

## Interactions with Voice of San Diego

### **“Settling SDG&E Lawsuit Wasn’t Part of City’s Monopoly Deal. Now It’s Paying the Price.”**

Dec. 2, 2022

#### **Questions:**

Working on a story about the lawsuit between SDG&E and the city over undergrounding/Pure Water for 4 p.m. today. I would like to speak with someone from the mayor’s office about whether the mayor’s staff pursued ending this litigation as part of the franchise fee negotiations? And why or why not?

#### **Response:**

The relocation of gas utilities was discussed in both the Invitation to Bid issued by Mayor Gloria on March 19, 2021, and the gas franchise agreement with SDG&E that was negotiated by Mayor Gloria and approved by the City Council on June 28, 2021. (The language on relocation in the electricity agreement was not changed.)

Negotiations with SDG&E were conducted over several weeks and under terms of confidentiality. However, it has been previously reported that SDG&E insisted on a number of revisions to the agreement as proposed in the City’s initial Invitation to Bid, which was issued by Mayor Faulconer on September 23, 2020, and to which only SDG&E responded. On issuing the second ITB, Mayor Gloria announced he would negotiate with the winning bidder even before the bids were opened. Again, only SDG&E responded. See: “Gloria releases new bidding proposal for San Diego’s electric and gas franchises,” San Diego Union-Tribune March 19, 2021. <https://www.sandiegouniontribune.com/business/story/2021-03-19/gloria-releases-new-bidding-proposal-for-san-diegos-electric-and-gas-franchises>

[Gloria releases new bidding proposal for San Diego’s electric and gas franchises - San Diego Union-Tribune](https://www.sandiegouniontribune.com/business/story/2021-03-19/gloria-releases-new-bidding-proposal-for-san-diegos-electric-and-gas-franchises)

“This is a starting point,” said City Council Pro Tem Stephen Whitburn.. “Unlike the previous approach where there was an invitation and the terms were set and it was take it or leave it ...

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#### **Invitation to Bid**

The March 19, 2021, Invitation to Bid (look at Section 8 starting on page 24 of the PDF file, and especially at section 8(b)) says effectively that in event of conflict requiring relocation then SDG&E was to pay, “...regardless of any doctrine of distinction,....” The “doctrine of distinction” that SDG&E was then arguing in the Pure Water litigation was the argument that City is acting in a “proprietary” rather than

governmental capacity in operating the Water Utility, and that it (SDG&E) does not have to bear relocation costs unless the City is acting in a governmental capacity. The advertised franchise essentially said that no matter what they may be arguing in court with respect to the 1970 franchise, for this new franchise there would be no tolerance of those sorts of arguments, and the advertised franchise was perfectly clear that SDG&E was to pay to relocate conflicting utilities.

### **Gas Franchise Agreement**

In the adopted Gas Franchise Agreement, Section 8(b) refers to the existence of the litigation (i.e. the “doctrine of distinction”) and provides that with respect to relocation costs for conflicts arising from water projects the parties will abide by the final judgment of the courts.

I have attached PDFs of both documents for your convenience, as well as our Office's Report to the Council, RC-2021-2, which identifies changes that had been made to Section 8(b) relating to the Pure Water relocation cost litigation, and which advised that responsibility for future relocation costs associated with City water projects would be left in the hands of the courts (see pages 6-7).