COUNCILMEMBER SEAN ELO-RIVERA
NINTH COUNCIL DISTRICT

M E M O R A N D U M

DATE: March 3, 2021

TO: Mayor Todd Gloria

FROM: Councilmember Sean Elo-Rivera

SUBJECT: Priorities for the Gas and Electric Franchise Agreements

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The City's gas and electric franchises are crucial tools in achieving a better energy future for San Diego. The contract bidding and awarding for the gas and electric franchises, expected in the coming months, present rare opportunities to make substantial investments in renewable energy and equitable infrastructure. I am focused on three ultimate outcomes: striking the best deal possible for ratepayers, moving toward a zero-carbon future, and building trust in the community by increasing transparency and accountability in the Invitation to Bid (ITB) process and eventual agreements.

To work toward these goals, the Council District 9 office, in concert with your Mayoral staff, hosted three virtual forums to solicit community feedback on City's ITB. We also received many letters, emails, and calls from community members and stakeholders, and the Environment Committee received public testimony on the ITB at its hearing on January 28, 2021. This feedback informed the terms I believe should be included in the ITB and what the outcomes of new franchise agreements should be. Below are my priorities for the gas and electric franchise agreements and the associated ITB.

<u>Term Length</u>
The gas and electric franchises agreements should be no longer than five (5) years. The pace of innovation and policymaking in the energy sector across the county and the state, the possibility of forming a public power agency, and the launch of San Diego Community Power are all reasons why a 5-year agreement is a more responsible term than the ultra-long term favored by the incumbent utility and promoted by the previous Administration.

The City should follow industry trends and fulfill the will of the community by pursuing a responsible term for our franchise agreements.

<u>Bid Amount</u>
The $80 million total bid amount in last year's ITB equated to just $4 million per year when prorated to the proposed 20-year agreement term. The lone bidder for the franchises was

SDG&E, which last month touted a $824 million profit for calendar year 2020.[1] In its 'Report to the City of San Diego concerning Gas and Electric Distribution Systems', JVJ Pacific Consulting estimates 42% of SDG&E's rate base is in the City of San Diego. Assuming SDG&E's rate base in the City contributed to its profits proportionately, then San Diegans contributed nearly $350 million in profits to the incumbent utility last year. The prorated $4 million payment SDG&E would have paid for the right to the gas and electric franchises represents just 1.1% of the company's 2020 profit. For providing 42% of SDG&E's profits, San Diegans would return just 1.1%. That is inadequate.

The minimum bid amount for a 5-year agreement should be $60 million. This number is roughly equivalent to the $11,986,128 in stock awards paid to SDG&E's executive officers in 2019,[2] multiplied by five for each year of a five-year agreement. Any additional years beyond an initial 5-year agreement should 'escalate' the bid amount, since a longer franchise agreement offers a potential franchisee additional certainty, which is of significant monetary value. Below is an example:

- 5 years—$60 million initial bid amount
- 6 years - $80 million initial bid amount
- 7 years - $105 million initial bid amount
- 8 years - $135 million initial bid amount

In this example, the minimum annual value of the bid amount is $12 million, three times higher than in last year's ITB, and is tied to the compensation of the executive officers of a company whose profits are in large part dependent on San Diegans. To that end, the upfront payment should not come from ratepayers (i.e. San Diego residents and businessowners).

Finally, as recommended by Councilmember LaCava, the initial payment should be paid in-full to execute any new agreement.

<u>Annual Payment</u>
As suggested by Councilmember Montgomery Steppe, the annual payments from a franchisee to the City should be tethered to the salaries and bonuses of its executives. The City should not be willing to accept what is only a small percentage of what ultra-rich executives are taking home on the backs of San Diegans.

As with the initial payment, annual payments should not come at a cost to ratepayers. Costs should not be socialized by San Diegans when obscene profits are being privatized.

<u>Eligibility</u>
To be eligible to bid on the gas and electric franchises, prospective bidders must not be a defendant to City litigation at time of contract awarding. The lone bidder for the franchises last year has been in constant litigation with the City, including in an existing $35.4 million lawsuit filed by the City against the franchisee for breach of contract. This is unacceptable. The City must only enter into an agreement with a partner who it can trust to adhere to the terms of the agreement. Existing failures to adhere to existing agreements must rule those potential bad-faith bidders ineligible.

[1] 'San Diego hears pitch for public power option on franchise agreement,' Rob Nikolewski, San Diego Union-Tribune, February 26, 2021.

[2] San Diego Gas and Electric Company pursuant to CPUC General Order No. 77- M for the year ended December 31, 2019

Climate Action

The franchisee must be a partner in achieving the City's climate action goals, and should agree to the following:

- Work cooperatively with San Diego Community Power, the nonprofit entity that procures and provides clean, renewable energy to San Diego;
- Support the City's Climate Action Plan and the emission reduction goals therein;
- Invest in electric infrastructure to support the City in achieving its transportation-related emission reduction goals;
- Share distribution-level data on load, congestion, system capacity, and integration of resources;
- Allow for more and easier access to rooftop solar, energy storage, and other local distributed energy resources to make the City's electric system climate resilient.

Equity, Representation, and Worker Rights

The franchisee, either through direct payment or via franchise fees remitted to the City, should contribute to the City's Climate Equity Fund, to be established later this year.

The franchisee should agree to "card-check neutrality" and commit to refrain from any and all forms of "union busting." Additionally, the City should require the franchisee to add directors to its governing board. The directors would be nominated by the City Council and represent the City and its residents. At least one City-appointed director must be from the franchisee's workforce, and the number of directors added should be 20% of the number of the current board members. These directors should have full voting rights.

This requirement is similar to a concept known as codetermination, which refers to workers of a company having the right to vote for representatives on governing boards. This proven practice would ensure the City's ratepayer interests are represented on the franchisee's governing board.

Additional terms and outcomes

- Mandatory periodic performance audits – performance audits should occur biennially. These audits should be conducted by the City Auditor and paid for by the franchisee.
- City representation at the California Public Utilities Commission (CPUC) cases regarding rate cases – In order to ensure the bid amount is not "rate-based" (i.e. put into the ratepayer calculations) and comes from shareholders, the City must intervene in rate-cases at CPUC to provide evidence that the franchise agreements dictate the bid amount to be paid by shareholders. City of San Diego utility rates have increased over 48% since 2013. While there has been significant investment in the grid for wildfire protection and new technologies, the City has an obligation to protect ratepayers and ensure the franchisee adheres to the terms of the franchise agreements.

Public power

Many community members have called on the City to explore municipalization or public power after short-term agreements go into effect. To enable this option, the City should include in the franchise agreements rights to purchase the utility's facilities to preclude a condemnation process. Separate from the ITB, the City should conduct a preliminary municipal utility feasibility study, like that which the City of Chicago recently conducted.

I greatly appreciate the community members who engaged on this issue. I also thank you and your staff for the time and resources you committed to ensure outreach in Council District 9 was effective and productive. I look forward to continue working with you on the gas and electric franchises.

CC: Honorable Mara Elliott, City Attorney
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