



Protect Our Communities Foundation

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City of San Diego, Utility Franchise Agreements, and Public Power

For many years, San Diego under SDG&E has paid electricity rates approximately twice as high as Sacramento residents. Currently SDG&E rates are [86% higher](#) than Sacramento rates. The new mayor and city council have the opportunity to finally end this inequity and set our city on a path to a new and more prosperous economic future.

Alternatively, a new franchise agreement with SDG&E would shackle the City to a utility owned by Sempra Energy, one of the largest fossil fuel companies in the nation. Sempra Energy trumpets its success in [continued buildout of fossil fuel](#) infrastructure, oversees fossil fuel subsidiaries like SoCalGas that [violate California regulations](#), and owns SDG&E which misled state regulators during [a recently botched lightbulb](#) program.

In 2015, the City approved a legally binding [Climate Action Plan](#). In March of 2020, the City Council approved a [climate emergency resolution](#).

It would appear hypocritical for the council to sign any deal that provides Sempra Energy, a fossil fuel company, with billions in profits. Anything less than a complete rejection of a Sempra franchise deal would acknowledge that Council President Campbell's climate emergency resolution was simply political theater just as former [Councilmember Sherman asserted](#).

The franchise agreements are City assets worth more than \$15 billion:

The City's consultant pegged the value of the franchise at \$6.4 billion by assuming gas and electricity rates stay the same for 20 years. The California Public Utilities Commission has already approved rate increases through 2021 ([see p. 2-3](#)) that exceed the consultant's assumptions by 17%. By simply assuming the average SDG&E growth in profits over the last 10 years and projecting that same growth forward, the worth of the franchises exceed \$15 billion. The City should take the time to obtain a rigorous analysis of the true value of the franchises.

SDG&E must continue to provide service even without a franchise agreement:

The City Attorney's memo to former Councilmember Bry ([ML-2020-2](#)) includes information detailing (1) that SDG&E has an obligation to continue service regardless of an active agreement; (2) a public utility could buy wholesale power from San Diego Community Power; and (3) that the City Attorney's office would sue SDG&E if SDG&E refused to deliver the franchise fee to the City. The City Attorney memo states that "it is possible that SDG&E would

discontinue payment of franchise fees and undergrounding revenue, *leading to litigation initiated by the City.*" [emphasis added] (p. 5)

SDG&E collects the franchise fee from its customers and delivers the fee to the City. SDG&E does *not* pay the franchise fee. The fee is simply a pass-through fee charged by SDG&E to the ratepayer and then delivered to the City. The franchise fee does not affect SDG&E's profits and thus SDG&E should continue to deliver the franchise fee regardless of an active franchise agreement.

SDG&E stands in violation of the current franchise agreement re: right-of-way:

The City is suing SDG&E in two separate cases because SDG&E refuses to follow [Section 8 of the franchise agreement](#) which requires SDG&E to move its infrastructure at no cost to the City if the City needs the right of way.

[City Attorney Press release](#) explaining the January lawsuit against SDG&E.

[January 15 Lawsuit](#) - City of San Diego v. SDG&E

[October 27 Lawsuit](#) - City of San Diego v. SDG&E

SDG&E violates the current franchise agreement re: electric line undergrounding:

[City Attorney Memo - explaining utility undergrounding violation](#) (p. 2)

" As UUP projects accelerated in 2019, SDG&E began to submit invoices with significantly increased and unsubstantiated costs. Around the same time, the rate of cost, or cost-per-mile, of SDG&E projects also significantly increased compared to prior SDG&E-led undergrounding projects and compared to current City-led undergrounding projects. SDG&E-led projects in the past historically averaged around \$4.5 million per mile of undergrounding conversion³ and City-led projects currently average about \$5 million to \$6 million per mile of undergrounding conversion. By comparison, we have learned some SDG&E projects are currently at or exceeding \$10 million per mile with some projects potentially approaching \$20 million per mile, without sufficient documentation to justify such increases. SDG&E has refused to provide City staff with detailed undergrounding cost documentation, which violates Section 12 of the 2002 Memorandum of Understanding between the City and SDG&E."

City of San Diego consultant reports on Franchise Agreement Issues:

Legal/strategic report: [JVJ Consulting](#)

The legal consultant for the City anticipated the exact situation in which the City today finds itself. In the City's current situation, the consultant recommends that the City form a public utility. Page 3 of the JVJ report states that "If the new proposed franchises are not accepted without material changes by a responsible bidder, then *we recommend that the City proceed to form community-owned electric and gas distribution utilities.*" [emphasis added]

Additionally, the JVJ Report details some of the many historical and continuing examples of SDG&E's poor performance. The report states:

- "...the City has experienced significant problems with SDG&E's operations under the 1970 franchises." (p. 42)
- "The City's operational departments have reported severe and increasing difficulties with SDG&E's performance..." (p. 42)
- "City operational departments report that SDG&E has become increasingly uncooperative..." (p. 43)
- "...problems have become so severe that there has been repeated litigation." (p. 43).
- "The City also has a major concern over SDG&E's lack of coordination on the Utility Undergrounding Program..." (p. 44)

Utility Infrastructure Valuation report: [NewGen Strategies](#)

Engineering and financial consultants to the City found that it would be cost effective for the City to start its own public utility. In other words, the consultant said that forming a public utility would save ratepayers money. In 5 of the 6 scenarios analyzed, the consultant found that the City and ratepayers would save money by forming a public utility - including in both base case scenarios, the most likely scenarios.

Gas: ([page 7](#), [pdf page 13](#))

- Low case scenario, public utility = cost effective
- Base case scenario, public utility = cost effective
- High case scenario, public utility = cost effective

Electric: ([page 5](#), [pdf page 11](#))

- Low case scenario, public utility = cost effective
- Base case scenario, public utility = cost effective
- High case scenario, public utility = not cost effective

All scenarios should have found that a public utility would be cost effective. A peer review of the reports would likely recommend corrections that would lead to cost effective outcomes in all six scenarios.

The City Council Plays an Important Role in Franchise Agreements:

If the Mayor and City Council ignore the recommendations provided by the City's consultants and decide to move forward with a franchise agreement with an investor owned utility, then the City Council plays an important role in setting the terms. According to the [City Charter](#), Section 103.1: "The Council shall have power to provide reasonable terms and conditions under which such businesses may be carried on and conducted within The City of San Diego."

Conclusion:

The City of San Diego must move forward with a twenty-first century clean energy plan centered around a public utility. Such a plan would finally bring much needed rate relief to San Diego energy consumers. It would place San Diego businesses on a level playing field with businesses from other cities. And our local utility would finally be locally controlled.