

November 15, 2017

Honorable Mayor Kevin Faulconer  
202 C Street, 11th Floor  
San Diego, CA 92101

**RE: City of San Diego Feasibility Study for a Community Choice Energy Program**

Dear Mayor Faulconer,

Thank you for the opportunity to comment on the *City of San Diego Feasibility Study For A Community Choice Aggregate* dated July 2017. I am a resident of the City of San Diego ("City"), and an attorney practicing in energy law who has represented and worked with Community Choice Energy ("CCE") programs in the past. Overall, I found the feasibility study to be thorough and robust, and the City and its consultants deserve a great deal of credit for their efforts. There are, however, a few things mentioned in the study that the City should examine in more detail as it considers how to meet the 100% renewable energy goal established in the Climate Action Plan ("CAP"). The comments below reflect my personal views, and not those of any clients or professional colleagues.

## **I. Introduction**

### *Goals*

Feasibility studies – including this one – are designed for the limited purpose of assessing the feasibility of a policy or program, rather than evaluating its merits, or analyzing the costs and benefits. Stakeholders should keep that limitation in mind when discussing or referencing this document. The study is a first step, not an exhaustive analysis.

## **II. Methodology and Assumptions**

### *Power Cost Estimates*

The cost of renewable power may be too high, and the City should revisit renewable power costs as it moves forward with further study and analysis. The cost of renewable power, particularly solar power, has been declining at a rapid pace over the last few years, and it continues to do so.

### *Revenue Requirement*

The study addresses exit fees, particularly the Power Charge Indifference Adjustment (“PCIA”), with analytical rigor, by subjecting revenue (and other projections) to a sensitivity analysis. CCE revenue projections are calculated with a range of different PCIA values to determine how revenue, rates and uptake are likely to be affected. This approach is well founded and has substantial methodological support in finance and social science.

### **III. Results**

#### *Key Assumptions for Rate Comparisons*

The City should be aware that the green rate offered by San Diego Gas & Electric (“SDG&E”), which is marketed under the brand name EcoChoice, is not a viable option for the City as it contemplates moving toward its 100% renewable goal for the reasons explained below. There are good reasons to exclude green rate programs from the study, but at a minimum, the program’s serious limitations should be acknowledged.

Most importantly, the City does not control the green rate program. The green rate program is controlled and operated by SDG&E. The program could be adversely modified or discontinued entirely without any remedy for the City whatsoever, and in that case, the City may be left without an alternative means of reaching its 100% renewable energy goal.

Furthermore, the authorizing legislation<sup>1</sup> and the subsequent decision by the California Public Utilities Commission (“Commission”) implementing the legislation establish capacity limits for green rate programs. SDG&E’s green rate program is limited to 59 MW,<sup>2</sup> a small fraction of the City’s overall demand for power.

Last but not least, green rate customers are also required to pay exit fees. The PCIA formula is currently undergoing revision in a rulemaking proceeding before the Commission<sup>3</sup> and it is scheduled to be resolved before the end of 2018. The City should take into consideration that the PCIA is the same fee that CCE customers pay, and green rate customers will be equally affected by the Commission’s ultimate decision on the matter.

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<sup>1</sup> Pub. Util. Code, § 2833, subd. (d).

<sup>2</sup> *Decision Approving Green Tariff Shared Renewables Program for San Diego Gas & Electric Company, Pacific Gas and Electric Company, and Southern California Edison Company Pursuant to Senate Bill 43* (D. 15-01-051) at 181, Ordering Paragraph 7.

<sup>3</sup> *Order Instituting Rulemaking to Review, Revise, and Consider Alternatives to the Power Charge Indifference Adjustment* (R.17-06-026).

## V. Risks

### *Power Charge Indifference Adjustment, Cost Responsibility Surcharge, and Portfolio Allocation Methods*

While the issue of exit fees is important, it has been misrepresented and overstated by contributors to the public debate about CCE. Various laws and regulatory decisions require that legacy costs incurred by the utility must be borne by all customers, whether they are bundled, green rate or aggregation customers. The formula can be changed, and costs can be allocated differently, but at the end of the day, everyone must pay.

### *Credit Risk*

This issue needs to be examined in greater detail. CCE programs are self-funded so the fiscal impact to participating cities and counties is typically limited to modest contributions for startup costs.<sup>4</sup> The revenue generated from selling power to customers is usually equal to or exceeds the cost of power and operations, so many CCE programs generate surplus revenue.<sup>5</sup> That revenue can be used for various purposes, and one such purpose is the establishment of reserves. These facts should be taken into consideration when assessing financial risks.

Furthermore, there are strong legal protections that establish limits on liability for participating cities, regardless of whether the city operates as a Joint Powers Authority (“JPA”) or pursues a single city program. These legal protections can be found in the Joint Exercise of Powers Act,<sup>6</sup> joint powers agreements, program operating rules and regulations, power purchase agreements and credit agreements. Together, these legal protections make it extremely difficult for anyone to reach beyond the CCE program and impose liability on participating cities or their general funds.

CCE programs have also adopted policies to ensure prudent financial management and responsible operations, including conflict of interest policies, integrated resource plans and implementation plans, to name a few. Finally, CCE programs undergo independent audits. The financial performance, limits on liability and fiscal policies of existing CCE programs provide financial stability, and they must be examined in order to obtain a full understanding of financial risk.

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<sup>4</sup> See, e.g., *Marin Clean Energy (MCE) Startup Timeline and Funding* at <https://www.mcecleanenergy.org/wp-content/uploads/2016/01/MCE-Start-Up-Timeline-and-Initial-Funding-Sources-10-6-14-1.pdf>.

<sup>5</sup> See, e.g., *Marin Clean Energy Financial Statements* at <https://www.mcecleanenergy.org/key-documents/>.

<sup>6</sup> Government Code, § 6500 et seq.

Sincerely,

A handwritten signature in black ink that reads "Ty Tosdal". The signature is written in a cursive, slightly slanted style.

Ty Tosdal, Shareholder  
Tosdal Law Firm