



October 20, 2020

San Diego City Council
City Administration Building
202 C Street
San Diego, CA 92101
Via: cityclerk@sandiego.gov

RE: Oppose the Mayor's Franchise Agreements Proposal

Dear Council President and Councilmembers,

On behalf of the organizations below, we urge you to oppose the outgoing Mayor's electric and gas Franchise Agreements proposal, and give the next Mayor and Council the opportunity to craft a better deal for San Diego with better outreach and engagement.

There is universal agreement that the 1970 franchise agreements are obsolete and serve the utility over the public interest. There has also been a clear pattern of abuse by our incumbent utility with no meaningful recourse for the city to hold the utility accountable or to explore other options.

As you know, the city hired an expert energy consultant to recommend a number of critical provisions to modernize our agreements and put the city and public interest first, which included a “Right to Purchase” clause. The Mayor presented the initial bid proposal with this provision in multiple public hearings, and with the support of other potential bidders. Unfortunately, on his way out of office, the Mayor decided to ignore the expert’s advice and lead the city into another 101 Ash Street debacle. Below are the reasons why the Council must oppose the Mayor’s proposal:

1) Removal of the Right to Purchase clause is a deal breaker. As recommended by the expert consultant, the Right to Purchase clause is the crux of the deal. It is the only material change from the 1970 contract that meaningfully protects the city and taxpayers from the misdeeds of the utility, and the only clause that would allow the city to exit the contract without undue burden and cost.

The condemnation clause in the current contract has been useless for 50 years because the city has no meaningful recourse or leverage outside of years of litigation. As a result, the city has been subject to a pattern and practice of SDG&E charging the highest rates in the state, while undermining city goals. This long pattern of SDG&E abuses—versus partnering with the city—was spelled out by the consultant in his report. It is akin to the indemnification clause of 101 Ash—it is the poison pill.

2) The Mayor put SDGE’s interest over the public’s interest. The Mayor removed the clause on his way out of office due to pressure from the incumbent utility. He capitulated when he should have stood his ground. He has tried to suggest that no utility would respond to the bids if the “Right to Purchase” clause were included, but that is contrary to what our expert consultant said, and contrary to what the Mayor’s team said on the record at the August hearing. Plus, one of the prospective bidders, Berkshire Hathaway, testified at multiple hearings that they were interested in bidding with all of the original terms, including “Right to Purchase.”

Ultimately, if no one did respond, the new Mayor would then start crafting new deal terms, consider pursuing municipalization and something would give. That is happening in the city of Chicago today, where they have extended the existing contract to craft a better deal.

3) Audits alone will not bring the utility to the table. Audits are meaningless without corresponding accountability. Without the leverage of the “Right to Purchase” clause, the proposed biennial audits will be an ineffective tool for holding the utility accountable or fostering genuine partnership with the city. If the utility received a bad audit, what recourse would the city have? Without the “Right to Purchase” clause, the answer is none.

4) Trading city rights for cash is not good governance. The suggestion has been made that the city and community should be content that there will be funds for the CAP and a potential climate equity fund as a trade-off for giving away the rights of the city for decades. This is not an

either/or scenario. The city should insist on both/and. In fact, it is this kind of thinking that has undermined the city in contract after contract. Numerous third party audits have validated that the city has a pattern and practice of adopting contracts that favor the bidders over the city. We cannot repeat this failed pattern for short term cash.

5) Future city leaders need to weigh in on this decision. On the cusp of an election that will usher in a new Mayor and five new councilmembers, it is critical their perspectives are at the franchise agreement table. Outgoing elected officials should not be making final decisions on long-term, multi-billion dollar contracts. Future leadership should shape and decide these decades-long agreements.

For these reasons, we urge you to oppose the Mayor's franchise agreement proposal, which will leave San Diego families at the mercy of Wall Street utilities for decades to come. We also recommend council direct city staff to secure at least a one year extension on the existing agreements so future leaders and San Diegans can explore their options and get the best deal. It is also critical for any extension to guarantee strong worker protections and good union jobs, and that any franchise agreements or alternatives moving forward do so as well. The city cannot afford another bad deal. Thank you for your consideration.

Sincerely,

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