



**COUNCIL PRESIDENT PRO TEM BARBARA BRY
CITY OF SAN DIEGO
DISTRICT 1
MEMORANDUM**

DATE: October 14, 2020
TO: Honorable City Attorney Mara Elliott
FROM: Council President Pro Tem Barbara Bry *Barbara Bry*
SUBJECT: Franchise Agreements: Essential Clarifications Requested

As the City Council prepares to review bids in response to the Mayor's Invitation to Bid on the electric and gas franchises, I seek your office's advice on the following key issues:

Whether a potential San Diego municipal utility can purchase energy from San Diego Community Power?

Before the City awards its electric and gas franchises, it is essential for the City Council to fully understand how a potential City-run utility would interact with our regional Community Choice Aggregation authority, San Diego Community Power (SDCP). In the JVJ Consulting Report it states:

The City Attorney's Office advises that if the City formed a utility, SDCP could not provide retail commodity electric service to customers within the City because of provisions in the statute creating community choice aggregation.

At the August 6th City Council hearing, Mr. Howard Golub of JVJ Consulting began explaining how SDCP could partner with a potential municipal utility to sell *wholesale* power to the municipal utility. Can you please provide clarification regarding the sale of energy from SDCP to a municipal utility, and how it may legally be structured?

Whether our incumbent utility has an obligation to serve?

At the July 16th Environment Committee meeting, Deputy Chief Operating Officer Erik Caldwell indicated the City believes that SDG&E will continue to have an obligation to serve San Diego customers, regardless of whether the current agreement expires with no new franchise agreement in place.

My current understanding of this obligation to continue service is also based on the California Public Utilities Code. Specifically, the limitation on a utility's right to abandon service is rooted in Public Utilities Code § 451 for stationary utilities. The restriction of abandonment or other unilateral discontinuance of service by stationary utilities seems to be long established under this statute.

Please confirm as soon as possible whether our incumbent utility has an absolute obligation to continue providing electric service to San Diego residents regardless of whether the current franchise agreement expires in January 2021 with no new agreement in place and no formal extension of the current franchise agreement. ***Additionally, if the City and incumbent utility end up in this situation, could the incumbent utility refuse and/or suspend franchise fee payments to the City? Would the failure of payment possibly constitute an illegal trespass by the incumbent utility under these circumstances?***

Thank you in advance, and I look forward to your swift response and thoughtful analysis.