**COMMUNITY ENERGY ACTION NETWORK**

*Promoting community-based local clean renewable energy solutions*

February 18, 2020

Mr. Lee Friedman, Strategic Energy Initiatives Manager,

Smart and Sustainable Communities Branch

City of San Diego, California BY EMAIL: Lfriedman@sandiego.gov

**RE: Request For Expressions of Interest (RFEI) for Gas and Electric Services**

Dear Mr. Friedman:

This response is submitted by H.C."Jay" Powell on behalf of the Community Energy Action Network **(CEAN)** to the City's **Request for Expression of Interest (RFEI)** "seeking information, ideas, and interest to inform its development of Invitations to Bid (ITB) for future electric and gas franchises."

CEAN is a San Diego-based cooperation promoting community-based local clean renewable energy solutions. Mr. Powell has served on the City's **Sustainable Energy Advisory Board (SEAB)** in the Environmental Advocate seat for over six years serving on several working groups regarding recommendations to achieve **Climate Action Plan (CAP)** goals.

Recommendations provided to the City Council and Mayor by SEAB include comments on the CAP implementing ordinance and EIR, "Priority Guiding Principles" for consideration and implementation of a CCA, Assessment and recommendation on SDG&E proposed alternative program to achieve the 100% renewable energy, and Recommendations to San Diego Municipal Energy Strategy Plan. A number of these recommendations by this official advisory board are attached and are available along with other background information on the SEAB website maintained by the Sustainability Department and should be considered in the City's development of policies to guide the terms of an Invitation to Bid (ITB) on new Franchise Agreements for gas and electricity.

This response has been organized into sections on "**Process**" and "**Substance**".

**Process**

The RFEI seeks information for the City "to engage in fair and open competition (Charter Section 103)" as "part of the City's commitment to a transparent and fair process."

The City has engaged expert consultants in the areas related to franchise agreements in order to provide information such as a survey of other comparable City Franchise Agreements and provide an estimate of the value of the assets installed in the City's right of way by the current franchisee. This and other information and reports obtained through these scopes of work should be made available to the public and interested parties and the City Council by posting to the City Sustainability website prior to providing any recommendations for a draft ITB to the City Council.

The City should consider and include on this website links to information gathered by the **National League of Cities (NLC)** as part of their presentation "Achieving City Energy Objectives Through Electric Utility Franchise Agreements". This information includes a national data survey of City Franchise Agreements by the **National Renewable Energy Laboratories (NREL)**, considerations by the City of Chicago in their review of their electric franchise agreement expiring this year and advice and counsel regarding "Negotiating Utility Franchise Agreements and Addressing Municipal Energy Goals." A recording of a webinar on this information can be accessed from [this link](https://attendee.gotowebinar.com/recording/3833250882377541122) and for additional information contact staff for NLC, Nicholas Kasza (kasza@nlc.org).

With regard to Municipal Energy goals, the City's CAP includes a goal to bring forward to the City Council a "Municipal Energy Strategy". This strategy should be clear and adopted by the City Council before setting forth terms and conditions of the franchise agreement necessary to achieving those strategic goals (see "Substance" section below regarding SEAB recommendations attached).

Additional background information that should be provided to the City website and as background to the public and City Council should include documents and information requested by CEAN as part of the RFPs for Franchise Agreement consultants set forth in 2018 and 2019 which is attached as enclosure to this response letter.

Background information for official posting to the City website and provided to the City Council should include a summary of proposed agreement terms that are not included in the current franchise agreements and terms in the current franchise agreements proposed to be deleted or modified.

Recommended actions and information on the Franchise Agreements should be reviewed by two committees of the City Council for their consideration of recommendations for policies that should be adopted by the City Council to guide the ITB and review of bids received for concurrence and compliance.

Public Outreach : The current public outreach program consisting of three workshops in the span of two weeks in February has not been sufficiently noticed or advertised on the City Sustainability website or other websites operated by the City of other available news media. Examples of other outreach and notification channels would be the CPC and each of the Community Planning Groups. As of submission of this response letter, the power point presentation and background info and survey provided for public input on a series of issue rankings and comment at the first workshop (Feb 12) has just been posted to the City website.

The City should engage the considerable public affairs resources of the City to update and amplify public outreach and noticing and consider additional workshops and publication of articles and notices in major circulation and community-specific publications, other electronic news media, social media sites, water bill enclosures and other City controlled or accessible websites.

Information and reports prepared by consultants to the City should be posted to the Sustainability website. Currently the only item posted regarding Franchise Agreement process posted to that site is the RFEI.

The RFEI Memorandum states that the current timeline is "to present a draft franchise agreement to the City Council by Spring 2020 with the intent to go to full Council by end of Summer 2020 with an executable franchise." It is premature to provide a draft agreement before providing background information listed above and outlining key issues and terms for City Council consideration in setting forth a policy to guide the terms to be included in an ITB.

The City should confirm the current franchisee's "obligation to continue service" and what steps might be necessary to extend the current agreement, if necessary to prepare sufficient background information, adopt City Policy to guide the terms of the new agreements to be set forth prior to issuing Invitations to Bid and process responses to the ITB to ensure they fulfill the expressed policies and desired terms for the City to be able to consider other alternatives.

**Disclosures and Conflicts of Interest** At public meetings with officially recognized Community Planning Groups, SDG&E presentations state that: "SDG&E has been working proactively with key City decision makers, the Mayor, each Councilmember and the City Attorney to facilitate the fair, competitive and public renewal process as required by the City Charter." The Charter addresses the requirements for a fair and open competition for the franchise to use public right of way, it does not presume that the current franchise agreement will be renewed.

It does not appear proper for SDG&E representatives to be responding to questions from the public at the City sponsored workshops or before public officials as a part of a fair and open competition. This is especially the case, since it is highly probable, if not certain, that ratepayer funds are being expended in these efforts.

In the interests of "fair and open competition" and "a transparent and fair process," the City and City officials and elected representatives should disclose any and all contacts with the current franchisee, SDG&E or any agents, contractors or lobbyists acting on behalf of SDG&E regarding the Franchise Agreement.

Reference is made in the RFEI Memorandum to "ongoing stakeholder meetings." These meetings should be listed and disclosed to the public on the Sustainability website and be listed as part of the staff report prepared for City Council and Committee information items and hearings.

**Substance**

As enumerated in the attached "Public Comment for JPA CCA Workshop 111619" conducted November 16, 2019 for the members of the San Diego Community Power JPA, the member cities have a choice regarding where renewable energy will be generated for their constituents: do we continue to import gas and electricity and export jobs and money -- or do we invest in our communities by generating energy and jobs in those communities and reinvesting funds captured back into these communities?

As noted in the section on "process", the City needs to define its Municipal Energy Strategy (MES) for achieving the minimum net energy goals for its facilities and operations. SEAB provided recommendations for key aspects of this strategy (attached). The City should ensure that these provisions are enabled and that the City has the option of wheeling energy it generates and stores in any of its facilities and the Water Utilities enterprise to and from those facilities or to entities with which the City chooses to partner to achieve its MES and CAP goals.

The City should also be evaluating its potential to generate additional energy as part of a system of community-based microgrids. The public comment for JPA workshop includes reference to the solar siting survey completed by The Clean Coalition for the City's participation in the National Renewable Energy Laboratory (NREL) Sustainable Energy Innovation Network (SEIN) program. An additional proposal was presented by the Clean Coalition to pursue a wholesale Feed In Tariff program to help facilitate development of the sites identified.

As part of the City's evaluation of options to achieve the 100% renewables goal by 2035 a RFI was issued in October 2016. CEAN responded to that RFI and subsequent questions from the City regarding "A Community-based Micro Grid System for San Diego" which is attached as an enclosure to this response letter. Such a system would have to be operated in cooperation with the entity franchised to use City right of way for electrical transmission or a municipal public utility or such other organization or mechanism to purchase and/or distribute electrical energy to its constituents.

Additional issues which need to be addressed and will affect the investments and operation of the local distribution grid that is largely located on City right of way and authorized by the new Franchise Agreements will include how access to the electrical grid will be provided to achieve the potential identified for solar and storage systems, electric vehicle charging and how much of the current energy uses provided by natural gas systems will be replaced by renewable electric systems.

These issues need to be evaluated and will evolve with the rapid changes in technologies for management and storage and dispatch of electrical energy. As enumerated in the proposed terms listed below, this is another reason to move deliberatively and with caution to retain options for desired adjustments in agreement terms due to technological changes through the provision of shorter agreement terms and including conditions for evaluating performance of electrical and gas distribution facilities located on the City right of way.

The City may wish to consider municipalization of portions of, or of the entire distribution grid located on its right of way in order to achieve municipal and community economic self

-sufficiency and sustainability goals. The terms and length of franchise agreements need to provide that flexibility for the City.

The "Priority Guiding Principles" adopted by the SEAB and recommended to the Mayor and City Council in 2014 and 2015 are attached and key aspects highlighted in the attached comments to the CCA JPA Workshop: "distributed energy generation (ie, PV panels on roof tops and parking lots and structures and storage) are heavily promoted to push electricity up and out of the neighborhoods into the rest of the local grid, storage systems and eventually out of the City." The new franchise agreements need to ensure that the electrical distribution system of the future will be designed and improved to achieve that potential.

A coalition of organizations coordinated through the Climate Action Campaign has advanced the following Franchise Agreement provisions. The City Council should consider these recommended terms in setting forth official City policies to guide the terms to be included in any ITB and subsequent Franchise Agreements (additional considerations advocated by this RFEI respondent are included in *italicized parenthesis*):

- Facilitate equitable access to local solar power for all City residents and businesses and

 institutions;

- Include specific provisions to meet or exceed current worker protections, standards and

 wages and the right to unionize (*worker protection provisions would not allow "loyalty"*

 *clauses requiring support of franchisee legislative and regulatory proposals that may be*

 *opposition to City energy goals in labor agreements);*

- Limit the term of agreements to no more than five (5) years to allow for regular performance

 evaluation and updates to incorporate evolving technology opportunities (*NREL dataset for*

 *NLC's study shows 46 cities with franchise agreements of 5 or fewer years)*;

- Require *(investor owned utility corporation*) shareholders, not customers, to pay for the use

 of the public right of way (*this provision should take into account what the asset base*

 *represented by the facilities located in the City's right of way represent in the rate of return*

 *on investment authorized by the CPUC--this is why the appraisal of that asset conducted by*

 *City consultants should be provided to the City Council and the public record);*

- Mandate a "cooperation requirement" for City prior review and approval of franchisee's

 legislative or regulatory proposals that could impact the City's energy system (*Meaning, for*

 *example, that an IOU does not introduce and promote legislation and regulations that*

 *undermine or oppose initiatives for expansion of local renewables through use of*

 *community-based solar and storage microgrids; cooperation provisions should also include*

 *the ability of the City to wheel energy that it generates between its facilities or properties to*

 *other municipal facilities including to and from and between public service facilities or*

 *facilities designated by the City as considered desirable or necessary to achieve CAP goals*

 *including equity goals through virtual net metering or self-service wheeling mechanisms)*;

- Mandate a daily penalty fee, paid by shareholders, if franchisee violates agreement terms.

**Summary**: Please confirm your receipt of this response to the RFEI and contact me if you have any questions or would like clarification of any of the items included in this response to the RFEI and thank you for providing this opportunity to provide this input and your consideration in the public interest.

Sincerely,

HC Jay Powell, Principal

*Cooperations - In the Public Interest, for the Common Good*

Submitted on behalf of Community Energy Action Network

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**Enclosures** (submitted by email accompanying this response letter):

 CEAN Community-based Micro Grid System for San Diego

 CEAN Questions and requests for information regarding RFP for Electric and Gas

 Franchise Agreement Consultant(s)

 SEAB Priority Guiding Principles for CCA 2015

 SEAB Recommendations to San Diego Municipal Energy Strategy Plan Adopted 030917

 Jay Powell Public comment to SDCP JPA workshop 111619

cc Office of the Mayor

 City Council President and City Councilmembers

 City Attorney

 City Independent Budget Analyst

**SOLARSD/Franchise Agree City SD RFEI Response HC Jay Powell 021820**