Council and City Attorney on February 13 summarizing points provided in a February 13 letter to the Committee regarding the appointment requirements, conflict of interest and ex parte communications issues. I request that email letter be provided to all members appointed to the Committee and posted to the City website for Franchise Agreements and the Committee.

IV. Approval of the April 19 Meeting Minutes

The April meeting Minutes for "Item IV. February 13, 2023 Minutes" should indicate the questions and response to a request for clarification of Conflict of Interest and Financial Form 700 filing requirements from Chairman Kavar to Deputy City Attorney Ortlieb and a request from a committee member to provide that response in writing to the Committee. That information provided to the Committee should be posted to the city website for FACRC.

Section 6. (a) of the ordinance setting forth the Electrical Franchise Agreement states that “No nominee with a conflict of interest shall be appointed to the Review Committee.”

V. Informational Item: Energy Cooperation Agreement.

Items 1 thru 4 of the “ECA” are not included in the “ Energy Cooperation Agreement Implementation Plan Matrix “ provided as background for this item. It would be helpful to have available the report submitted for City Council approval of the Implementation Plan for review of this item.

Item 2, the description of the Implementation Plan includes the following requirements: “. roles, processes, responsibilities, timelines, program, and development pathways, and estimated costs to achieve the goals and deliverables outlined in the (Energy Cooperation) Agreement within 90 days of City Council approval.” The ECA was approved in May 2021. If there is a more specific document which includes these specifics, that should be provided to the Committee and posted to the website for public review.

Item 3. “Living Agreement”. Outlines that every three years after the effective date of the ECA, a “Cooperation Agreement Summit” (CAS) will be convened to consider changes to the ECA to submit to the City Council for approval. It would appear that the recommendations of the Compliance Review Committee, whose term is specified to end June 26, 2024, would be an important component of considering changes to the ECA and the Implementation Plan.

Provisions of Section 12 (a) of the Electrical Franchise Agreement that deal with promoting **local renewable distributed energy resources** should be included in the description of requirements of the Energy Cooperation Agreement and specified for actions in the Implementation Plan. Excerpts of language from that section (where SDG&E is the *Grantee*):

“Grantee’s acceptance of the Franchise includes Grantee’s understanding of **the City’s policy objectives**, and, subject to Applicable Law, its willingness to assist in good faith the City’s goal of having all electricity used in the City generated from renewable fuel sources by 2035, **including to the greatest extent practicable and lawful, through local customer-controlled distributed energy resources**. Grantee shall cooperate, subject to Applicable Law, with all the City’s efforts to have distributed energy resources located in the City more completely and increasingly integrated with the operation of Grantee’s electrical distribution system. Grantee accepts that the City will support economic mechanisms **to foster development of local renewable fueled electric distributed resources, electric storage, microgrids**, electric transportation, and other technologies to be increasingly integrated with the design and operation of the Grantee’s electric distribution system.” (**emphasis added**)

Item 5 of the Implementation Plan Matrix regarding “San Diego Community Power” refers to development of a Community Power Plan in 2022. What is the status of that plan and will the Committee be scheduling a presentation and discussion with SDCP representatives?

General Comment: The “Compliance Review Committee Status Update” matrix cell provides very little specificity on items to assist the Committees evaluation of compliance. Is it assumed that these issues will be addressed in next month’s meeting?

Item 8.d. Undergrounding program in the “Implementation Plan Matrix.” Please see the attached letter submitted as testimony for the April 19 meeting on this topic. There are a number of issues identified in that letter should be further addressed

Agenda Item VI. Discuss topics for next month’s SDG&E presentation.

A number of the Issues identified above for Agenda Item III have relevance for the SDG&E presentation.

The provisions of Section 12 (a) of the Franchise Agreement quoted above should be addressed with regard to SDG&E actions and positions taken and support of organizations that have intervened in regulatory, legislative and public relations efforts that have adversely affected the City’s policy objective of havjng electricity used in the City be generated “ **to the greatest extent practicable and lawful, through local customer-controlled distributed energy resources.**” More specifically, the positions taken on the NEM 3.0 proceedings at the CPUC and legislation proposed or supported by SDG&E directly or indirectly that may inhibit that goal should be addressed.

Additional topics for consideration include SDG&E promotion of a regional decarbonization plan that proposes heavy investment in transmission facilities to import remotely generated electric power versus investments in “local customer-controlled distributed energy resources” and the proposal to implement a high “Income Graduated Fixed Charge” on residential ratepayers that was added to state legislation last year. The latter item has implications on funding of public purpose programs and other programs included in the Energy Cooperation Agreement.

Thank you for your service on this Committee. Please let me know if you have any specific questions regarding the items and issues outlined.

Sincerely,

Jay Powell, Principal, Cooperations – In the Public Interest, for the Common Good

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██████████ cell direct

Enclosures:

Franchise CRC Letter Email to Mayor and City Council 021323

Franchise CRC Letter 021023

Undergrounding Electric Facilities Issues for CRC 041923

(SOLARSD / FACRC Letter 053023)

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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
Heather Werner 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 18th 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

----- Original Message -----

From: hcjpowell hcjpowell <[REDACTED]>

To: MayorToddGloria@sandiego.gov, VivianMoreno@sandiego.gov, MarnivonWilpert@sandiego.gov, RaulCamillo@sandiego.gov, StephenWhitburn@sandiego.gov, Jennifercampbell@sandiego.gov, KentLee@sandiego.gov, CityAttorney@sandiego.gov, JoeLaCava@sandiego.gov, SeanEloRivera@sandiego.gov, MMontgomerySteppe@sandiego.gov

Cc: RWilde@sandiego.gov, fortlieb@sandiego.gov, Sbspivak@sandiego.gov

Date: February 13, 2023 at 8:45 AM

Subject: Communication to City of San Diego "Franchise Compliance Committee" Members for FEBRUARY 13 Meeting

Mayor Todd Gloria

City Attorney Mara Elliott

Council President Sean Elo Rivera and City Councilmembers

Please find attached a communication to the "Franchise Compliance Committee" for their second meeting on Monday, February 13 at 3PM.

Main points:

1. Appointment of Members: Only four of the five committee members have been appointed contrary to the requirement of the gas and electric Franchise Agreements to appoint 5 members by July 2022.
2. Conflict of Interest Review: A proper review regarding potential conflict of interest of members has not been conducted.
3. Public Meetings: The Committee meetings are being held in a remote and constrained conference room requiring requests to enter by phone.
4. Exparte Communications: Guidance has not been provided regarding communications by members of the committee with the franchisee or agents or intermediaries of the franchisee or with other committee members outside of the publicly noticed meetings.
5. Charge to the Committee: The Independent Auditor and the Committee should be charged to review the required schedule of actions stipulated in the franchise agreements and Energy Cooperation Agreement and report on deficiencies and reasons for any delays and impacts to program effectiveness (eg, undergrounding of electric utilities).
6. The Franchise Compliance Review **Committee should not be meeting until all members are appointed and these issues are addressed.**

Please contact me if you have any questions regarding this information and request.

FOR MEETING INFORMATION: Franchise Agreements Website:

<https://www.sandiego.gov/sustainability/electric-and-gas-services>

Sincerely,

Jay Powell

[REDACTED]

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Cooperations - In the Public Interest, for the Common Good

Community Energy Action Network

(SOLARSD / Franchise CRC Letter Email to Mayor and City Council 021323)

April 19, 2023

Chairman Jeff Kavar and Members of the Franchise Compliance Review Committee
City of San Diego

By Email c/o: Megan Ong, mong@san diego.gov

Subject: Undergrounding of Electric Facilities Issues
Agenda Item V, April 19, 2023

Chairman Kavar and Franchise Compliance Review Committee Members:

I am submitting these comments and questions for your consideration of the undergrounding program. Some of these issues are not necessarily for just the Transportation Department but also for the Sustainability and Mobility Department consideration, since they are charged with the transitions and programs necessary to accomplish our Climate Action Plan goals. Collaboration of those two departments will be very important.

As shown in the presentation slides, the surcharge funds are collected by SDGE and transmitted to the City.

- What portion of these funds which have been paid for by City customers are considered assets of SDGE which then become a part of their rate base for computing rates and rate of return to SDGE?

The City is working to have greater control of the design and in some cases the contracting and direct expenditure of those funds.

- Who makes the decisions on the capabilities needed for the undergrounding system?
- If the City determines that it wants to create a municipal utility, how will these assets be considered in valuations for acquisition? Will the citizens of San Diego pay for them three times -- through the surcharges on their bills to construct, in their bills as part of SDGE's rate base calculations for monthly bills and then to purchase them from SDGE ?

Regarding the capabilities of the underground system:

- If every home and business and commercial and municipal facility in San Diego converts from methane gas appliances and applications to electricity, and installs electric vehicle charging all dependent on electric power provided through the existing transmission and distribution system, will the underground facilities now installed and those being designed and installed be capable of supporting that electrical load?
- If the City were to promote the expansion of roof top and storage on municipal facilities and in residential and commercial neighborhoods to the full potential that has been identified while

it is promoting the electrification of all buildings and electric vehicle charging in those areas, will the underground facilities now installed and those planned to be installed be capable of supporting such a system?

COST PER MILE and costs of undergrounding utilities:

The committee should be made aware of the cost per mile and other issues identified by the City Auditor previously and those that the City has previously challenged regarding the cost per mile charges submitted by SDGE and comparisons of costs to other areas of the state.

- What are the costs per mile of other utilities (both municipal, public and investor owned utilities) operating in California compared with the costs per mile and the overall costs per project that include the removal of the replaced older above ground utilities in the City of San Diego?

Jay Powell



cell direct

Community Energy Action Network

SOLARSD / Undergrounding Electric Facilities Issues for CRC 041923