

Diridon Station Area Public Power Initial Feasibility Memo

November 4, 2019

Table of Contents

Task Background	2
Summary	2
Key Issues	3
Physical Infrastructure	3
Legal/Regulatory Constraints	4
Value Propositions	7
Funding	8
Vehicles for Ownership/Implementation	8
Timing Constraints	8
Feasibility Investigation Process	9
Fact Finding/Research	10
Legal Review	10
Economic Analysis.....	10
Scenario Building	10
Scenario Sensitivities	11
Representative Scenarios	12
Appendix A - Preliminary List of Applicable Laws and Regulations	14
California Constitution	14
California Public Utilities Code.....	14
San José City Charter.....	15
Electric Franchise Agreement between PG&E and the City of San José.....	15
Appendix B – Select Diridon Station Area Materials	16
Appendix C - Electric Franchise Agreement between PG&E and San José	17

Task Background

Task Services: Flynn Resource Consultants Inc. (“Consultant”) shall identify key issues affecting the desirability of providing electric utility distribution service to the Diridon Station Area (“DSA”). The Consultant shall describe the general process, steps, and timeline for the City of San José to be able to own distribution assets to support the advanced micro grid.

Task Deliverable: The Consultant shall email the Project Manager one (1) memo via word document summarizing key issues, describing the feasibility investigation process, and at a high level, address any associated regulatory and legal considerations.

Summary

The City of San José (“San José”), a municipal corporation, is interested in understanding the major factors which would be involved in a feasibility study to provide public power service to the DSA, specifically in a manner that would facilitate development of an advanced microgrid by or in coordination with Google LLC (as likely master planner of the DSA), consisting of on-site generation, on-site energy storage, and advanced energy management systems, as part of the DSA project.

Baseline Scenario: The baseline scenario absent action by San José would likely be retail electric distribution services to be provided by the incumbent utility, PG&E. This baseline scenario may have cost advantages or disadvantages in terms of both one-time and on-going costs and may have many additional factors that would affect the scale, scope, and value proposition of the contemplated advanced microgrid. With PG&E providing electrical distribution service, San José and occupants of the DSA may be subject to PG&E procedures and rules that could hamper microgrid design and development and affect the timeline/approval process. Alternatively, DSA may benefit from established processes of PG&E.¹

Public Power Scenarios: Pursuing non-baseline scenarios will also have advantages and disadvantages compared to the baseline scenario. These factors will be explored during a feasibility study, and will largely be related to legal/contractual/regulatory constraints, funding constraints, existing physical infrastructure and anticipated modifications, tangible value streams (such as ongoing costs and cost savings), intangible values (such as wider latitude on microgrid scale and scope without PG&E and/or CA Public Utilities Commission (Commission) involvement), timing constraints, and implications related to the selected legal vehicle for providing public power distribution services to DSA (such as San José ownership, existing/new district ownership, etc.).

¹ **Baseline Scenario Caveat:** The baseline scenario for current purposes is to assume that San José would not provide any public power services to DSA. Therefore, part of this feasibility study will need to address whether the Google Master Plan as currently contemplated is feasible *without* San José’s involvement. Legal and regulatory constraints may determine a baseline scenario other than what is described in this memo.

Memo Scope: The purpose of this memo is to outline the key issues that a feasibility study should cover and is organized as shown in the Table of Contents. Flynn RCI's approach is to first cover the most important issues, and then to describe a framework for the feasibility study that involves building several representative scenarios, to be explored in parallel and refined during the study. For current purposes, a scenario is a combination of i) facts and constraints identified during the feasibility study (exogenous variables), and ii) a course of action considered by San José (endogenous variables, or decision variables).

The task facing San José, and Google LLC as the likely master developer of a significant portion of the DSA, is comprised of an enormous amount of uncertainty, regarding knowable facts about the area (including parcel ownership, easements, rights of way, existing utilities, other encumbrances), many layers of governing laws and regulations, unknown-but-estimable ongoing activities in and around the DSA, unknown future variables (such as the PG&E T&D rates vs. San José T&D costs, potential departing load charges, willingness of voters to approve financing by San José, and others).

Recommended Approach: The advantage of the scenario-building approach described in the memo is that it provides a tractable way for San José to consider a wide range of future states of the world which will be iteratively refined and fleshed out as facts are gathered and legal constraints identified while also informing the investigation and fact-finding efforts and the necessary legal review. The framework will support a flexible approach that can be tailored to the timeframe and resources available to San José, including possibly phasing the investigation process. It may help inform efforts San José may wish to pursue in parallel during the feasibility study process which are tangential but related to the study itself (such as regulatory activities, legislative activities, or partnerships with peer agencies on collaborative action to advance microgrid develop) and which may positively affect several scenarios being explored, even if no one scenario is a clear winner during the process.

Early attention should be paid to timing issues and what might be critical path issues to be resolved between Google LLC and San José to proceed with a plan of service to connect to the PG&E transmission grid. It may be necessary for Google LLC to develop a fallback plan to ensure available electrical service even as the City investigates a range of issues through a feasibility study

Key Issues

The CONSULTANT shall identify key issues affecting the desirability of San José providing electric utility distribution service to the DSA.

Physical Infrastructure

San José should compile relevant information on the physical infrastructure currently existing at the DSA site, the infrastructure changes (if any) under way independent of DSA, and the configurations as contemplated under the likely baseline scenario and variants, including:

Privileged & Confidential Attorney Work Product

- The geographic and electrical circuit infrastructure boundaries of: i) the Diridon Station Area, ii) the Google campus and advanced microgrid serving Google load, and iii) other properties and electrical loads within, adjacent to, or otherwise potentially affected by (i.e. sharing the same distribution circuit with) the DSA plan.
 - Identify all parcels within and adjacent to the DSA, including ownership (Google vs. San José vs. 3rd party), utilities, and other easements.
- The existing electrical physical infrastructure within the DSA footprint which serve current loads, including circuits at both transmission and distribution voltages.
 - Determine whether the transmission substation “San José Station A” is likely to remain in place, or to be relocated within or outside the DSA footprint, on a timeline that affects DSA development.
 - Identify current loads served by PG&E facilities within or immediately outside the DSA footprint. For example, a very simple but unlikely case would be several distribution feeders from the Station A transmission-level substation serving only those loads presently within the DSA footprint. A more complex and realistic case would be distribution feeders from Station A that serve both loads physically located within the DSA footprint, and neighboring loads. Plans for serving these neighboring loads (either by San José or PG&E) will need to be developed.
- Infrastructure changes under way during the DSA development timeline but independent of DSA (such as transmission upgrades for Caltrain or California High Speed Rail Authority at or near the Diridon Station).
- The electrical configurations in the Google LLC master redevelopment plan² involving service to new DSA load to be connected to or composing the DSA advanced microgrid (include variants that may be considered conditional on the results of this feasibility study).
 - Expected new loads, net load demand/supply profiles, and microgrid(s) configurations expected to serve the new loads at DSA (including on-site generation, storage, and other advanced energy management equipment and capabilities).
 - Plans and schedules for undergrounding or relocating existing equipment.
- The electrical configurations identified or implied by the master redevelopment plans to serve any loads not intended to be served from the microgrid(s) (e.g., served from existing PG&E distribution, served from a line off of Station A not connected to the microgrid circuit, or served from transmission other than Station A).

Legal/Regulatory Constraints

San José should request or draft a legal opinion on rights and options under current laws, regulations, and agreements related to provision of electric service to redevelopment areas, including development and use of advanced microgrids and the distribution infrastructure needed or preferred to accommodate them. To begin the exercise the following list, which should not be considered exhaustive, may be used:

² See <https://www.diridonsj.org/diridon-station-area-plan-google-project> and <http://www.sanJoseca.gov/GoogleProject>.

Privileged & Confidential Attorney Work Product

- Under the California Constitution, Article XI, Section 9(a), San José may furnish its inhabitants with power.
- Under PUC Section §6202, San José may grant a franchise to another entity for such services.
- Under the Electric Franchise Agreement currently in effect (included as Appendix C), Section 18 “Acquisition and Evaluation,” San José may acquire property of PG&E; Under Section 19 “Franchise to be Non-Exclusive” San José may grant another franchise for “all or any areas of the City.”
- Under the San José City Charter, no revenue bonds may be issued for public utilities without an affirmative vote from a majority of voters.
- Under PUC Sections §854³, the California Public Utilities Commission must approve the transfer of utility property (regardless of the type of acquiring entity) and has discretion to evaluate the effort in light of factors laid out in statute, which are subject to the Commission’s interpretation.
- Under PUC Sections §1401-1421, the Commission oversees the valuation of utility properties and just compensation in the case of acquisition of such assets by a public entity (including a new subdivision of an existing public entity).
- Under several PUC Sections (including §367, §369, §9601, §9604, and others), PG&E may collect departing load charges for current or new loads under certain circumstances, with some exceptions.
 - Commission decisions in Rulemakings R.02-01-011 (including but not limited to D.03-07-028⁴, D.03-08-076, D.04-11-014, D.04-12-059) and R.06-02-013 (including D.08-09-012) address collection of departing load charges from Municipal Departing Load customers, such as a new “local publicly owned electrical corporation.”
 - Commission decisions in Rulemaking 02-01-011 (including D.03-04-030⁵, D.07-05-006) implemented mechanisms for collecting departing load charges from Customer Generating Departing Load, with certain exceptions described in the decision and implemented in tariff schedule E-DCG⁶.
- PG&E collects non-bypassable charges from departed customers taking service from a publicly owned utility under Tariff schedule E-TMDL⁷ and customers providing self-service under Tariff schedule E-DCG.
- Under Government Code Section §56133, Santa Clara Local Agency Formation Commission (“LAFCO”) approval may be needed if a special district is used to provide service to the DSA.

Other legal statutes and regulations may impact the feasibility investigation process, such as eligibility for PG&E Wholesale Distribution Tariff service, and those governing private entity utility service.

³ https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=854.&lawCode=PUC

⁴ http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/28134.PDF

⁵ http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/25100.PDF

⁶ https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_SCHS_E-DCG.pdf

⁷ https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_SCHS_E-TMDL.pdf

Some legal/logistical questions to be answered:

1. Can Google LLC own any electrical distribution assets in the considered scenarios? Would there be any restrictions for Google LLC to fund (via in-kind or capital contributions or through a targeted tax) City owned assets?
2. What constraints apply to Google LLC in terms of accommodating reconfiguration of PG&E assets within the DSA footprint?
3. Can a district created to support the objectives of this project (public power distribution to DSA) issue tax revenue bonds with/(without) city-wide referenda? Does the City have any existing districts that should be considered as a bonding source?
4. Which, if any, of the scenarios involving creation of a new legal entity would require LAFCO approval? And what is the likely impact of the need to obtain such approval for the alternatives requiring it?
5. What powers of the City of San José under the city charter, California constitution, etc. differ from those of cities that currently provide service to their customers through municipally owned and controlled electric utility assets, or from those cities that are in the planning stages of making this change from investor-owned utility service?
6. What are potential exposures to non-bypassable Municipal Departing Load or Customer Generation Departing Load charges for the various types of load within the DSA under each of the considered scenarios.
 - a. Determine whether existing and/or new customer loads would be exposed.
7. Can shared service within and around the DSA be implemented (some continued service by PG&E, and some by San José or an agent/sub-division of the city)?
 - a. What would be the cost of any severance issues that are likely to arise in such alternative/shared service situations?
8. How may planned changes to the transmission service to the DSA and surrounding South Bay Area (such as upgrades to serve HSR, BART, and Caltrain) impact the desirability of considered scenarios, including whether any existing or “in-flight” agreements or efforts may affect the DSA development (such as the October 4, 2018 agreement between PG&E and the CA High Speed Rail Authority⁸)?
9. What tariffs, processes, or procedures does PG&E have in place to facilitate development of advanced microgrids? What tariffs, processes, or procedures are likely to hinder San José’s and Google LLC’s objectives (including both administrative burdens/costs and timing constraints)?
10. What obligations San José or Google LLC have to PG&E under existing rules related to reconfiguration of PG&E transmission/distribution assets (transferring property and paying PG&E’s associated taxes)?
11. For each alternative plan of service, assess the technical and regulatory issues such as FERC, NERC, CAISO, CPUC, and CEC issues, focusing on any fatal flaws.
12. Interconnecting only new equipment at 115 kV (transmission-level) versus at 12 kV (distribution level) may have widely differing implications on timing/schedule and cost.
13. Have interconnection requests already been made to PG&E from Google LLC vs San José? Might such recent requests constrain future options?

⁸ For example, https://www.pge.com/tariffs/assets/pdf/adviceletter/ELEC_5046-E.pdf

- a. Will new interconnection requests be made from Google LLC or San José?
 - b. Which interconnection rules will apply (PG&E Wholesale Distribution Tariff⁹, PG&E Open Access Transmission Tariff¹⁰, CAISO, etc.)?
14. How San José should evaluate implementation risks (such as litigation) under differing approaches (e.g. acquisition of utility assets)?
15. Which scenarios can meet the timing constraints of the DSA occupants? Can scenarios be chained to create a phased implementation plan to meet some objectives initially and all objectives eventually (a first phase including set-asides of real estate or electrical capacity for the later phase(s))?

Value Propositions

San José should determine the primary and secondary objectives of this project: Cost savings, increased flexibility/optionality, increased DSA and neighboring area electrical reliability/resiliency, etc. Identifying these objectives will support the Feasibility Investigation Process.

- **Tangible:** San José should estimate the tangible value of various alternative methods of providing electric service to the DSA. This would include establishing the expected electric rates, including recovery of financing and all operating expenses. Such costs of service should account for whether some or all of DSA would be subject to Municipal Departing Load or Customer Generation Departing Load non-bypassable charges for various alternatives. The above costs should be compared to expected customer costs to take retail service from PG&E.
- **Intangible:** San José should estimate the intangible value of each considered alternative. This would include benefits of local control (e.g., removing barriers imposed by PG&E related to the advanced microgrid development), improved reliability from a better optimized configuration for advanced microgrid/s, and more robust implementation of Climate Smart San José plans than would be possible without San José ownership of assets serving DSA. Another intangible benefit may be public power service to DSA representing a first phase of greater public power service in San José. Finally, facilitating infrastructure for advanced microgrids at DSA and throughout San José could support continued reliable power for critical uses during planned and unplanned power grid outages¹¹.

⁹ https://www.pge.com/pge_global/common/pdfs/about-pge/company-information/regulation/contracts-and-tariffs/wd-tariff-2017.pdf

¹⁰

<https://www.pge.com/includes/docs/pdfs/shared/customerservice/nonpgeutility/electrictransmission/tariffs/TO%20Tariff%20-%20eTariff%20Baseline%20Version.pdf>

¹¹ An example would be continued electrical service in cases of power service outages undertaken by the incumbent utility under a Public Service Power Shutoff (PSPS) event. See https://www.pge.com/en_US/safety/emergency-preparedness/natural-disaster/wildfires/public-safety-power-shutoff-faq.page for more. Note that the amounts of onsite generation and storage resources currently identified by Google LLC would not be sufficient to maintain continued normal electrical service even over extremely short duration PSPS events. If continued reliable service during PSPS events were a priority, San José and Google would need to explore alternative equipment configurations and perhaps operating procedures for conditions when the microgrid is islanded from the larger grid.

Funding

Several factors will impact not only the costs, but also the constraints on and eligibility for various funding sources. Under the San José City Charter Section 1221, voter approval is required for revenue-backed bonds. Some questions to be addressed during the feasibility study:

- Are revenue bonds necessary under some or all scenarios?
 - If so, would voters likely approve issuance?
- If not, are there other sources of funding available?
- What infrastructure is Google LLC expected to fund?
- Could Google LLC's contribution be greater. If so, under what legal structure?
- Could funding be provided through a private contribution (of capital or facilities) to the City, or through a targeted tax on property within the DSA footprint?
- Could grants or loans for development of advanced microgrids such as the one being contemplated be used for necessary upstream supporting equipment (such as assets on the distribution side of the premise meter(s))?
- Determine whether San José has an existing available funding mechanism to avoid revenue bonds subject to City Charter 1221 to serve existing PG&E customers by acquiring PG&E owned assets.

Vehicles for Ownership/Implementation

As part of the feasibility study, San José should consider the legal/contractual vehicles available for each scenario. Certain vehicles may require voter approval or legislative changes, which could be obstacles that make some scenarios infeasible given resources and time constraints, while other types of vehicles could be considered (from a practical as well as legal perspective) that would enable implementation on an expedited schedule (for example, a public district or corporation with a footprint coincident with the DSA and a targeted tax on occupants). San José may also consider invoking its right under the Franchise Agreement with PG&E to terminate such franchise in a sub-set of the city boundaries and create a new franchise agreement with a new entity. Example structures include:

- City (or sub-division of city, such as a district) ownership of electrical assets.
- Other Corporation (private or public-private) ownership of electrical assets, perhaps with new Franchise Agreement.

Timing Constraints

Options available to San José may vary with respect to the feasibility of timely development to make sure reliable electric service will be available when required. Alternatives may also vary based upon the degree to which they are subject to departing load charges.

If the first preferred scenario is not feasible under the timeline needed by the DSA master developer and other affected parties, San José may consider scenarios involving parallel and complementary

action plans which will meet the immediate timeline while also accommodating future actions to achieve long-term desired outcomes (for example, if acquisition of utility assets would be time-prohibitive, San José may pursue options for providing service that do not involve acquisition of existing PG&E assets or a phased variant of continued PG&E service that facilitates a smooth transition to city service through acquired equipment when such action is appropriate).

Feasibility Investigation Process

The Feasibility Investigation Process should describe and evaluate the feasibility of several representative scenarios for public power electrical distribution services to DSA, following the guidance of Key Issues described above. During fact finding and legal review, San José may discover that certain structures of service are preferred, non-preferred, or infeasible. Combining fact finding with legal review will narrow the options and will assist in developing feasible scenarios, which are here used as described above as a set of external factors and internal (San José-initiated) plans of action which would result in, for example, a legal structure, a funding structure, an identification of physical property/assets, a timeline, and other relevant elements.

The Feasibility Investigation Process is described below in general terms, and will involve 1) Fact Finding/Research, 2) Legal Review, 3) Economic Analysis, 4) Scenario Building, and 5) Scenario Sensitivities. These process stages will be conducted iteratively in order to coalesce around one or more feasible scenarios to be compared with the baseline, resulting in a section covering recommendations for San José to pursue. During Scenario Building, a focus on fatal flaw analysis given the results of the fact finding and legal review stages will support San José’s decisions on how and whether to pursue continued feasibility study of specific public power options for the DSA area.

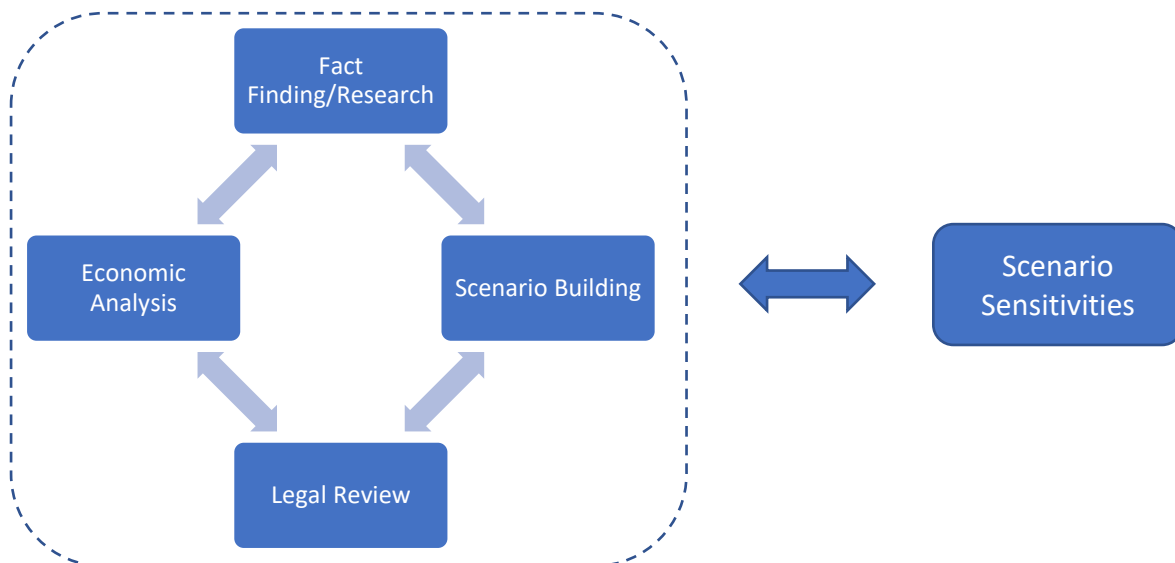


Diagram showing general recommended approach of the iterative Feasibility Investigation Process (each stage informs efforts within the other stages, occurring iteratively and in parallel; once a set of feasible and desirable scenarios are constructed, scenario sensitivity analysis should enable San José to recommend a plan of action that is i) feasible, ii) desirable, and iii) robust under uncertainty)

Fact Finding/Research

During the Feasibility Investigation Process, San José should leverage previous studies to the greatest extent possible to gather relevant facts (on physical infrastructure, primarily). The process should largely follow the content described in the Key Issues section above, but will also be informed iteratively through execution of each step in the Feasibility Investigation Process.

Legal Review

San José should obtain legal review as part of the feasibility study, to guide development of scenarios based on legal constraints and options (see “Key Issues Legal/Regulatory Constraints” section above and Appendix A – Preliminary List of Applicable Laws and Regulations).

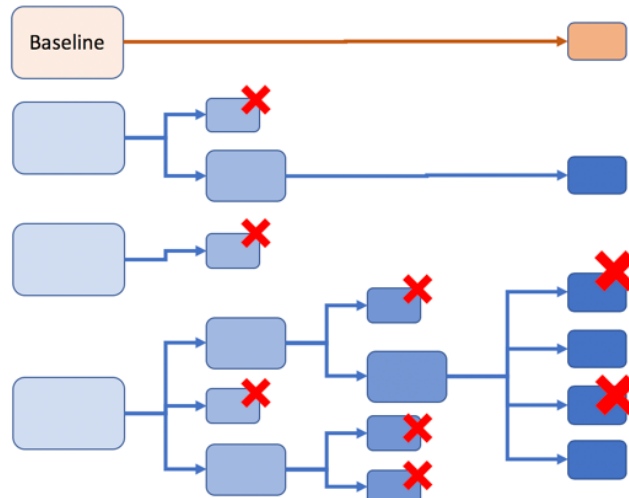
Economic Analysis

A critical component of any feasibility study for public power service to DSA will involve an economic analysis of each considered scenario. By building on the information gathered regarding physical infrastructure and tangible value propositions, the economic analysis portion will allow direct comparisons between scenarios, incorporating benefits of scale, merits and demerits of actions which trigger involvement of various governing entities (such as Commission authority under PUC §1401-1421). Importantly, San José should estimate the up-front and ongoing costs of acquiring or building electrical distribution assets to facilitate the contemplated scenarios. Additional factors for an economic analysis will include:

- Projections of PG&E retail transmission and distribution rates that would apply to DSA loads in a baseline scenario and each alternative scenario (where some PG&E service remains).
- Development of severance plans and estimates of associated cost, as necessary, to ensure PG&E can continue to serve its remaining customers after implementation of the selected service plan for the DSA.
- Staffing, consultant, and other technical services costs under each scenario.
- Funding sources and financing costs.
- Risks or range estimates of major cost areas.

Scenario Building

The process of building scenarios for evaluation of feasibility has been outlined above and is recommended by Flynn RCI to make the problem facing San José more tractable. Scenarios should be described in high level terms and segmented/refined iteratively during fact finding and legal review. The feasibility study process may quickly eliminate types of scenarios through a targeted set of fatal flaw analyses, allowing San José to focus in detail on a smaller number to compare with the baseline scenario. Thus, the more detailed analyses can be undertaken later in the process on a smaller subset of alternatives.



Example Scenario Building/Refinement (Left-to-Right process indicates both identification of infeasible scenarios and branching scenarios into variants for further exploration during additional fact-finding, legal review, and economic analysis)

Scenario Sensitivities

Some issues/questions may not be answerable during the feasibility study but may be considered with respect to how sensitive each scenario's value proposition is to a range of values. For example:

- If the Commission or CAISO change rules on storage, distributed generation, and/or hybrid resources, this may affect the ancillary service and Resource Adequacy (RA) value of the considered configurations (e.g., if 2 hour duration batteries are not eligible to provide RA, but 4 hour or 6 hour duration batteries are, how does this impact the project value?).
- Estimating or projecting future rule changes at the Commission and the CAISO, as well as technological changes during the study process and project design and construction which may materially affect the feasibility and value propositions of various scenarios (sensitivity analysis).
 - What identified constraints to implementing an advanced microgrid and the supporting equipment might be relieved through near term legislation or Commission action?
Would this change make a larger scale microgrid effort feasible or desirable?
- Costs and cost changes over time are a category of factors that will significantly impact the net value of each scenario. These include, but aren't limited to, departing load charges, PG&E transmission and distribution rates, construction and operating costs of distribution assets, and tax treatment of equipment based on ownership.

Representative Scenarios

This memo is intended to outline the key issues that will likely impact San José’s decision(s) on how to proceed through a full feasibility study and possibly into an action plan. The scenarios below are meant to represent points along a spectrum of paths that San José may take, based on information gathered and intermediate decisions made during exploration. A scenario is here considered to be a combination of facts that are gathered, legal opinions rendered, and decisions made by San José. The scenarios below are not meant to be exhaustive or detailed, but to create combinations of the key issues listed above into realistic representative scenarios ordered from high effort/involvement to low effort (“Baseline”).

For each scenario, the legal structure/vehicle for implementation would need to be explored as part of a full feasibility study. As the formal feasibility study is conducted, certain conditions may be discovered which preclude types of scenarios (for example, if a condemnation process isn’t likely to be completed within the planned DSA development schedule, this may narrow the paths available to San José). Other scenarios may be conditional on factors outside of the feasibility study or DSA planning process, such as statewide legislation supporting advanced microgrid development (for example, by reducing regulatory obstacles to development of microgrids and supporting infrastructure). Such conditional scenarios may be good candidates for branching, in which San José would have a plan of action regardless of future developments.

Finally, scenarios may be linked through a phased implementation process. For example, a first phase could involve San José construction of a distribution substation to serve a Google-only microgrid’s net loads within the DSA footprint, but would be sized to accommodate a second phase in which the Google microgrid were integrated with a larger DSA or neighborhood-wide microgrid.

Representative Scenario	Facts That Would Affect Decision	San José Decision
High Complexity: San José can only serve DSA by acquiring PG&E property and decides to proceed.	<ul style="list-style-type: none"> Some or all electrical loads in DSA fall under existing statutes and Commission jurisdiction; Utility property acquisition necessary; §1401-1421 PUC statutes govern; Cost/benefit analysis and time constraints support such acquisition. 	Proceed with utility property acquisition for San José service of all DSA loads. Variant A: San José takes transmission-level service from Station A. Variant B: San José takes distribution-level service from PG&E for a portion of the DSA loads.
Medium Complexity: San José can serve some DSA loads without acquiring PG&E property.	<ul style="list-style-type: none"> Utility property acquisition not necessary to serve new DSA loads; PG&E continues to serve some existing loads, but San José can serve new loads; §1401-1421 PUC statutes are not triggered; 	Proceed with construction of new equipment for San José service to new DSA loads. Variant A: San José takes transmission-level service from Station A. Variant B: San José takes distribution-level service from

Privileged & Confidential Attorney Work Product

	<ul style="list-style-type: none"> • San José must build equipment to serve such new loads; • Cost/benefit analysis and time constraints support this action plan; • Clear delineation of respective equipment and rights of way between San José and PG&E may be required if equipment/lines overlap or intersect within or near DSA footprint. 	<p>PG&E for a portion of the DSA loads.</p>
<p>Low Complexity: San José can serve all DSA loads without acquiring PG&E property.</p>	<ul style="list-style-type: none"> • Utility property acquisition not necessary; • §1401-1421 PUC statutes are not triggered; • San José must build equipment to serve such new loads; • Cost/benefit analysis and time constraints support this action plan. 	<p>Proceed with construction of new equipment for San José service to all DSA loads. Variant A: San José takes transmission-level service from Station A. Variant B: San José takes distribution-level service from PG&E for a portion of the DSA loads.</p>
<p>Baseline 1: San José cannot serve any DSA loads while meeting timeline and cost/benefit constraints but can work with DSA customers to optimize tariff design for maximum value. PG&E provides standard retail electrical delivery (transmission and distribution) services.</p> <p>Note: As described above, Google LLC’s current master plan may not be feasible, or least-cost/least-complexity, without San José providing service.</p>	<ul style="list-style-type: none"> • Utility property acquisition would be necessary; • §1401-1421 statutes would be triggered; • Cost/benefit analysis does not support utility property acquisition; 	<p>San José advises DSA occupants and assists in negotiations with PG&E, and optimization of DSA infrastructure and SJCE tariff design.</p> <p>PG&E continues providing transmission and distribution services to all DSA customers.</p>

Appendix A - Preliminary List of Applicable Laws and Regulations

California Constitution

CALIFORNIA CONSTITUTION ARTICLE 11 LOCAL GOVERNMENT

SEC. 9. (a) A municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication. It may furnish those services outside its boundaries, except within another municipal corporation which furnishes the same service and does not consent.

(b) Persons or corporations may establish and operate works for supplying those services upon conditions and under regulations that the city may prescribe under its organic law.

(Retrieved from https://law.justia.com/constitution/california/article_11.html on 10/7/19)

California Public Utilities Code

PUC 369 directs the CA Public Utilities Commission (“Commission”) to create a mechanism to collect certain applicable costs from departing customers, including those being served through the formation of a new publicly owned utility.

https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=1.&chapter=2.3.&part=1.&lawCode=PUC&article=6.

PUC Section 854 give the Commission oversight of “merger, acquisition, or control activities” related to public utilities, and creates thresholds which the Commission shall use to determine whether to approve such “merger, acquisition, or control activities.” 854 also provides the Commission discretion to interpret the statute. Section 854.2 mandates employment provisions in an acquisition/municipalization.

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=854.&lawCode=PUC

PUC Sections 1401-1421 govern “Just Compensation for Acquisition of Utility Properties.” Such statutes provide the structure for a political subdivision of the state (such as San José) to petition the Commission for acquisition of assets under eminent domain or other means, and the structure for determining just compensation.

https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=1.&chapter=8.&part=1.&lawCode=PUC

PUC Section 6202 provides the right for municipalities to grant franchises for utility service to third parties.

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PUC§ionNum=6202.

San José City Charter

SECTION 1221. Revenue Bonds for Public Utilities.

No revenue bonds shall be issued by the City for the purpose of supplying its inhabitants, or any portion thereof, with water, light, heat, power, railroad or motor vehicle transportation service (other than airport service), or telephone, telegraph or wireless communication service unless authorized by the affirmative vote of a majority of the electors voting on such a proposition in each case.

Nothing herein contained, however, shall be deemed to apply to any of the facilities mentioned in Section 1220. Also, nothing herein contained shall be deemed to deprive the City or its Council of any power which it may have under other Sections of this Charter or under the laws of the State to reimburse, or agree to reimburse, in whole or in part, from any special fund or special revenues, without the affirmative vote of any electors, any subdivider, developer or owner of any real property for any public improvements constructed, installed or furnished by any such person, or for any property dedicated or conveyed to the City by any such person, for or in connection with the subdivision, development or improvement of any real property of any such person.

Also, nothing herein contained shall preclude the issuance of general obligation bonds of the City for any purpose pursuant to proceedings taken therefor in accordance with the Constitution and general laws of the State.

(Retrieved from <http://www3.sanJoseca.gov/clerk/charter.asp#Art12> on 10/15/19)

Electric Franchise Agreement between PG&E and the City of San José

Section 18 of the Electric Franchise Agreement ensures the City is not prevented from acquiring PG&E's assets, and Section 19 makes the franchise non-exclusive (the City may grant a similar franchise for "all or any areas of the City").

(Retrieved from PG&E Advice Letter ELEC_3651-E,
https://www.pge.com/notes/rates/tariffs/tm2/pdf/ELEC_3651-E.pdf on 10/7/19)

See Appendix C - Electric Franchise Agreement between PG&E and San José

Appendix B – Select Diridon Station Area Materials

1. 2014 Diridon Station Area Plan
 - a. <http://www.sanJoseca.gov/DocumentCenter/View/85308>
2. 2018 MOU Between San José and Google LLC
 - a. <https://www.diridonsj.org/s/Final-MOU.pdf>
3. 2019 Updated FAQ on DSA and Google LLC Project
 - a. https://www.diridonsj.org/s/Updated-FAQs-on-DSAP-Google_Sept2019.pdf
4. Google LLC Plan Set and Project Description
 - a. <http://www.sanJoseca.gov/GoogleProject>
5. 2017 Diridon Station Area Infrastructure Analysis
 - a. <https://bit.ly/2q9MiBI>
 - b. Note: Analysis described a 2006 study to relocate PG&E’s Station A. Because this 2017 Analysis used 11 year old information, there may not be anything new available, but San José should explore what is available.

Appendix C - Electric Franchise Agreement between PG&E and San José

(on following pages)