



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: June 5, 2020

TO: Honorable Mayor and Members of the City Council

FROM: Johnnie Perkins, Deputy Chief Operating Officer, Public Utilities

SUBJECT: City Attorney Memorandum regarding the Utility Undergrounding Program

This memorandum serves to provide additional information from that which was provided in the City Attorney's recent communication regarding the Utility Undergrounding Program (UUP). It is abundantly clear that San Diego Gas and Electric (SDG&E) is not meeting its contractual obligations related to the UUP. City Management most recently discussed the ongoing challenges with SDG&E in this regard with the City Council during the Utilities Undergrounding Program First Semi-Annual Report for FY 2019 (Attachment 9). Since 2018, (Attachment 1) and in close consultation with the City Attorney's Office, City Management has endeavored to hold SDG&E accountable to its obligations associated with the UUP.

Issues with the Utility Undergrounding Program

For more than a decade, City officials and community leaders have decried the slow pace at which the Utility Undergrounding Program completes projects¹. At one point, it was estimated completing undergrounding projects across the entire City would take more than half a century. Responding to these concerns, City Management, in late 2018, opened a dialogue with SDG&E to explore how the utility and the City could work together to speed up completing projects. Over several months, the City and SDG&E developed process improvements focused on streamlining the undergrounding process. At no time during the dialogue with SDG&E did the City discuss or consent to increasing the cost of undergrounding work. Soon after SDG&E committed to expediting its undergrounding timelines, the City noticed a significant increase in overhead charges on SDG&E's reimbursement requests submitted to the City. During a review of documents at SDG&E offices last month, staff concluded SDG&E's overhead rates have increased to more than 50 percent.

Management's Response to SDG&E's Non-Compliance

Management is concerned with the recent increases in overhead rates as it corresponds with an acceleration in underground work. Generally, work performed on a public works or utility project is variable in nature meaning as activity increases, cost go up. However, overheads tend to remain relatively fixed as activity increases. Management has repeatedly asked

¹ Voice of San Diego article related to Undergrounding delays (2019):
<https://www.voiceofsandiego.org/topics/government/after-decades-of-slow-going-city-plans-to-speed-up-utility-undergrounding/>

SDG&E to provide the City with access to records which allow the City to understand the methodology SDG&E uses to calculate its overhead rates. The utility is obligated to provide access to this information per Article 12 of the UUP Memorandum of Understanding (MOU). Article 12 states that *"SDG&E will make all business records directly relevant to the undergrounding program available to the City upon request..."*. City Management, while providing regular updates to the City Attorney's Office, has made several requests for all information which could explain SDG&E's increased overhead rates.

City staff sought guidance from the City Attorney's Office and was advised in January 2020 to "notice" SDG&E of the City's position of "suspending invoice payments until adequate responses were received." City Management met with SDG&E in February and provided such notice. SDG&E representatives committed to providing the detailed information requested. Acting in good faith, City staff met with SDG&E staff on six occasions since the February meeting. Unfortunately, these meetings did not result in satisfactory conveyance of the back-up information requested.

In response to SDG&E's failure to provide adequate responses to our numerous requests, on May 27, 2020, I formally notified SDG&E that the City was suspending invoice payments for the UUP effective January 2020 and continuing until adequate responses were received (Attachment 6). To date, we have not received a response from SDG&E. Management will provide a comprehensive update to Council as soon as full and accurate information is received by SDG&E.

Going Forward

The Utility Undergrounding Program Fund was never intended to accumulate large cash balances. The growing fund balance was a byproduct of the historical slow rate of project completion. Revenues the City receives related to UUP funding are protected due to City management's suspension of payments. SDG&E's increasing overhead rate and the planned acceleration of work which have resulted in a decrease in the level of available funds in the UUP fund do not create a liability for the City's General Fund. Once SDG&E complies with the MOU and provides the requested information, the suspension of payments will be lifted, and the program can resume funding undergrounding activity on a pay as you go basis as originally intended. If after resolving this issue with SDG&E budget adjustments in the UUP fund are needed we will bring an action forward for Council consideration and approval.

The current franchise agreement expires in January of 2021 and the City is currently going through a competitive process to determine who will hold the next franchise agreement. A new franchise agreement between the City and a yet to be determined utility, should include an ability for regular independent audits by a third party as it relates to every element of franchisee's performance. The results of these audits will allow the City and the public to have confidence in a franchisee's performance. Furthermore, a new franchise agreement should include liquidated damages and other penalties to strengthen the ability of the Mayor and Council to hold a franchisee accountable for honoring their commitments.

I am looking forward to working with SDG&E to resolve this issue to the City's satisfaction and to answering any questions the Council may have related to these ongoing issues. In the meantime, I have attached for reference various documents on this matter.

Sincerely,



Johnnie Perkins
Deputy Chief Operating Officer, Public Utilities

Attachments:

1. Letter form SDG&E Partnership between City of San Diego and SDG&E on Accelerated Undergrounding Goals dated December 6, 2018
2. Letter to SDG&E Partnership between City of San Diego and SDG&E on Accelerated Undergrounding Goals dated January 2 2019
3. Letter from SDG&E Partnership Update between City of San Diego and SDG&E on Accelerated Undergrounding Goals dated April 18 2019
4. Letter to SDG&E RE Partnerhship Update between City of San Diego and SDG&E on Accelerated Undergrounding Goals dated June 4 2019
5. Letter to SDG&E Initiation Process for Undergrounding Projects and Validation of Additional SDG&E Services dated December 3 2019
6. Letter to SDG&E Immediate Suspension of Invoice Payments dated May 27 2020
7. Report to Council Status of the Utilities Undergrounding Program Issued February 2 2018
8. Report to Council Status of Utilities Undergrounding Program and Approval of Updated Master Plan and Five-Year Implementation Plan Issued June 11 2018
9. Report to Council Utilities Undergrounding Program First Semi-Annual Report for FY 2019 Issued January 25 2019

cc: Honorable City Attorney Mara Elliott
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