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To: City of San Diego
Franchise Compliance Review Committee

Date: October 31, 2025

Subject: Management Letter Regarding Performance Audit of SDG&E Compliance with Franchise

Separately, Crowe LLP provided the City of San Diego (City) with our performance audit of San Diego Gas & Electric's (SDG&E) compliance with the Gas and Electric Franchise Agreements, Administrative Memorandum of Understanding (MOU), Undergrounding MOU, and the Energy Cooperative Agreement between July 8, 2023 and July 7, 2025. In planning the performance audit, we considered SDG&E's internal control structure in order to determine our auditing procedures for the purpose of providing conclusions on the audit objectives and not to provide assurance on the internal control structure.

For the City of San Diego (City) and SDG&E consideration we herein submit our comments and suggestions, related to internal control and other matters, summarized in **Table 1** with details for each comment beginning on page 3. These are in addition to the findings presented in the performance audit report and are intended to assist in affecting improvements in internal controls and other procedures. These items include less significant internal control matters that were not significant enough to the performance audit objectives but are important enough to warrant attention of those charged with governance, and other control matters.

The accompanying comments and recommendations are intended solely for the information and use of the Franchise Compliance Review Committee, City management, and SDG&E. We have already discussed many of these comments and suggestions with various City and SDG&E personnel. We would be pleased to discuss our comments and suggestions in further detail with you at your convenience, to perform any additional study of these matters, or to review the procedures necessary to bring about desirable changes.

We include the City's response to this letter in **Appendix A** and SDG&E's response to this letter in **Appendix B**. The City's and SDG&E's written responses to the suggestions identified in our audit were not subjected to the auditing procedures applied in the audit of the compliance with Franchise terms and condition and, accordingly, we express no opinion on the responses by the City or SDG&E.

We appreciate the courtesy and assistance given to us by City and SDG&E staff during both phases of the performance audit.

Crowe LLP

Crowe LLP

cc: City Franchise Compliance Review Committee
San Diego Gas & Electric

Table 1
Summary of Comments and Recommendations Related to SDG&E Franchises and Controls

Number	Title	Applicable Agreement Section	Recommendation(s)
1	Undergrounding Costs on Higher End of Comparable Range	Sections 4.2.3, 7.2.2, and 12.3, Undergrounding MOU	• Provide Greater Detail for Project Cost Estimates • Provide More Rationale/Context for Cost per Mile Costs Estimates • Provide Greater Access to Books and Records to Substantiate Cost per Mile • Perform Project Lookback to Identify Drivers for Lower and Higher Cost Projects • Evaluate Cost Savings Measures Where Possible
2	Limited Documentation to Support Method for Determining Overhead Cost Rates Use for Undergrounding Projects	Section 10.1,3 and 10.3, Undergrounding MOU	• Provide More Rationale/Context for Application of Each Overhead Applied to Undergrounding Projects • Provide Greater Access to Books and Records to Support Overhead Cost Rates
3	Duty to Defend Not Immediately Provided in Certain Cases	Section 13 (a), Franchise Agreement	• Implement Duty to Defend Immediately Where Required • Update Section 13(a) of the Franchise Agreement for Duty to Defend Provision • Implement Formal Duty to Defend Communication Process
4	Permitting Challenges	Administrative MOU	• Strengthen Internal QA/QC Controls • Standardize Use of City Templates • Enhance Training and Compliance Awareness • Improve Responsiveness to Feedback • Require As-Built Record Integration • Engage in Regional Coordination
5	Clarification of 90-Day Relocation Commencement Requirement Under Franchise and Administrative MOU	Franchise and Administrative MOU	• Amend the Administrative MOU to explicitly reference Franchise Section 8(a) • Define “substantially complete designs” as 90% design completion or greater, • Retain the formal “90-Day Notice” as a confirmation and scheduling tool • Require joint documentation of design completion notifications, acknowledgment by SDG&E. • Provide training and procedural guidance to both City project managers and SDG&E liaisons.

1. Undergrounding Costs on Higher End of Comparable Range

Comment

Regarding SDG&E's compliance with the requirement to submit to the City on an annual basis SDG&E's average underground cost per mile for the Surcharge Program,[1] in 2023 SDG&E provided undergrounding costs for 13 current surcharge projects that ranged from $7.8 to $13.3M per mile, and averaged $9.3M per mile, as shown in the table below. As part of the phase II audit, from our sampled projects, we updated the cost per mile and overhead factor for five (5) of these selected projects and determined the average was $5.6M per mile, well below the 2023 estimates.

Table 2
SDG&E Surcharge Undergrounding Project
Current Cost Estimates per Mile
November 2023, October 2025 Update

		November 2023				October 2025 (Updated)		
Project	**Miles**	**Total Cost (Millions $)**	**Cost per Mile (without OH)**	**Cost per Mile (with OH)**	**OH Factor**	**Cost per Mile (without OH)**	**Cost per Mile (with OH)**	**OH Factor**
1. Allied Gardens 7R1	3.77	$41.1	$5.2M	$9.6M	81%			
2. North Clairemont 6K1	4.61	$49.1	$5.2M	$9.6M	85%	$3.1M	$4.9M	56%
3. North Clairemont 6K2	5.89	$55.8	$4.7M	$8.5M	81%	$2.2M	$3.5M	55%
4. Crown Point 2BB, Job 1	2.07	$28.2	$6.7M	$12.4M	85%	$5.0M	$7.8M	56%
5. Crown Point 2BB, Job 2	2.44	$24.8	$4.7M	$9.1M	94%	$4.6M	$8.7M	90%
6. Del Mar Heights 1Y	2.41	$21.2	$4.3M	$7.8M	81%			
7. Mission Beach 2S2	2.14	$31.5	$7.3M	$13.3M	82%			
8. Muirlands 1M1	2.64	$25.7	$4.8M	$8.7M	81%			
9. Navajo Blk 7T	4.89	$47.8	$4.9M	$9.0M	84%	$3.8M	$6.2M	61%
10. North Encanto Blk 4R1	5.53	$52.5	$4.5M	$8.3M	84%			
11. Palm City Blk 8R	2.99	$29.9	$4.8M	$8.8M	83%			
12. Normal Heights 3DD	4.28	$47.0	$5.4M	$9.9M	83%			
Total	43.66	$407.1						
Average			$5.1M	$9.3M	83%	$3.4M	$5.6M	63%

[1] Per Section 13.1 of the Undergrounding MOU, this is calculated using the "Miles Installed" methodology described in the Franchise (the "Miles Installed" methodology reflects length of mainline trench and service trench installed as referenced in Appendix A — Cost Per Mile of the Undergrounding MOU).

These cost per mile figures have fluctuated materially since 2023. SDG&E's estimated average undergrounding costs for these 12 surcharge projects equaled approximately

- $6.9M for fiscal year 2023.[2]
- $7.2M per mile for fiscal year 2024
- $9.6M per mile in November 2024 (above table)
- $5.6M per mile as of October 2025, for those 5 projects noted in the above table.

When compared to other published undergrounding cost per mile data, these were generally on the higher end of the range prior to the current estimates. For example, PG&E reported average actual rule 20A undergrounding costs per mile of $5.2M.[3] A City of Berkeley, California, study indicated average City undergrounding cost per mile figures of approximately $6.0M in 2022.[4] The State of New York identified undergrounding costs per mile ranging from $4M to $7.2M.[5] However, with the current estimates, the average of $5.6M is more in line with these comparisons.

We note that there are a variety of reasons why undergrounding costs per mile can vary significantly. These include:

- Concentration of other underground utilities
- Customer outreach requirements
- Environmental clearances
- Labor costs
- Paving
- Permitting
- Population density
- Terrain
- Topography
- Volume of services.

Importantly, use of undergrounding cost per mile figures for rural settings is not a valid comparison as the undergrounding construction conditions generally are much more straightforward. For example, SDG&E has reported recent undergrounding cost per mile figures of between $2.0 and $2.3M for wildfire mitigation efforts located in the rural high fire threat district (HFTD) areas it serves.[6] Again these are not comparable costs with SDG&E in City urban area undergrounding costs.

Suggestions

Given that SDG&E's undergrounding costs have fluctuated significantly over the past several years, and it is difficult to identify the causes for these fluctuations, we find it prudent for SDG&E to:

- Provide Greater Detail for Project Cost Estimates – Currently SDG&E provides a one-page summary of the costs per mile, organized to include general categories of service panel modifications, trench & conduit costs, cabling & connections, cable poles, and overhead removals. However, from this data alone it is difficult to understand exactly which elements of that project pose unique construction challenges which may cause that project's costs to be higher than in other locations. We suggest that SDG&E provide a basis of estimate, project assumptions, and more detailed line-item costs for each project cost estimate.
- Provide More Rationale/Context for High Cost per Mile Estimates – Recognizing the complexity and variability of undergrounding work, we suggest that SDG&E provide additional data and information to

[2] Source: *City Status Update on the Utilities Undergrounding Program*, June 22, 2023, Attachment 4 SDG&E Cost Forecast.
[3] Source: PG&E Rule 20A Annual Report.
[4] *Study to Underground Utility Wires in Berkeley*, prepared February 2020, page 4, in 2019 dollars.
[5] *The Benefits, Costs, and Economic Impacts of Undergrounding New York's Electric Grid,* June 27, 2023, Industrial Economics, Inc., Page 22, for underground distribution capital projects.
[6] SDG&E Report 2022 Spending Accountability Report (RSAR), Strategic Undergrounding (Capital), dated 4/28/2023, SDG&E Balanced Program Direct Capital Cost Variances (2020, 2021, and 2022), pages A-117 and A-120.

the City to explain reasons why SDG&E undergrounding costs are on the higher end of the range of comparable undergrounding costs.

- Provide Greater Access to Books and Records to Substantiate Cost per Mile Estimates – We suggest in the spirit of open communications related to the MOU that SDG&E provide detailed final actual costs related to completed undergrounding projects, to the City, particularly if these are used to inform future project cost estimates.
- Perform Project Lookback to Identify Drivers for Higher and Lower Cost Projects –SDG&E should perform a lookback analysis of twenty (20) completed undergrounding projects to identify lessons learned, primary cost drivers, and unique project-specific factors that contributed to the higher or lower than estimated project costs.[7] For example, for higher cost projects, was the cost high because of one-time or extraordinary factors that SDG&E does not expect for most future projects (e.g., lengthy project delays, project starts/stops due to Covid pandemic, temporary supplier/vendor limitations, re-mobilizations, "standing army" or unforeseen utility conflicts)? Additionally, SDG&E should provide documentation to support higher than expected project costs driven by increases in costs of construction, labor, equipment, materials, permitting, and/or overhead. SDG&E should factor these observations and lessons learned into its go forward project cost estimates. SDG&E also should explain whether or not future undergrounding project cost estimates include higher contingencies and/or cost escalations based on recent experience performing undergrounding project work within the City.
- Evaluate Cost Savings Measures – SDG&E has already been working with the City to identify alternative cost-saving measures such as bundling job packages, leveraging City owned property for staging areas and utilizing one lot for two projects, and shortening design durations to bring the Issued for Construction Drawings notice forward.

2. Limited Documentation to Support Method for Determining Overhead Cost Rates Used for Undergrounding Projects

Comment

For undergrounding projects, as shown in the Table 2, SDG&E's total effective overhead rate was approximately 83 percent in 2023 and now is approximately 63 percent. The overhead rate is applied to direct costs and in accordance with the Undergrounding MOU, SDG&E is required to report to the City overhead in the following four (4) overhead cost categories:

- Administrative & General (A&G) and Construction Support OH
- Labor OH
- Purchasing & Warehousing OH
- Other OH.

Per testimony provided in conjunction with SDG&E's General Rate Case proceedings for electric and gas rates regulated by the California Public Utilities Commission (CPUC)[8], SDG&E overhead costs are charged for expenses not attributable to one project, but many projects. Overhead costs can include supervisors, managers, field employees, and administrative personnel. Overhead costs can include administrative expenses such as office supplies, telephone, mileage, uniforms, professional dues. Overhead costs also can include contract administration, pension and benefits, workers compensation, administrative and general, fleet/equipment, and rent costs.

Given the significance of the overhead costs relative to total City undergrounding project costs, the City would benefit from SDG&E providing additional justification and documentation to support the overhead

[7] The City should select five (5) completed higher cost projects and five (5) completed lower cost projects for both Rule 20A, and City Surcharge funded, for a total of 20 projects. Each project lookback should be completed within three years of each project's completion.

[8] Sources: Revised Prepared Direct Testimony of R. Craig Gentes on Behalf of SDG&E (Track 2 Accounting), application A.22-05-016 for 2024 General Rate Case – Track 2, dated February 9, 2024, page SPD-15 and Revised Prepared Direct Testimony of Steven P. Dais (Rate Base), application A.22-05-016 for 2024 General Rate Case, dated August 2022, page SPD-15.

rates that SDG&E uses for project cost estimates and the overhead costs it provides in conjunction with Section 10.3 of the Undergrounding MOU.

Suggestions

- Provide More Rationale/Context for Application of Each Overhead Rate Applied to Undergrounding Projects – We suggest that as part of its cost estimates, SDG&E provide additional documentation to show the relationship and/or nexus for each applicable overhead rate applied to a direct project cost. Further, SDG&E should provide documentation to support where comparable overhead rates have been accepted/approved elsewhere. One basis for comparison would be the effective overhead rates SDG&E has been approved to apply to similar undergrounding and/or capital projects as part of the CPUC General Rate Case process.[9]
- Provide Greater Access to Books and Records to Support Overhead Cost Rates - We understand that the City has requested additional specifics regarding this overhead rate and is working with SDG&E to better understand the costs included within the overhead rates applied to City surcharge projects. For example, the City has requested a custom report to show job specific details of how accruals and direct costs affect the overhead amount, and to provide an annual report on rate adjustments and their impact to overhead rates.

3. Duty to Defend Not Immediately Provided in Certain Cases

Comment

Section 13 (a), Franchise Agreement indicates that the "Grantee, to the fullest extent permitted by law fullest, shall defend with legal counsel reasonably acceptable to the City, indemnify, and hold harmless the City and its officers, agents, departments, officials, and employees (Indemnified Parties) from and against all claims, losses, costs, damages, injuries (including death) (including injury to or death of an employee of Grantee, any agent or employee of a subcontractor of any tier), expense and liability (collectively "Claims"), including court costs, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation, that arise out of, in whole or in part, any acts performed, rights exercised, or rights or privileges granted under the Franchise, to or by Grantee, any employee, agent or subcontractor of any tier."

This indemnification assumes an immediate duty to defend. The duty to defend is provided in the following case law:

- California Civil Code section 2778(4) specifies that "the person indemnifying is bound on request of the person indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct such defenses, if he chooses to do so."
- California Supreme Court case *Crawford v. Weather Shield Mfg., Inc.*, 44 Cal.4th 541, 553 (2008) provided the following clarifications regarding Section 2778:
    - The California Supreme Court held that "section 2778, unchanged since 1872, sets forth general rules for the interpretation of indemnity contracts, 'unless a contrary intention appears.' If not forbidden by other, more specific, statutes, the obligations set forth in section 2778 thus are deemed included in every indemnity agreement unless the parties indicate otherwise. Several subdivisions of this statute touch specifically on the indemnitor's obligations with respect to the indemnitee's defense against third party claims." (Reference: pages 9-10)
    - With respect to the timing of the duty to defend, the Court identified that the duty to defend:

      … arises immediately upon proper tender of defense by the indemnitee, and thus before the litigation to be defended has determined whether indemnity is actually owed. This duty, as described in the statute, therefore cannot depend on the outcome of that litigation. It follows that, under subdivision 4 of section 2778, claims 'embraced by the indemnity,' as to which the duty to

[9] SDG&E receives approval for overhead costs, not rates, as part of the CPUC General Rate Case process, but these effective overhead rates can be calculated from approved indirect and direct costs.

defend is owed, include those which, at the time of tender, *allege* facts that would give rise to a duty of indemnity. (Reference: pages 16-17)

- The Court noted this is because the duty to defend is broader than the duty to indemnify. (Page 1 of 17)

- California Superior Court case *City of Bell v. Superior Court*, 220 Cal.App.4th 236, 249 (2013), citing *Crawford*, 44 Cal.4th at 558, provided the following context regarding duty to defend timing:

  "sometimes it will not be clear whether an action brought against the indemnitee is within the scope of the indemnity until after the underlying action has been resolved. In those situations, the duty to defend nonetheless arises. That is to say, the law implies in every indemnity contract, unless the contract provides to the contrary, the duty to defend claims which, at the time of tender, allege facts that would give rise to a claim of indemnity. (Reference: page 249)

- *UDC-Universal Development, L.P. v. CH2M Hill*, 181 Cal.App.4th 10, 22 (2010), provided the following context regarding the duty to defend is broader than the duty to indemnify:

  "The duty to defend arises immediately upon proper tender and is owed "regardless of whether the indemnitor is ultimately found negligent." Again, this is because the duty to defend "is distinct from, and broader than," the duty to indemnify."

- *Centex Homes*, 32 Cal.App.5th at 1237 specified the following:

  "…the indemnitor, has a duty to defend throughout the underlying tort action unless the indemnitor proves, by undisputed evidence, that Plaintiff's action is not covered by the agreement."

There have been several recent cases where SDG&E did not appear to have provided timely duty to defend in accordance with the franchise agreement and case law:

1. Jerry Phillips v. City of San Diego, SDG&E et al

   Jerry Phillips alleges that he tripped and fell on an uplift between two trench plates in the street. The trench plates cover an excavation done by a contractor for SDG&E. We reviewed the following documentation provided by the City:

   - Phillips' government claim against the City, dated January 31, 2025
   - Pictures of the condition
   - A document reflecting a claims search by the City's Risk Department showing that as of the search date (March 4, 2025), SDG&E was already on notice of this claim
   - Phillips Lawsuit naming the City and SDG&E, dated March 19, 2025
   - Deputy City Tender to SDG&E, dated April 14, 2025
   - Contractor accepts City's tender, dated May 29, 2025
   - Evidence that the Contractor's insurance carrier hired defense counsel for the City, dated June 10, 2025.

   This case is an example of a lawsuit where SDG&E appears to have been on notice while the case was in the claims stage but did not timely communicate with the City about it and waited until the lawsuit was filed against it and the City. It also appears that SDG&E did not respond to the City's tender and waited for its subcontractor's insurance carrier to respond. During these three months the City Attorney's Office defended the case, the City incurred attorney's fees and costs not recovered from SDG&E.

2. Angela Turner v. City of San Diego, SDG&E et al

   Angela Turner filed a claim and lawsuit against the City (and SDG&E) arising out of an incident where her daughter was riding in the backseat of a vehicle that hit a curb and landed on top of SDG&E's electric utility boxes. Ms. Turner's daughter got out of the vehicle, was electrocuted, and died while trying to move the vehicle off the boxes. The City provided the following documentation:

   - Turner government claim, dated February 21, 2024
   - Turner lawsuit naming City and SDG&E, dated May 7, 2024

- Deputy City Attorney tender to SDG&E, dated May 31, 2024
- SDG&E denial of tender, dated July 15, 2024
- Email to SDG&E's counsel in response to denial, dated July 15, 2024
- Deputy City Attorney follow-up tender, dated March 3, 2025.

To date SDG&E has not responded to the City's follow-up requests after the tender denial. The City has incurred fees and costs in defending this matter. Based on the immediate duty to defend requirement, SDG&E was obligated to defend the City for a claim related to an electrocution occurring on its facilities.

3. Sawman Guzman v. City of San Diego, SDG&E et al

The plaintiff was riding his bicycle when it got caught in a gap between an SDG&E manhole cover and the concrete next to it. The City provided the following documentation:

- Guzman government claim, dated February 23, 2022
- Guzman lawsuit naming City and SDG&E, dated May 26, 2022
- Guzman Deputy City Attorney tender to SDG&E, dated August 8, 2022
- SDG&E acceptance of the City's defense and indemnity on September 13, 2022; and appoints counsel that requires conflict waiver not agreeable to the City
- Substitution of attorney, April 5, 2023, substituting in conflict free counsel for the City.

The City has incurred fees and costs due to SDG&E's delay in providing conflict free counsel to the City.

4. Lelia Farmer v. City of San Diego

The plaintiff alleged a trip and fall on an uneven sidewalk. The City's geotechnical engineering expert visited the site and determined that the SDG&E vault was installed lower than the sidewalk causing the condition that the Plaintiff claimed caused her fall.

While tendering to SDG&E, the City obtained a summary judgment, the court finding the condition was not dangerous as a matter of law. The City continued to pursue recovery of its fees and costs from SDG&E. SDG&E demanded the City produce a written expert opinion of the cause of the condition. The City incurred that cost, produced the expert report implicating SDG&E's facilities and it continued to deny any obligation. Settlement negotiations are still ongoing. The City provided the following documentation:

- Farmer Complaint, dated July 28, 2023
- Deputy City Attorney tender, dated June 18, 2024
- SDG&E doesn't investigate its own facility and rejects tender based on "timeliness" and other details irrelevant to the duty to defend, dated June 21, 2024
- Deputy City Attorney tender, dated June 21, 2024
- SDG&E rejects tender again and demands "expert reports," dated July 2, 2024
- Deputy City Attorney tender, dated October 22, 2024, provides expert report
- SDG&E rejects tender again on November 1, 2024, raising liability defenses and ignoring controlling case law applicable to the duty to defend
- Deputy City Attorney makes final demand.

5. Pierce Hussain v. City of San Diego, SDG&E et al

Plaintiff alleged his motorcycle went down due to loose asphalt at an intersection where SDG&E's contractor was performing work. The City provided the following documentation:

- Hussain First Amended Complaint naming the City and SDG&E, dated August 25, 2021
- Deputy City Attorney tender to SDG&E, dated August 26, 2021
- SDG&E tender denial, dated July 20, 2022
- City of San Diego's Motion for Summary Adjudication of the Duty to Defend, dated January 26, 2024
- Hearing transcript with Judge Pollack granting the City's motion, ordering SDG&E to defend
- Court's Order granting the City's motion

The judge in this case (Judge Pollack) made it clear the defense obligation exists from the onset, unless and until SDG&E can prove the accident occurred due to the City's conduct and that this principle applies to the 2021 Franchise Agreement just like it did in the 1970 Franchise agreement:

> "There's case law that basically says in a defense scenario here, where you're just moving for duty to defend -- you start out with a duty to defend -- If you were, for example -- let's say you were to bring a motion for summary adjudication, some kind of determination that they were willfully negligent, then I would stop the defense. In other words, the – under the 1970 Agreement, they get a defense all the way. Okay."
>
> "Under the 2021 Agreement, they get a defense until you establish there was active negligence, sole negligence or willful misconduct (*Hussain* Hearing Transcript, p.16, lines 3-13)."

The transcript indicates that SDG&E was obligated to defend the City unless and until it could prove its/its contractor's work was not implicated. The Court also commented that SDG&E's obligation to defend would exist under the terms of the new franchise agreement.

Suggestions

- Implement Duty to Defend Immediately Where Required - In cases where it is required to do so, SDG&E should promptly meet its duty to defend obligation.
- Update Section 13(a) of the Franchise Agreement for Duty to Defend Provision – The City and SDG&E should add language clarifying the immediate duty to defend obligation in Section 13(a) of the franchise agreement.
- Implement Formal Duty to Defend Communication Process – The City and SDG&E should develop and implement a formal communications process, including the applicable timing for responding to City tenders citing the duty to defend.

4. Permitting Issues

Comment

The City identified various recurring challenges observed in the permitting and construction process between SDG&E and the City. These issues encompass delays in permit approvals, deficiencies in submitted construction plans, safety concerns impacting both workers and the community, resistance to established City standards, and insufficient integration of existing records. Addressing these concerns is essential for improving project efficiency, safety, and collaboration. Examples include:

1. Delays in Permit Processing
    a. SDG&E's permitting timelines averaged 55 days compared to the City's 10-day review cycle.
    b. Most delays were linked to resubmittals by SDG&E requiring corrections or clarifications.
2. Quality Deficiencies in Construction Plans
    a. Submittals frequently omitted critical information, such as the number and location of excavations, right-of-way and easement boundaries, and required separations from existing utilities.
    b. Some plans were not prepared using professional drafting standards, undermining accuracy and constructability.
3. Safety and Community Impact
    a. Inaccurate or incomplete plans contributed to unsafe traffic control planning and construction risks. For example, missing details on deep excavations created hazards for both work crews and the public.
4. Resistance to City Standards and Reviewer Comments
    a. SDG&E at times disregarded reviewer feedback, labeling comments "excessive" or asserting requirements did not apply.
    b. Misinterpretations of the MOU, Street Design Manual, and Municipal Code prolonged project review and increased inefficiency.

5. Insufficient Record Research
    a. Project teams frequently requested As-Built records from City staff rather than incorporating them into submittals, placing additional burdens on City reviewers and extending timelines.

Suggestions

To address these concerns and improve collaboration with the City, we recommend that SDG&E:

- Strengthen Internal QA/QC Controls – Establish mandatory internal reviews prior to submittal, using checklists and supervisory sign-off to ensure completeness and accuracy.
- Standardize Use of City Templates – Adopt and consistently use approved templates, excavation tables, and symbology to align with City expectations and reduce review cycle times.
- Enhance Training and Compliance Awareness – Provide staff training on City standards, the MOU, and applicable codes to reduce misinterpretations and ensure uniform compliance.
- Improve Responsiveness to Feedback – Foster a collaborative approach by addressing reviewer comments thoroughly and promptly, rather than disputing established requirements.
- Require As-Built Record Integration – Incorporate existing records into submittals at the outset to strengthen accuracy and reduce reliance on City staff.
- Engage in Regional Coordination – Explore opportunities for regional standardization of templates and requirements with other municipalities, reducing redundancies for projects spanning multiple jurisdictions.

5. Clarification of 90-Day Relocation Commencement Requirement Under Franchise and Administrative MOU

Comment

The Franchise Agreement between the City and San Diego Gas & Electric (SDG&E) establishes the requirements for relocating utility facilities that conflict with City capital improvement projects. Under Section 8(a) – City Reserved Powers, SDG&E must begin physical field construction to relocate its facilities within ninety (90) calendar days after receiving a written request from the City Manager. This request must include substantially complete designs for the portion of work impacting SDG&E's facilities.

The Administrative Memorandum of Understanding (MOU) supplements these requirements by outlining detailed coordination procedures between the City and SDG&E. Specifically, Section 12(f) defines how relocation design milestones, environmental review, permitting, and initiation of field construction are to be managed.

During the audit, it was observed that neither the City nor SDG&E consistently initiated relocation activities within the 90-day timeframe envisioned by the Franchise. The root cause of this delay lies in differing interpretations of what triggers the 90-day period to begin.

- SDG&E's interpretation has been that the 90-day requirement does not commence until a formal written "90-Day Notice" is issued by the City Manager or designee.
- The City's interpretation has been that the 90-day period should be triggered upon notification that project design plans are substantially complete, even if a formal notice has not yet been transmitted.

In practice, this misalignment has resulted in relocation work being deferred, as both parties awaited formal notice issuance. The City often considered coordination underway once designs reached 90% completion, while SDG&E did not begin mobilization activities until receiving the formal notice.

As a result, project schedules were extended, and the intended coordination efficiency described in the Franchise and Administrative MOU was not consistently achieved.

The Franchise language provides that SDG&E's 90-day construction obligation begins upon a written request from the City Manager containing substantially complete designs. However, the Administrative

MOU defines the “90-Day Notice” as a formal document issued when the City has awarded its prime construction contract and is ready to hold a preconstruction meeting.

This procedural interpretation has inadvertently narrowed the original intent of the Franchise provision. The MOU framework has come to delay the start of the 90-day period until well after substantial design completion—contrary to the Franchise’s objective of ensuring timely relocations once sufficient design information exists.

The City recognizes that the existing process has not effectively enforced the 90-day commencement requirement. While coordination with SDG&E has been ongoing, the absence of a clearly defined and mutually recognized trigger point has caused uncertainty and delayed relocation starts.

The City considers that notification of substantially complete designs (typically 90% design completion) should constitute the effective trigger for the 90-day requirement.

This interpretation aligns with Section 8(a) of the Franchise, which ties the start of the relocation period to the City’s delivery of “substantially complete designs” rather than the issuance of a separate formal notice.

The City acknowledges, however, that the Administrative MOU does not explicitly reflect this understanding and that the formality of the “90-Day Notice” has, in practice, superseded the Franchise’s original intent.

Suggestion

To align future relocation coordination with Franchise requirements and reduce procedural ambiguity, the following corrective actions are recommended:

- Amend the Administrative MOU to explicitly reference Franchise Section 8(a) and clarify that notification of substantially complete designs constitutes the start of the 90-day relocation commencement period.
- Define “substantially complete designs” as 90% design completion or greater, consistent with industry practice and project management standards.
- Retain the formal “90-Day Notice” as a confirmation and scheduling tool but clarify that its absence does not delay SDG&E’s obligation to begin relocation work once substantial design completion has been communicated.
- Require joint documentation of design completion notifications, acknowledgment by SDG&E, and project readiness milestones to establish a consistent record of compliance.
- Provide training and procedural guidance to both City project managers and SDG&E liaisons to ensure consistent understanding of the revised trigger mechanism.

Appendix A – City of San Diego Response

The City of SAN DIEGO

Department of General Services
Energy Division

October 30, 2025

Subject: **City Response to Crowe LLP Management Letter**

Dear Crowe LLP,

The City acknowledges Crowe's observations outlined in the management letter and commits to facilitating the execution of the recommended improvements. The City appreciates Crowe highlighting these potential focus areas for the next audit, as they may impact the overall success of City and SDG&E projects.

Regarding Items 1 and 2, recognizing that several of the areas highlighted by Crowe would benefit from mutually agreed-upon requirements and accountability to achieve long-term solutions, the City looks forward to engaging in constructive dialogue with SDG&E to carry out these improvements. The City believes revisiting certain areas of the Undergrounding MOU for amendment to formalize any process improvements would be the most effective path to implement the Auditor's recommendations. We are committed to finding strategies that streamline processes and minimize delays, ultimately ensuring the efficient delivery of City projects.

In regard to Item 4, the City concurs with Crowe's recommendation that the Administrative MOU would benefit from amendments explicitly referencing the requirements in Section 8.a of the Franchise Agreement. As a part of the ongoing Administrative MOU renegotiations, the City has begun working with SDG&E to provide clearer definitions of "substantially complete designs" and the corresponding actions required by SDG&E. These revisions are expected to be reflected in version 3 of the Administrative MOU, anticipated for execution in November 2025.

The City values Crowe's recommendations and remains committed to continuous improvement and enhanced partnership with SDG&E.

Sincerely,

Heather Werner
Deputy Director, Energy Division
City of San Diego, Department of General Services

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Appendix B – San Diego Gas & Electric Response

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November 5, 2025

Aaron Coen, PMP
Crowe LLP

Via email to: Aaron.Coen@Crowe.com

Dear Mr. Coen:

SDG&E has reviewed comments and suggestions put forth by Crowe LLP in the draft "City of San Diego Management (Phase 2) Letter Draft" related to SDG&E's compliance with the Gas and Electric Franchise Agreements, Administrative Memorandum of Understanding (MOU), Undergrounding MOU, and the Energy Cooperative Agreement.

SDG&E is appreciative of the constructive suggestions, and seeks to provide the following comments in response:

1. **Undergrounding Costs on Higher End of Comparable Range**

SDG&E is conscious and committed to improving project cost control. We will continue to focus on and support efforts to reduce costs of these projects. In general, we have seen an overall reduction in cost per mile as projects move through to construction phase.

2. **Limited Documentation to Support Method for Determining Overhead Cost Rates Used for Undergrounding Projects**

SDG&E remains committed to helping the city understand overall project cost and performance where possible. The SDG&E project team and accounting team met with the City UUP team on April 7, 2025, to re-explain the accounting components which make up the overhead loaders specifically for the surcharge project portfolio. We will continue to help provide support in explaining these overhead costs.

3. **Duty to Defend Not Immediately Provided in Certain Cases**

SDG&E appreciates the opportunity to respond to the Management Letter's legal findings pertaining to the defense obligations set forth in the Franchise Agreements. SDG&E certainly recognizes its legal commitments and there are several instances not listed in the Management Letter where SDG&E has accepted the City's defense request. Nonetheless, the Audit provides three recommendations:

- Implement Duty to Defend Immediately Where Required
- Update Section 13(a) of the Franchise Agreement for Duty to Defend Provision
- Implement Formal Duty to Defend Communication Process

On the first point, SDG&E disagrees with any suggestion or implication that it does not appropriately consider the City's tenders under the Franchise Agreement. SDG&E's legal professionals promptly evaluate each tender by carefully examining the underlying complaint, the Franchise terms and conditions, and applicable law. This is a factually intense analysis that cannot be carried out without careful consideration of all the above. As such, a complex analysis such as this cannot be made on an expedited basis and may need additional inquiry or clarification from the City Attorney's office. Hence, SDG&E is concerned that the Management Letter findings and recommendations are based upon assumptions which fail to recognize the above.

Additionally, while SDG&E appreciates that the Management Letter attempts to summarize the applicable law on the subject, SDG&E is compelled to note that the recitation is incomplete and does not capture the complexity of the legal analysis that must be performed in each matter. As such, SDG&E appreciates the opportunity to supplement and flesh out the legal analysis. Initially, the Franchises state that the Grantee [SDG&E], "to the fullest extent permitted by law," has an obligation to defend the City. Thus, the Franchise mandates that all the applicable laws must be considered, not just a selected sampling of the relevant cases. When the full extent of the applicable case law is considered, the obligation to defend is not as one-sided as suggested in the Management Letter.

In particular, the Supreme Court and appellate courts have identified that contractual indemnity, such as those created by the Franchises, and insurance indemnity rules differ and that they differ "significantly". The California Supreme Court stated in *Crawford v. Weather Shield Manufacturing* (2008) 44 Cal.4th 541 that "rules for interpreting the two classes of contracts do differ significantly." Commercial indemnity agreements are not construed against the indemnitor as is the case in insurance indemnity agreements. The same public policy considerations are not implicated in a commercial indemnity agreement, and the "language on point must be particularly clear and explicit and will be construed strictly against the indemnitee" (*Morlin Asset Management LP v. Murachanian* (2016) 2 Cal. App. 5th 184, 191, citing *Crawford, supra.*)

Further, the underlying allegations in the underlying complaint must be compared with the indemnity provisions in the contract. In *Centex Homes v. R-Help Construction Co. Inc.* (2019) 32 Cal.App. 5th 1230, the Developer sought damages for failing to defend the underlying personal injury lawsuit. The court looked at the underlying complaint and

found that the complaint stated facts related to the utility box installed by the defendant/indemnitor. Hence, a duty to defend was triggered. In doing so, however, the court compared *Morlin, supra*, finding that "unlike this case, the allegations of the complaint in the underlying tort case were not embraced by the terms of the indemnity agreement" (*Centex Homes* at p.1237). Hence, the underlying complaint facts are material to a determination regarding the duty to defend, and if the underlying complaint says nothing about the SDG&E facilities found within the franchise area, a City's tender is improper under the above-cited law.

There have also been instances where the City attempted to cure the factual deficiencies in a complaint by coming up with a City-created allegation that the SDG&E facilities caused or contributed to the incident. This is also not a proper tender under applicable law. Case law is clear that an indemnitee "may not speculate about unpled third-party claims to manufacture coverage." *Michaelin v. State Comp. Ins. Fund* (1996) 50 Cal.App.4th 1093, 1106. Further, the "potential" for purposes of defense "does not include made-up facts, just because those facts might naturally be supposed to exist along with the known facts. An insured is not entitled to a defense just because one can imagine some additional facts which would create the potential for coverage." (*Friedman Prof. Management Co. v. Norcal Mutual Ins. Co.*, 2004, 120 Cal.App.4th 17).

Additionally, SDG&E's scope of defense is not unlimited under the Franchise Agreement. There are two relevant provisions in the Franchise that relate to SDG&E's obligation to defend. First, the Franchise provides SDG&E with the rights to use the City Streets. "Streets" is an expressly defined term under the Franchise Agreement. Pursuant to Section 1(s), "'Streets' means the public freeways, highways, streets, ways, alleys and places as they now or may hereafter exist within the City, but excludes easements or fees held by Grantee." Hence, the Franchise excludes areas where SDG&E either has acquired its own easement or fee simple ownership. Thus, if the accident occurs as a result of a facility found within SDG&E's easement or fee owned land, then the Franchise does not apply.

Second, Section 13 states that the duty to "defend, indemnify, and hold harmless shall not include (1) any claims or liabilities arising from the active negligence, sole negligence, or willful misconduct of the Indemnified Parties." Active negligence is found when an indemnitee personally participates in an affirmative act of negligence; is connected with negligent acts or omissions by knowledge or acquiescence; or fails to perform a precise duty that the indemnitee had specifically agreed to perform (*Rossmoor Sanitation, Inc. v. Pylon, Inc.*, 13 Cal. 3d 622; *Sanders v. Atchison, Topeka & Santa Fe Ry. Co.*, 65 Cal. App. 3d 630; *King v. Timber Structures, Inc.*, 240 Cal. App. 2d 178). As such, the Franchise Agreements clearly exclude indemnity when the City's active negligence is identified. As a consequence, the potential for City's active negligence is also a factor that must be evaluated in each case because allegations of active negligence would make a City's tender request improper.

Therefore, SDG&E's duty to defend requires thoughtful and careful consideration of the underlying complaint allegations with Franchise terms and conditions. There will certainly be cases where acceptance of the City's defense is appropriate and cases

where acceptance is not warranted based on the factors noted above. While SDG&E appreciates the Management Letter's finding, SDG&E cannot agree with recommendations that do not take into account the potentially involved analysis presented by each tender or suggest a process which prevents SDG&E from fully evaluating each tender.

As to the second and third points, SDG&E believes that such recommendations are unnecessary since the Franchise Agreement already provides a mechanism to address any disputes related to a tender made by the City. Section 17 of the Franchise Agreement provides for a Dispute Resolution mechanism:

> (a) If any dispute arises under the Franchise, including any alleged breach, the City and Grantee shall use reasonable efforts to resolve the dispute. The City and Grantee shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to the City and Grantee. If the City and Grantee do not agree on such a solution within fifteen (15) calendar days, then, upon written notice by either party to the other, such dispute shall be referred to the City Manager and a member of Grantee's executive staff for further consultation and negotiation.
>
> (b) If the City Manager and the member of Grantee's executive staff are unable to agree on a solution within fifteen (15) calendar days of such referral, the City and Grantee shall attempt in good faith to settle the dispute by non-binding mediation administered by a mediator acceptable to both parties.

Given that each tender submitted by the City is factually unique, there may be situations where the City's legal staff and SDG&E's legal staff disagree that the duty to defend has been invoked. The Franchise Agreement already provides a mechanism for the parties to work out disagreements in good faith, elevate them through the appropriate internal channels and ultimately engage a mediator to attempt to resolve the dispute. Ultimately, there may be some situations where the dispute may need to be resolved through the court determining if a duty to defend existed in a particular situation. The Franchise contemplates that after a mediation either the City or SDG&E can file a civil action to resolve the dispute.

As to the specific matters noted in the Management Letter, SDG&E provides the following brief response:

Phillips v. City of San Diego
When the tender of defense was received by the City, SDG&E did not have any information regarding the facts, injuries or cause of the incident. Once the facts were discovered, SDG&E promptly tendered this matter to its contractor who accepted the defense and indemnity of both the City and SDG&E. In July of 2025, the matter was resolved.

Angela Turner v City of San Diego

The SDG&E facility that plaintiffs alleged as causing them harm was located outside of the franchise area and within a right of way issued by another entity (Caltrans). Thus, the tender was denied since the facilities at issue were not covered by the Franchise Agreement. The City did not invoke the Dispute Resolution process. In this matter, the City took the position that any time SDG&E has facilities in the City of San Diego, even if not located on City property, the Franchise Agreement's obligations would be triggered. SDG&E disagrees with this contention.

Guzman v. City of San Diego
SDG&E accepted the tender of defense from the City and retained counsel who had previously represented the City in the Reynolds matter. The City Attorney did not agree to accept this firm despite the previous representation. SDG&E interviewed other firms and with the City Attorney's approval, retained a different law firm to represent the City. There was no delay on the part of SDG&E.

Farmer v. City of San Diego
The City's tender included the Complaint and the plaintiff's Claim, neither of which referenced SDG&E facilities as causing the incident. Both documents cited a sidewalk defect, the City's responsibility. SDG&E requested further factual documentation (depositions, photos, witness statements). Instead, the City provided a conclusory report from a hired expert which was incomplete and deficient. Due to the dispute, SDG&E invoked the Dispute Resolution clause of the Franchise. The matter was resolved as part of this process.

Hussain v. City of San Diego
Plaintiff's complaint alleged that gravel in the roadway from construction activities caused plaintiff to be thrown off his motorcycle. At the time, there were numerous entities performing work in the area and on the subject roadway. There were concurrent causes for the alleged loose gravel. Ultimately, the court decided that a defense was owed to the City. The City was reimbursed for its defense fees and did not contribute financially to the ultimate settlement.

4. Permitting Issues

The suggestions and assertions outlined in the Management Letter were not derived from information or data that was provided to Crowe by SDG&E in response to associated audit inquiries. These items were introduced by the City of San Diego Development Services Department as a part of a PowerPoint Presentation that SDG&E was not a part of. SDG&E did not have a chance to review or collaborate on the information before it was presented. Due to this, SDG&E is unable to verify the information that was used by the City to develop the presentation.

1. *Delays in Permit Processing*
    a. *SDG&E's permitting timelines averaged 55 days compared to the City's 10-day review cycle.*
    b. *Most delays were linked to resubmittals by SDG&E requiring corrections or clarifications.*

After comments are received from the City, they are reviewed and then provided to the project designer. These comments often necessitate changes to our design which involve numerous downstream changes caused by the specific change requested by the reviewer. After a change is made to the plans, it goes through internal review to ensure standards and functionality are maintained, then QA/QC review by SDG&E Permitting staff to ensure the City's comment was addressed. Due to this, changing our design takes more time than the act of reviewing it.

2. *Quality Deficiencies in Construction Plans*
    a. *Submittals frequently omitted critical information, such as the number and location of excavations, right-of-way and easement boundaries, and required separations from existing utilities.*

SDG&E provides accurate submittals that conform to City requirements including separations from existing utilities, depiction of property lines, and use of the City's required civil symbology. If the City requires additional separations to be documented, SDG&E provides that information. We are continuing to improve internal QA/QC so that submittals meet all requirements before being sent to the City.

    b. *Some plans were not prepared using professional drafting standards, undermining accuracy and constructability.*

Although this affects a small number of submittals that represent minor scopes of work, SDG&E has welcomed this feedback from the City and is actively engaging with the impacted design groups to ensure City Requirements are met.

3. *Safety and Community Impact*
    a. *Inaccurate or incomplete plans contributed to unsafe traffic control planning and construction risks. For example, missing details on deep excavations created hazards for both work crews and the public.*

If the City of San Diego is aware of specific unsafe site conditions, that information should be shared with SDG&E. The City of San Diego reviews our plans for accuracy, completeness, and compliance with applicable laws prior to approving the submittal. If there is inaccurate or incomplete information on the approved plans, this information was previously reviewed and accepted by the City of San Diego. Traffic Control Plans and Construction Plans are implemented in the field per the approved plans.

4. *Resistance to City Standards and Reviewer Comments*
    a. *SDG&E at times disregarded reviewer feedback, labeling comments "excessive" or asserting requirements did not apply.*

When comments from the City reviewer relate to utility design decisions, or other areas where SDG&E has specific CPUC granted authorities, and not specific City Requirements, those comments do not apply. SDG&E and the City can collaborate on

how to address frequently provided comments, whether that is through additional QA/QC from SDG&E or education on CPUC preemptions for City reviewers.

b. *Misinterpretations of the MOU, Street Design Manual, and Municipal Code prolonged project review and increased inefficiency.*

When asking for clarification on a comment from a City reviewer, it is common to request the citation from where a specific requirement originates. SDG&E's requests for citations to relevant City Requirements are not always answered by City Staff. Providing this information to SDG&E can help improve our QA/QC and the overall quality of our submittals as we train our designers on these requirements.

The MOU was created collaboratively by both SDG&E and the City of San Diego, and therefore misinterpretations of the language can come from either party. SDG&E encourages the City to document these instances and share them so we can address them collaboratively. This has been done multiple times with the City's Field Inspection Team (FIT) and has greatly improved our working relationship and overall coordination.

5. *Insufficient Record Research*
   a. *a. Project teams frequently requested As-Built records from City staff rather than incorporating them into submittals, placing additional burdens on City reviewers and extending timelines.*

SDG&E requests as-built records prior to submittal, per the established City process. If during the City's review, a reviewer identifies additional as-builts that need to be referenced in our plan, SDG&E staff will ask the reviewer to provide such as-builts.

5. **Clarification of 90-Day Relocation Commencement Requirement Under Franchise and Administrative MOU**

SDG&E and the City of San Diego are actively working on revisions to the Administrative MOU to address and improve the coordination and timing of relocation project initiation and construction. Once the Admin MOU changes are final, SDG&E will ensure all employees involved in the process are made aware of and trained on changes that impact communication, procedures, and associated time frames.

Once again, SDG&E thanks Crowe LLP and the City of San Diego for the opportunity to provide comments in response to the "City of San Diego Management (Phase 2) Letter Draft." We look forward to our continued partnership with the City of San Diego.

Sincerely,

Katelyn Hailey
Regional Public Affairs Manager