

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:

- 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>.

- 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.

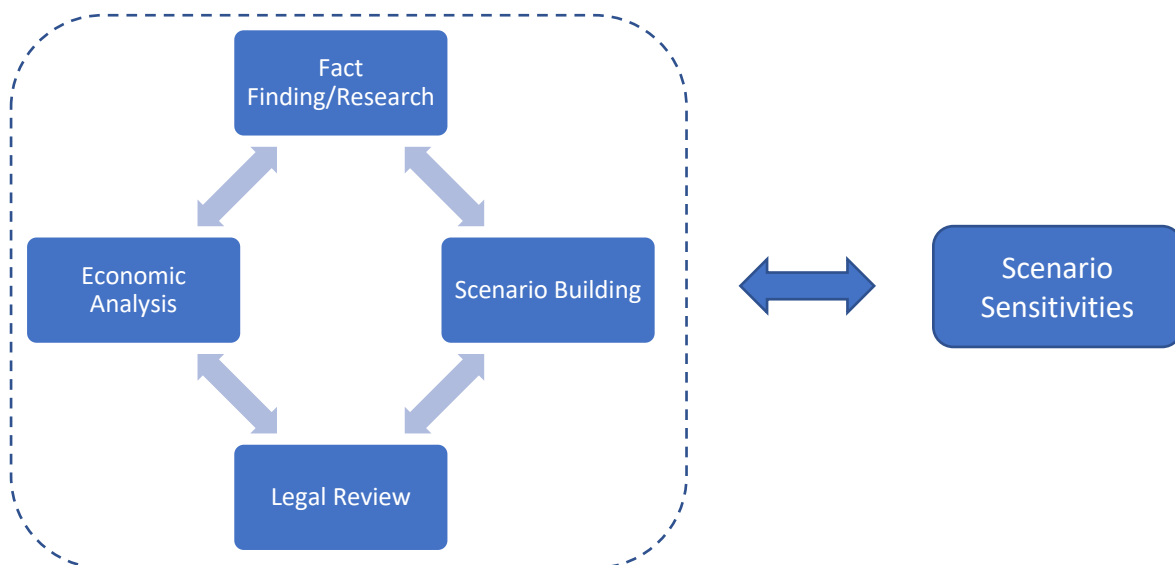


Diagram showing general recommended approach of the iterative Feasibility Investigation Process (each stage informs efforts within the other stages, occurring iteratively and in parallel; once a set of feasible and desirable scenarios are constructed, scenario sensitivity analysis should enable San José 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).

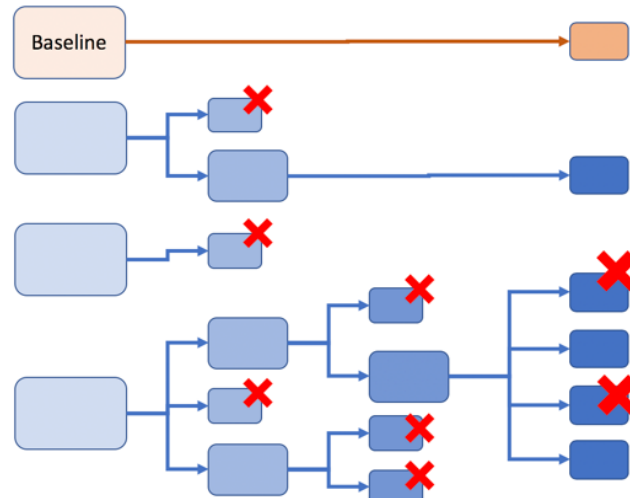
Economic Analysis

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. 	<p>Proceed with utility property acquisition for San José service of all DSA loads.</p> <p>Variant A: San José takes transmission-level service from Station A.</p> <p>Variant B: San José takes distribution-level service from PG&E for a portion of the DSA loads.</p>
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; 	<p>Proceed with construction of new equipment for San José service to new DSA loads.</p> <p>Variant A: San José takes transmission-level service from Station A.</p> <p>Variant B: San José takes distribution-level service from</p>

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. 	PG&E for a portion of the DSA loads.
Low Complexity: San José can serve all DSA loads without acquiring PG&E property.	<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.</p> <p>Variant A: San José takes transmission-level service from Station A.</p> <p>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)

Electric Franchise

Ordinance 15880 (adopted September 20, 1971)

Ordinance 21677 (adopted June 5, 1984)

Ordinance 26914 (adopted June 10, 2003)

Ordinance 28720 (adopted February 9, 2010)

ORDINANCE NO. 19330

AN ORDINANCE OF THE CITY OF SAN JOSE GRANTING TO PACIFIC GAS AND ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE (1) TO USE, FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY SUITED FOR LIGHTING BUT FOR USE BY CONSUMERS FOR ANY AND ALL LAWFUL PURPOSES OTHER THAN LIGHTING, ALL POLES, WIRES, CONDUITS AND APPURTENANCES WHICH ARE NOW OR MAY HEREAFTER BE LAWFULLY PLACED AND MAINTAINED IN THE STREETS WITHIN THE CITY OF SAN JOSE UNDER SUCH FRANCHISE THAT GRANTEE MAY HAVE UNDER AND PURSUANT TO SECTION 19 OF ARTICLE XI OF THE CONSTITUTION OF THE STATE OF CALIFORNIA, AS SAID SECTION EXISTED PRIOR TO ITS AMENDMENT ON OCTOBER 10, 1911, (2) TO CONSTRUCT, MAINTAIN AND USE IN SAID STREETS ALL POLES, WIRES, CONDUITS AND APPURTENANCES WHENEVER AND WHEREVER SAID CONSTITUTIONAL FRANCHISE IS NOT NOW OR HEREAFTER AVAILABLE THEREFOR, NECESSARY TO TRANSMIT AND DISTRIBUTE ELECTRICITY SUITED FOR, AND FOR USE BY CONSUMERS FOR, ANY AND ALL LAWFUL PURPOSES, AND (3) TO UTILIZE SAID POLES, WIRES, CONDUITS AND APPURTENANCES IN SAID STREETS FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY FOR USE OUTSIDE THE BOUNDARIES OF THE CITY FOR ANY AND ALL LAWFUL PURPOSES, AND PROVIDING THE TERMS AND CONDITIONS OF THE FRANCHISE SO GRANTED.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Definitions. Wherever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions (unless in a given instance the context wherein they are used shall clearly import a different meaning):

(a) The word "Grantee" shall mean Pacific Gas and Electric Company, and its lawful successors or assigns.

(b) The word "City" shall mean the City of San Jose, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or re-incorporated form.

(c) The word "Engineer" shall mean such officer as may from time to time be designated by the Council of the City of San Jose or its successor, as the Engineer referred to in this ordinance; provided,

that until otherwise provided by said Council or its successor, the word "Engineer" shall mean the head of the Public Works Department of the City of San Jose.

(d) The word "streets" shall mean the public streets, ways, alleys and places now or hereafter established within the City, including State highways and freeways now or hereafter established within the City; providing and excepting, however, that the word "streets" shall not be deemed to mean or include any parks, playgrounds, school property or other municipal or public property not constituting public thoroughfares.

(e) The words "poles, wires, conduits and appurtenances" shall mean poles, towers, supports, wires, conductors, cables, guys, stubs, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-outs, switches, communication circuits, appliances, attachments, appurtenances and, without limitation to the foregoing, any other property located or to be located in, upon, along, across, under or over the streets of City, used or useful in transmitting and/or distributing electricity for the purposes for which this franchise is granted.

(f) The words "construct, maintain and use" shall mean to construct, erect, install, operate, maintain, use, repair or replace.

(g) The phrase "constitutional franchise" shall mean such franchise or right, if any, as Grantee may have because of the acceptance by Grantee or its predecessor in estate of the offer contained in the provisions of Section 19 of Article XI of the Constitution of the State of California, as said Section existed prior to its amendment on October 10, 1911.

(h) The phrase "gross receipts", as used in this Section and in other parts of this ordinance, shall mean all gross operating revenues received or receivable by Grantee from the sale of electricity to Grantee's customers with points of service within the corporate limits of the City (including, but not limited to, sales to military reservations with points of service within the City's corporate limits) which are credited to Account Nos. 440, 442, 444, 445 and 446 of the current Uniform System of Accounts of the Federal Power Commission, as adopted by

the California Public Utilities Commission, or similar superseding accounts, or which would be credited to such accounts or similar superseding accounts if Grantee kept its books in accordance with such accounts or similar superseding accounts.

SECTION 2. Purpose. Subject to each and all of the terms, conditions and limitations set forth in this ordinance, there is hereby granted to Grantee the franchise to do all of the following:

(a) To use, for transmitting and distributing electricity suited for lighting but for use by consumers for any and all lawful purposes other than lighting, all poles, wires, conduits and appurtenances which are now or may hereafter be lawfully placed and maintained in the streets within the City under the constitutional franchise of the Grantee;

(b) To construct, maintain and use in said streets within the City all poles, wires, conduits and appurtenances whenever and wherever the constitutional franchise of Grantee is not now or hereafter available therefor, necessary to transmit and distribute electricity suited for, and for use by consumers for, any and all lawful purposes; and

(c) To utilize said poles, wires, conduits and appurtenances in said streets for transmitting electricity for use outside the boundaries of City for any and all lawful purposes.

SECTION 3. Term. Subject to all terms, conditions and limitations contained in this ordinance, the franchise granted by this ordinance shall endure in full force and effect until the same shall, with the consent of the Public Utilities Commission of the State of California, be voluntarily surrendered or abandoned by Grantee, or until the State or any of its political subdivisions or agencies, or the City of San Jose or any municipal or public corporation, thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of said franchise and situate in the territorial limits of the State, municipal or public corporation purchasing or condemning such property, or until said franchise shall be forfeited for noncompliance with its

terms or until said franchise is otherwise forfeited, terminated or abandoned pursuant to any of the provisions of this ordinance or pursuant to any applicable law.

SECTION 4. Consideration. The franchise, and all rights and privileges, granted by this ordinance to Grantee are granted upon the express condition that Grantee, in consideration thereof and as compensation for the use of the streets of the City as herein authorized and permitted, shall pay to the City, in lawful money of the United States, in the manner and on the conditions hereinafter set forth in Section 5, for each of the calendar years (or fractional calendar years) following the effective date of this ordinance, a sum of money equal to one percent (1%) of Grantee's gross receipts during each such calendar year (or fractional calendar year); provided and excepting, however, that the amount of said annual compensation, and/or the formula or measure or manner in which the amount shall be determined, may be changed or amended as hereinafter provided in this Section, to wit:

(a) If, as a result of negotiation or litigation, or both, between Grantee and any other city or cities of the State of California, regardless of whether such other city or cities is or are a general law or charter city or cities, including but not limited to negotiation or litigation, or both, under any hereafter adopted statute or constitutional amendment, or if by litigation, whether the City participates therein or not, which right of participation is hereby expressly reserved to the City, or if for any other reason, the Grantee shall make payment or payments to any other city for any of said calendar years (or fractional calendar years) in accordance with a formula (hereinafter referred to as a "second formula") which if applied to the City would provide payments to the City greater than provided for by the use of the formula hereinabove specified in the first paragraph of this Section 4, such "second formula" shall prevail over the formula hereinabove specified in the first paragraph of this Section 4 for each of said years of the term of said franchise for or during which Grantee makes payments to any other city in accordance with said "second formula".

(b) In the event that the laws of the State of California, as they exist as of the date of adoption of this ordinance, should at any time ever be amended or changed to permit general law cities, in granting franchises of the kind herein being granted to Grantee, to require the Grantee of any such franchise to pay or give any consideration or compensation in accordance with a formula (hereinafter referred to as "third formula") which, if applied to the City of San Jose and the Grantee herein, would provide payments to the City greater than provided for by the use of the formula hereinabove specified in the first paragraph of this Section 4 or by the use of the abovementioned "second formula" if such "second formula" is the higher, then in such event City shall have the right, at any time thereafter, to require Grantee to thereafter make payments in accordance with such "third formula"; provided, however, that City shall not require Grantee to make any payments pursuant to the provisions of this subparagraph (b) during the first thirty (30) years of the franchise herein granted by City to Grantee.

(c) Within the last six (6) calendar months of the calendar year 1981, and thereafter within the last six (6) calendar months of each ten (10) calendar year period following the calendar year 1981, each of such six (6) month periods being hereinafter referred to as "six-month-notice period", either City or Grantee, or each of them, may serve written notice upon the other of its desire to change the amount or kind of consideration or compensation to be annually paid or given, after the expiration of such "six-month-notice period", by Grantee to City as consideration for said franchise and as compensation for the use by Grantee of the streets of the City as herein authorized and permitted, or of its desire to change the manner, measure or formula pursuant to which such annual consideration and compensation shall thereafter be determined. Said notice shall specify the change or changes desired. Within ninety (90) days from and after the date of service of such notice, or at such other time or times as the parties may mutually agree upon, City and Grantee shall meet and confer and attempt in good faith to resolve the matters at issue by mutual agreement. No such agreement shall be

effective unless it is in writing, and unless it is approved and signed by both City and Grantee. No such agreement shall be deemed approved by City unless it shall have been approved and authorized by written ordinance adopted by the governing body of the City. Unless otherwise provided in the agreement, any change or changes agreed upon in any such agreement shall be effective from and after the commencement of the calendar year immediately following the expiration of the "six-month-notice period".

In the event that City and Grantee should fail to arrive at any agreement with respect to the proposed change or changes within ninety (90) days from and after the service of the abovementioned notice, either party may thereafter serve upon the other a written notice of its intent to present the proposed change or changes to a board of arbitration for its consideration and decision. Unless otherwise agreed to by both parties, said notice must be served no later than the 30th day of June next following the expiration of the above-mentioned "six-month-notice period".

The board of arbitration shall consist of seven (7) members, two (2) to be selected by the City, and two (2) to be selected by the Grantee. The four (4) arbitrators selected by the parties shall select three (3) neutral arbitrators. Within thirty (30) days after service of said notice of intent to submit said matter to arbitration, each of the parties, respectively, shall select its two (2) members of the board, and within thirty (30) days after the four (4) are selected, they shall select the three (3) neutral arbitrators. The board of arbitration shall then consider the proposed change or changes, and, after giving both parties a reasonable opportunity to be heard, shall determine what change or changes, if any, are to be made. The change or changes, if any, ordered by the board may differ from those requested or desired by either of the parties. The determination shall be fair and reasonable to both parties, and in arriving at it, the board shall consider the nature and value of the rights and privileges granted by this ordinance to the Grantee, the costs, expenses and damages, if any, which City has

or will incur or suffer because of the grant of said rights and privileges to Grantee or because of Grantee's exercise of such rights and privileges, the amount paid to comparable cities for similar franchise rights and any and all other relevant factors. The board's determination shall be in writing, shall be by the majority vote of its seven (7) members, and shall be final and conclusive and binding upon both parties. The board shall render its written decision on or before, and no later than, the last day of the first twelve (12) calendar months immediately following the expiration of the abovementioned "six-month-notice period". Any change or changes made by the board shall be effective retroactively as of the first day immediately following the end of the aforementioned "six-month-notice period", and shall continue in effect until such time as the consideration payable by Grantee to City is again changed pursuant to any of the provisions of this Section 4.

If said board shall fail to arrive at a determination within the twelve (12) months immediately following the expiration of the abovementioned "six-month-notice period", said board, unless otherwise agreed to by both parties, shall be deemed discharged, and a second board, no members of which shall have been a member of the previous board, shall be established as follows: City and Grantee shall each appoint two (2) new arbitrators; City and Grantee, or either of them, shall petition the Superior Court of the State of California in and for the County of Santa Clara to appoint three (3) neutral arbitrators and to order all seven (7) of said arbitrators to consider the proposed change or changes, to give both parties a reasonable opportunity to be heard, and to arrive at a determination, within a reasonable time specified by the Court, as to what change or changes, if any, shall be made. The determination shall be fair and reasonable to both parties, and in arriving at it the second board shall consider all matters and factors which the former board was required to consider. The second board's determination shall be in writing, and must be by majority vote of all seven (7) members; and its determination shall be final and conclusive and binding upon both parties. Any change or changes made or ordered by the board shall be effective retroactively

as of the first day immediately following the end of the aforementioned "six-month-notice period" and shall continue in effect until such time as the consideration payable by Grantee to City is again changed pursuant to any of the provisions of this Section 4.

All costs and expenses of the boards of arbitration, and court costs in the event recourse is had to the Superior Court as aforesaid, shall be paid equally by City and Grantee.

In the event any person appointed to serve as an arbitrator on either of the abovementioned boards should die or fail or be unable to perform the duties of an arbitrator, a substitute shall be appointed to serve in his place and stead by the party or body which appointed his predecessor.

In the event that the arbitrators fail to comply with the order of the court and to reach a decision by the majority vote of its seven (7) members within the period specified by the court, or within three (3) years from and after the date of expiration of the abovementioned "six-month-notice period", whichever is the shorter period of time, the party who proposed the change or changes shall thereafter have the right to terminate the rights, privileges and franchise herein granted by City to Grantee, and upon such termination, the rights, privileges and franchises of Grantee granted by this ordinance shall be at an end; provided, however, that such right of termination shall be deemed waived if not exercised within one hundred eighty (180) days immediately following the expiration of the time, specified by the court, within which the board was required to reach a decision.

SECTION 5. Reports, Dates of Payment. Within three (3) months from and after the expiration of each calendar year, or fractional calendar year, following the effective date of this ordinance, Grantee shall file with the City Clerk of City the original, and with the Director of Finance of City a copy, and with the City Auditor of City another copy, of a duly verified statement showing in detail the gross receipts of Grantee during the preceding calendar year or fractional calendar year, and such other data or information as City may need to calculate or determine the amounts which Grantee is obligated to pay City pursuant to the provisions of Section 4. Said statement shall be in such form and detail as from time to time may be reasonably prescribed by City.

Within fifteen (15) days from and after the time for filing of each such statement, Grantee shall pay to City, at the office of City's Director of Finance, in lawful money of the United States, the sum of money hereinabove required to be paid by Grantee to City for the calendar year, or fractional calendar year, covered by the statement.

Any neglect, omission or refusal by Grantee to file such verified statement, or to pay said percentage at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and of all rights and privileges of Grantee hereunder.

In the event Grantee fails to make the payments for this franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration both of the following amounts:

(a) A sum of money equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment, including, but not limited to, the cost of administering, accounting and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving revenue.

(b) A sum of money equal to one percent (1%) of the amount due per month as interest and for loss of use of the money due.

SECTION 6. Examination of Books, Accounts and Records. The City Auditor of City, or any certified public accountant or qualified person designated by City, at any reasonable times during business hours, may make examination or audit at Grantee's office or offices, of its books, accounts and records germane to and for the purpose of verifying the data set forth in the statement required by Section 5 hereof.

All books, accounts, and other records relating to the statement required by Section 5 hereof shall be kept within the City of San Jose, or the City of San Francisco, California, or in such other place within the territory served by Grantee as the reasonable convenience of Grantee may require.

In the event that it becomes necessary for said City Auditor, or any representative designated by City, to make such examination at any place other than within the County of Santa Clara or the City and County of San Francisco, then, in that event, all increased costs and expenses to City necessary or incident to such examination and resulting from such books and records not being available within said counties shall be paid to City by Grantee on demand.

Grantee shall file with the City's City Clerk, Director of Finance and City Auditor a copy of its annual report to the California Public Utilities Commission, or its successor in authority, as soon as practicable after the original of said report has been filed with said Commission or its successor in authority.

SECTION 7. Franchise Subordinate to Public Use of Streets. The franchise herein granted to Grantee, and all rights and privileges granted thereunder, are and shall be subordinate to the right of City, and of the general public, to use and occupy, and to any occupancy by them, of any street or streets for any municipal or public uses or purposes; provided, however, that the words "municipal or public uses or purposes" do not include the construction and operation by City of facilities to provide and deliver electricity, gas or water to private customers.

SECTION 8. Joint Use With Power. All work undertaken, or performed and all poles, wires, conduits and appurtenances constructed, maintained and used, pursuant to the provisions of the franchise granted herein, including but not limited to the practices of Grantee in its installation and removal of Grantee's facilities in the streets of City, shall be done, undertaken, performed and accomplished, and Grantee by acceptance of this franchise agrees that it will do, undertake, perform and accomplish the same, in accordance and compliance with applicable ordinances, rules and regulations of City now or as hereafter adopted or prescribed, and with applicable laws, rules, regulations and orders of the State of California, the Public Utilities Commission of the State of California and of any other governmental authority having jurisdiction in the premises, and, also, so as to cause the least possible hindrance to the use of the streets for the purpose of travel or any other public purpose.

SECTION 9. City Reserved Powers.

(a) City reserves the right for itself to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade or maintain below surface or above surface improvements of any type or description in, upon, along, across, under or over the streets of the City. City further reserves the right to relocate, remove, vacate or replace the streets themselves. If the exercise of the aforementioned reserve rights conflicts with any poles, wires, conduits and appurtenances of Grantee constructed, maintained and used pursuant to the provisions of the franchise granted hereby, whether previously constructed, maintained and used or not, or if a street or any part thereof is vacated and no easement is reserved to permit Grantee to retain its facilities therein, Grantee shall, and by acceptance of this franchise agrees to, without cost or expense to City, within a reasonable time after written notice from the City, or its authorized representative, and request so to do, begin the work of physical field construction, of changing the location of all facilities or equipment so conflicting, unless otherwise authorized by the City, the work of removing its facilities from any street or part thereof which has been vacated and in which no easement is reserved to permit Grantee to retain its facilities therein, and, after such beginning, prosecute the work with due diligence to completion.

In the event Grantee shall fail to commence such work within such reasonable time after service of said notice upon Grantee, or shall fail after such beginning to prosecute the same with due diligence to completion, City may, if it should wish to so do, without limitation with respect to any other rights or remedies which it may have under the circumstances, cause the work required in said notice to be done and performed by City or its agents or contractors, and Grantee, in such event, shall pay, and by acceptance of this franchise agrees to pay, City the costs thereof, within ten (10) days after delivery to Grantee of an itemized bill therefor. It is understood and agreed that the cost of doing said work shall be considered to be the actual costs plus ten percent (10%) thereof for overhead.

(b) Irrespective of any other provision of this ordinance, Grantee's right to construct, maintain and use, or remove poles, wires, conduits and appurtenances thereto shall be subject at all times to such right as the City may have, in the exercise of its police power, to require the removal or relocation, to either overhead or underground locations, of said poles, wires, conduits and appurtenances thereto at the sole cost and expense of Grantee.

(c) Nothing contained in this Section 9 shall require Grantee to remove or relocate its facilities so as to eliminate conflicts with facilities constructed and operated by City to provide and deliver electricity, gas or water to private customers.

SECTION 10. Hold Harmless. Grantee shall indemnify, save and hold harmless, and by acceptance of this franchise Grantee agrees to indemnify, save and hold harmless, the City, and all officers and employees of City, for, against and from all damages, judgments, decrees, costs and expenditures or loss which City, or any such officers or employees, may suffer, or which may be recovered from or be obtainable against City, or such officers or employees, for, or by reason of, or growing out of, or resulting from the exercise by Grantee of any or all of the rights or privileges granted by this franchise, or by reason of, or growing out of or resulting from any act or acts of Grantee or its servants or agents in exercising the franchise herein granted, or by reason of, or growing out of or resulting from the failure of Grantee

to comply with the provisions of said franchise or to do anything required of it by said franchise; and Grantee shall defend, and by acceptance of said franchise agrees to defend, any suit that may be instituted against City, or any officer or employee thereof, by reason of or growing out of or resulting from the exercise by Grantee of any or all of the rights or privileges granted by said franchise, or by reason of any act or acts of Grantee, or its servants or agents, in exercising the franchise herein granted, or by reason, or growing out of or resulting from the failure of Grantee to comply with the provisions of said franchise or to do anything required of it by said franchise.

In the event that any person, firm or private or public corporation makes claim against City for any damages for or against or from which Grantee hereinabove agrees to indemnify City or save and hold City harmless, City shall give Grantee written notice of such claim within thirty (30) days from and after the date City receives said claim.

In the event that any person, firm or private or public corporation makes claim against any officer or employee of the City for any damages for or against or from which Grantee hereinabove agrees to indemnify said officer or employee or save and hold said officer or employee harmless, City or said employee shall give Grantee written notice of said claim within thirty (30) days from and after the date said officer or employee receives said claim.

In the event City suffers any damage or loss for or against or from which Grantee hereinabove agrees to indemnify City or save and hold City harmless, City shall give Grantee written notice of such damage or loss within thirty (30) days from and after the expiration of a reasonable time, after incurring such damage or loss, within which it could determine whether the damage or loss was covered by the above indemnification and save and hold harmless provisions.

In the event any officer or employee of City suffers any damage or loss for or against or from which Grantee hereinabove agrees to

indemnify said officer or employee or save and hold said officer or employee harmless; City or said employee shall give Grantee written notice of such damage or loss within thirty (30) days from and after the expiration of a reasonable time, after incurring such damage or loss, within which it could determine whether the damage or loss was covered by the above indemnification and save and hold harmless provisions.

SECTION 11. Repair Costs. Grantee shall pay, and by acceptance of this franchise agrees to pay, to City on demand the cost of all repairs to City property made necessary by any of the operations of Grantee under the franchise granted by this ordinance; provided, however, that, if and to the extent that such is authorized by ordinances, rules and regulations of the City as the same may now or hereafter exist, Grantee may make repairs to streets, sidewalks, curbs and gutters itself at its own cost in accordance with City ordinances, rules, regulations and specifications if the same can be so done without undue inconvenience of the City.

SECTION 12. Work Done By Grantee In Streets. Reference is hereby made to Section 8 of this ordinance. Subject to all laws, ordinances, rules, regulations and orders mentioned in said Section 8 and Grantee's compliance therewith, and unless and until otherwise provided by said laws, ordinances, rules, regulations and orders, or any amendments or additions thereto which may hereafter be adopted, the following conditions shall apply to all work done by Grantee in the streets of City pursuant to the franchise herein granted to it, and Grantee, by acceptance of this franchise, agrees to comply therewith, to wit:

(a) Excavation Permits. Grantee shall not make, and Grantee by acceptance of this franchise agrees that it shall not make, any opening or excavation in any street in the City, nor disturb the earth beneath the surface of any such street, regardless of whether the surface

thereof is to be damaged or removed or not, unless (i) Grantee shall have first applied for and obtained from the Engineer of City, in accordance with such applicable ordinances, rules or regulations of the City as may be in force or effect at the time such application is made, a permit for the work proposed to be done by Grantee, each such permit to prescribe the location, place, time and manner at and in which such work is to be done and such other conditions as the Engineer may prescribe, (ii) Grantee deposits such sum of money, or provides City with such surety bond, as may be required by any ordinance, rule or regulation of the City at the time the above application is made, as a guarantee and security to City that Grantee will reimburse City for any and all costs or damages which City may incur or suffer by reason of, in connection with or as a result of the doing of such work, and (iii) Grantee does all said work in accordance with the conditions of the abovementioned permit and all applicable laws, ordinances, rules and regulations in effect at such time, and (iv) Grantee reimburses City for all of its abovementioned costs and damages; provided and excepting, however, that in cases of emergency where the abovementioned work is urgently and immediately necessary to protect the public safety, the abovementioned permit may be dispensed with.

(b) Restoration of Streets by Grantee. When any opening or excavation is made, or work done in, upon, along, across, under or over any street for any purpose whatever by Grantee, in connection with the exercise of any right or privilege granted by this franchise, any portion of said street affected or damaged thereby shall be restored by Grantee, and Grantee hereby agrees to restore the same, as promptly as practicable, to as useful, safe, durable and good condition as existed prior to the making of such opening or such excavation or the doing of such work, and the same shall be in conformity with the provisions of applicable ordinances, laws, rules and regulations of City adopted in the exercise of its police power in force and effect at the time of the performance of such work, and in accordance with applicable State laws, and

shall be to the reasonable satisfaction of the Engineer. After the work of restoring such portion of said street has been completed as provided in this Section, Grantee shall preserve, and Grantee hereby agrees to preserve, such portion of said street so restored from deterioration resulting from it having been opened or excavated, ordinary wear, tear and use excepted.

(c) Repair of Streets by Grantee. If any portion of any street or City property shall be damaged by reason of, growing out of, or resulting from the exercise by Grantee of any or all of the rights or privileges granted by this ordinance, or by reason of any act or acts of Grantee, or its servants or agents, in the exercise of such rights or privileges, Grantee, at its own cost and expense, shall immediately repair such damage and restore said street or property to as useful, safe, durable and good condition as existed before such damage. Such work shall be done under the direction of the Engineer and to his reasonable satisfaction.

(d) Special Provisions Re Manholes, etc. All manholes, vaults, traps, catch basins, or other structures shall be so capped and covered as to be flush with the surface of the street, and shall not interfere in any way with the use of such street for the purpose of travel.

Grantee shall not lay, construct, erect or install in the streets of City any vent pipe from any vault, manhole or other structure of Grantee except in the manner and at the location or locations prescribed or approved by the Engineer.

(e) Notification of Abandonment or Removal of Facilities of Grantee. Upon abandonment or removal of any of the facilities or equipment of Grantee located above or below the surface of a street, Grantee shall notify the Engineer in writing of such abandonment or removal within not less than twenty (20) days thereafter.

(f) Restoration or Repair of Streets by City. Anything hereinabove in this Section 12 to the contrary notwithstanding, in the event during the term of this franchise City shall provide, by ordinance adopted in the exercise of its police power, that all work of restoring or repairing the portion of any street affected or damaged by any opening or excavation made or work done by Grantee in, upon, along, across, under or over said street, shall be done and performed by City and City shall have done and performed said work pursuant to the provisions of said ordinance Grantee shall pay, and by the acceptance of this franchise Grantee agrees to pay City, the cost of performing such work. Said charges shall be paid by Grantee to City at the time and in the manner provided in said ordinance.

SECTION 13. No Recourse Against City for Damages Resulting From Public Work. If Grantee shall sustain any loss, injury or damage by reason of the doing by City of any public work, and if said work shall be done without negligence on the part of City and/or any officer, board, commission or department thereof, then Grantee shall have no recourse whatever against City and/or any officer, board, commission or department thereof on account of such loss, injury or damage.

SECTION 14. Enumeration of Specific Rights of City Not to Limit General Reservations. The enumeration herein of specific rights reserved to City shall not be taken as exclusive, or as limiting the general reservations herein made.

SECTION 15. No Transfer Without Consent. Grantee shall not sell, lease, transfer or assign the franchise or all or any of the rights or privileges granted thereby unless an ordinance of the City consenting to such sale, lease, transfer or assignment shall have been duly adopted and become effective. Any such sale, lease, transfer or assignment consented to by any such ordinance shall be subject to all terms, conditions and provisions of this ordinance and of such consenting ordinance. Any

sale, lease, transfer or assignment made without said consent, or in violation or non-compliance with the terms, conditions or provisions of any ordinance granting consent, shall be null and void and of no force or effect. However, nothing contained in this Section 15 shall be construed to prevent Grantee from including said franchise in a mortgage or trust deed without such express consent.

SECTION 16. Franchise Granted Herein To Be In Lieu Of Other City Franchises. The grant of this franchise is made in lieu of all other City franchises owned or claimed by Grantee which may authorize it to use all or any of the streets of City for transmitting and distributing electricity.

Grantee, by acceptance of this franchise, and as a condition precedent to the enjoyment of any rights and privileges hereunder, surrenders to City all City franchises in lieu of which this grant is made.

SECTION 17. Forfeiture of Franchise. This franchise is granted upon each and every condition herein contained, and shall at all times be strictly construed against Grantee. Nothing shall pass by the franchise granted hereby to Grantee unless it be granted in plain and unambiguous terms. The enumeration herein of specific rights reserved to City shall not be taken as exclusive, or as limiting the general reservations herein made. Each of said conditions is a material and essential condition to the granting of the franchise. If Grantee shall fail, neglect or refuse to comply with any of the conditions of the franchise granted hereby, and shall not within ten (10) days after written demand for compliance begin the work of compliance, or after such beginning shall not prosecute the same with due diligence to completion, then City, by the City Council, in addition to all rights and remedies allowed by law, thereupon may terminate and declare forfeited the right, privilege and franchise granted in and by this ordinance, and all the rights,

privileges and the franchise of Grantee granted hereby shall thereupon be at an end. Thereupon and immediately, Grantee shall be deemed to have surrendered the franchise and all rights and privileges connected therewith. No provision herein made for the purpose of securing the enforcement of the terms and conditions of the franchise granted herein shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies and procedure outlined herein or provided, including forfeiture, shall be deemed to be cumulative.

SECTION 18. Acquisition and Evaluation. Nothing in this ordinance or in the franchise granted hereby shall be construed as in any way impairing or affecting City's right to acquire property of Grantee, either by purchase, or through the exercise of City's power of eminent domain or through voluntary agreement between City and Grantee; and nothing in this ordinance or in the franchise granted herein shall be construed to contract away or to modify or to abridge either for a term or in perpetuity the City's right of eminent domain in respect to any public utility.

Also, the franchise and all rights and privileges herein granted to Grantee shall never be given, and Grantee by acceptance of the franchise agrees that such franchise, rights and privileges shall never be given, any value before any court or other public authority in any proceeding of any character in excess of the cost to the Grantee of the necessary publication and any other sum paid by it to the municipality at the time of the acquisition.

SECTION 19. Franchise to be Non-Exclusive. This franchise shall be non-exclusive, and neither the granting of this franchise nor any of the provisions contained herein shall prevent the City from granting any ~~identical, similar or different franchise to any person other than~~ Grantee for all or any areas of the City, or ~~at any time~~ at any time, City from constructing, maintaining and using poles, wires, conduits and appurtenances necessary or proper for transmitting and distributing

electricity to the public for any and all purposes in, along, across, upon, under or over any public streets and places in the City.

SECTION 20. Succession to Rights, Powers and Duties. Whenever in this ordinance any right or power is conferred or duty imposed upon the legislative body of City or any officer thereof, such right and power shall inure to and be exercised by, and such duty shall be imposed upon such body, board or officer of City as may by law hereafter succeed to their respective rights, powers and duties. All of the rights and powers conferred or duties imposed upon City in its present incorporated form shall inure to and be exercised by and be imposed upon City in any future reorganized, consolidated, enlarged or reincorporated form.

SECTION 21. Publication Expenses. Grantee of said franchise shall pay to City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting thereof; such payment to be made within thirty (30) days after City shall have furnished Grantee with a written statement of such expense.

SECTION 22. Giving of Notices. (a) Any written notice herein required to be given by City, or any of its officers or agents, to Grantee, shall be deemed to have been duly served if delivered in person to, or if sent by registered or certified mail to any of the following officers at the following addresses, or to such other officers and addresses as the Grantee may from time to time file with the City Clerk of City, to wit:

Division Manager
San Jose Division
Pacific Gas and Electric
Company
86 South Third Street
San Jose, California 95114

Vice President and General
Counsel
Pacific Gas and Electric
Company
77 Beale Street
San Francisco, California 94106

(b) Any written notice herein required by Grantee to be given to City, or any of its officers or agents, shall be deemed to have been duly served if delivered in person to the City Clerk of City, or if sent by registered or certified mail to the City Clerk of City.

SECTION 23. Use of Singular and Plural. The use of the singular number herein shall include the plural, and the use of the plural number shall include the singular.

SECTION 24. Acceptance of Franchise. Within ten (10) days after the effective date of this ordinance, Grantee shall file with the City Clerk a written acceptance of the franchise hereby granted, which acceptance shall constitute a continuing agreement on the part of Grantee to comply with the terms and conditions hereof, and no rights are hereby conferred until the filing of such acceptance. If Grantee shall fail to file its said written acceptance with said City Clerk within said ten (10) day period, the offer of franchise contained in this ordinance shall be deemed revoked, and said franchise may not be thereafter accepted.

SECTION 25. This ordinance is adopted pursuant and subject to the provisions of the Charter of City, and in accordance with the provisions of Article X, Chapter 1, of the San Jose Municipal Code. The provisions of said Chapter 1 of Article X are hereby incorporated in this ordinance to the same extent as though fully set forth herein.

PASSED FOR PUBLICATION this 20th day of September, 1971, by the following vote:

AYES: Councilmen - Colla, Garza, Goglio, Hayes, Hays, Naylor, Mineta.

NOES: Councilmen - None

ABSENT: Councilmen - None

NORMAN Y. MINETA

ATTEST: FRANCIS L. GREINER

By: Roy H. Hubbard, Deputy
City Clerk

Void if detached

The attached is a full, true and correct copy of

Ordinance No. 15880
which became effective on
November 4, 1971

ATTEST:

Francis L. Greiner, City Clerk
of the City of San Jose, Calif.

By: Patricia Caldwell Deputy

Dated: October 5, 1971

ORDINANCE NO. 21677

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING SECTIONS ONE (1), FOUR (4), AND FIVE (5) OF ORDINANCE NO. 15880 WHICH GRANTED PACIFIC GAS AND ELECTRIC COMPANY AN INDETERMINATE FRANCHISE FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY WITHIN THE CITY OF SAN JOSE; TO PROVIDE FOR A PERIOD OF QUARTERLY PAYMENTS OF FRANCHISE FEES; TO PROVIDE FOR A WAIVER OF CERTAIN NEGOTIATION AND ARBITRATION OF FRANCHISE FEES WHICH, PURSUANT TO ORDINANCE NO. 15880, WOULD OCCUR IN 1991 UNLESS WAIVED HEREIN; AND REPEALING ORDINANCE NO. 21177.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. That Section One (1) of Ordinance No. 15880 is hereby amended by adding thereto subsections (i), (j), (k), (l), (m), (n), (o), (p), and (q), to be numbered and entitled and to read as follows:

SECTION 1. Definitions. Wherever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions (unless in a given instance the context wherein they are used shall clearly import a different meaning):

(a) The word "Grantee" shall mean Pacific Gas and Electric Company and its lawful successors or assigns.

(b) The word "City" shall mean the City of San Jose, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

(c) The word "Engineer" shall mean such officer as may from time to time be designated by the Council of the City of San Jose or its successor, as the Engineer referred to in this ordinance; provided, that until otherwise provided by said Council or its successor, the word "Engineer" shall mean the head of the Public Works Department of the City of San Jose.

(d) The word "streets" shall mean the public streets, ways, alleys and places now or hereafter established within the City,

ORDINANCE NO. 21677

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING SECTIONS ONE (1), FOUR (4), AND FIVE (5) OF ORDINANCE NO. 15880 WHICH GRANTED PACIFIC GAS AND ELECTRIC COMPANY AN INDETERMINATE FRANCHISE FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY WITHIN THE CITY OF SAN JOSE; TO PROVIDE FOR A PERIOD OF QUARTERLY PAYMENTS OF FRANCHISE FEES; TO PROVIDE FOR A WAIVER OF CERTAIN NEGOTIATION AND ARBITRATION OF FRANCHISE FEES WHICH, PURSUANT TO ORDINANCE NO. 15880, WOULD OCCUR IN 1991 UNLESS WAIVED HEREIN; AND REPEALING ORDINANCE NO. 21177.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. That Section One (1) of Ordinance No. 15880 is hereby amended by adding thereto subsections (i), (j), (k), (l), (m), (n), (o), (p), and (q), to be numbered and entitled and to read as follows:

SECTION 1. Definitions. Wherever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions (unless in a given instance the context wherein they are used shall clearly import a different meaning):

(a) The word "Grantee" shall mean Pacific Gas and Electric Company and its lawful successors or assigns.

(b) The word "City" shall mean the City of San Jose, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

The attached is a full, true and correct copy of the original now on file in my office.

ATTEST:

Helen E. Jackson, City Clerk
of the City of San Jose, California

By: Sharon K. Padden Deputy

Dated: JUN 6 1994

neer" shall mean such officer as may from
ed by the Council of the City of San Jose or
gineer referred to in this ordinance;
erwise provided by said Council or its
ineer" shall mean the head of the Public
City of San Jose.
ets" shall mean the public streets, ways,
hereafter established within the City,

VOID IF DETACHED

Form No. 179-40

including State highways and freeways now or hereafter established within the City; provided and excepting, however, that the word "streets" shall not be deemed to mean or include any parks, playgrounds, school property or other municipal or public property not constituting public thoroughfares.

(e) The words "poles, wires, conduits and appurtenances" shall mean poles, towers, supports, wires, conductors, cables, guys, stubs, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-outs, switches, communication circuits, appliances, attachments, appurtenances and, without limitation to the foregoing, any other property located or to be located in, upon, along, across, under or over the streets of City, used or useful in transmitting and/or distributing electricity for the purposes for which this franchise is granted.

(f) The words "construct, maintain and use" shall mean to construct, erect, install, operate, maintain, use, repair or replace.

(g) The phrase "constitutional franchise" shall mean such franchise or right, if any, as Grantee may have because of the acceptance by Grantee or its predecessor in estate of the offer contained in the provisions of Section 19 of Article XI of the Constitution of the State of California, as said Section existed prior to its amendment on October 10, 1911.

(h) The phrase "gross receipts", as used in this Section and in other parts of this ordinance, shall mean all gross operating revenues received or receivable by Grantee from the sale of electricity to Grantee's customers with points of service within the corporate limits of the City (including but not limited to, sales to military reservations with points of service within the City's corporate limits) which are credited to Account Nos. 480, 481 and 482 of the current Uniform System of Accounts of the Federal Power Commission, as adopted by the California Public Utilities Commission, or similar superseding accounts, or which would be credited to such accounts or similar superseding accounts if Grantee kept its books in acceptance with such accounts or similar superseding accounts.

(i) The phrase "Quarterly Payment Amount" shall mean a payment of one quarter of the previous calendar year's total franchise fee payments paid to City pursuant to the electric franchise granted to Grantee pursuant to Ordinance No. 15880, as amended. Grantee shall not be required to make a quarterly payment, or may pay a lesser Quarterly Payment Amount, if payment of the full Quarterly Payment Amount would result in a Cumulative Value equivalent (as defined herein) exceeding Three Million Four Hundred Thousand Dollars (\$3,400,000) for both the electric franchise granted to Grantee pursuant to Ordinance No. 15880, as amended, and the gas franchise granted to Grantee pursuant to Ordinance No. 15879, as amended.

(j) The phrase "Quarterly Payment Dates" shall mean June 1, September 1, and December 1 of each year.

(k) The phrase "Quarterly Bond Yield" shall mean the yield on Domestic Municipal Bonds derived from the Bond Buyer's Index for Eleven General Obligation Bonds as published by the Bond Buyer founded in 1891 of One State Street Plaza, New York, New York, and as reported on the date that said index is published during the week following each of the dates of March 1, June 1, September 1, and December 1.

(l) The phrase "Annual Interest Rate" for each year that quarterly payments of franchise fees are made shall mean the average of the Quarterly Bond Yields during that year expressed as a decimal.

(m) The phrase "Annual Discount Factor" for each year that quarterly payments of franchise fees are made shall mean the figure of one plus the Annual Interest Rate, except that the Annual Discount Factor for 1983 shall be an amount equal to one plus three-quarters of the 1983 Annual Interest Rate.

(n) The phrase "Cumulative Discount Factor" for each year that the cumulative quarterly payments of franchise fees are made shall mean the product of the Annual Discount Factors from 1983 to that year inclusively.

(o) The phrase "Quarterly Value Factor" shall mean, in any year for which quarterly payments are made on June 1, September 1, or December 1, the product of the Annual Interest Rate and an amount

equal to .875 (10.5/12), .625 (7.5/12) or .375 (4.5/12) for the quarterly payments made June 1, September 1 or December 1, respectively.

(p) The phrase "Quarterly Value" shall mean the value of any Quarterly Payment Amount made in any year as expressed by: the product of (1) the Quarterly Payment Amount, and (2) the Quarterly Value Factor; as divided by (3) the Cumulative Discount Factor.

(q) The phrase "Cumulative Value" shall mean the sum of the Quarterly Values accumulated under this electric franchise plus the Quarterly Values accumulated under the gas franchise granted pursuant to Ordinance No. 15879, as amended.

SECTION 2. That Section Four (4) of Ordinance No. 15880 is hereby amended, to be numbered and entitled and to read as follows:

SECTION 4. Consideration. The franchise, and all rights and privileges, granted by this ordinance to Grantee are granted upon the express condition that Grantee, in consideration thereof and as compensation for the use of the streets of the City as herein authorized and permitted, shall pay to the City, in lawful money of the United States, in the manner and on the conditions hereinafter set forth in Section 5, for each of the calendar years (or fractional calendar years) following the effective date of this ordinance, a sum of money equal to two percent (2%) of Grantee's gross receipts during each such calendar year (or fractional calendar year); provided and excepting, however, that the amount of said annual compensation, and/or the formula or measure or manner in which the amount shall be determined, may be changed or amended as hereinafter provided in this Section, to wit:

(a) If, as a result of negotiation or litigation, or both, between Grantee and any other city or cities of the State of California, regardless of whether such other city or cities is or are a general law or charter city or cities, including but not limited to negotiation or litigation, or both, under any hereafter adopted statute or constitutional amendment, or if by litigation, whether the City participates therein or not, which right of participation is

hereby expressly reserved to the City, or if for any reason, the Grantee shall make payment or payments to any other city for any of said calendar years (or fractional calendar years) in accordance with a formula (hereinafter referred to as a "second formula") which if applied to the City would provide payments to the City greater than provided for by the use of the formula hereinabove specified in the first paragraph of this Section 4, such "second formula" shall prevail over the formula hereinabove specified in the first paragraph of this Section 4 for each of said years of the term of said franchise for or during which Grantee makes payments to any other city in accordance with said "second formula".

(b) In the event that the laws of the State of California, as they existed as of September 20, 1971, should at any time ever be amended or changed to permit general law cities, in granting franchise of the kind herein being granted to Grantee, to require the Grantee of any such franchise to pay or give any consideration or compensation in accordance with a formula (hereinafter referred to as "third formula") which, if applied to the City of San Jose and the Grantee herein, would provide payments to the City greater than provided for by the use of the formula hereinabove specified in the first paragraph of this section 4 or by the use of the above-mentioned "second formula" if such "second formula" is the higher, then in such event City shall have the right, at any time thereafter, to require Grantee to thereafter make payments in accordance with such "third formula"; provided, however that City shall not require Grantee to make any payments pursuant to the provision of this subparagraph B during the first thirty (30) years from September 20, 1971.

(c) Within the last six (6) calendar months of the calendar year 2001, and thereafter within the last six (6) calendar months of each ten (10) calendar year period following the calendar year 2001, each of such six (6) month periods being hereinafter referred to as "six-month-notice period," either City or Grantee, or each of them, may serve written notice upon the other of its desire to change the amount or kind of consideration or compensation to be annually paid

or given, after the expiration of such "six-month-notice period," by Grantee to City as consideration for said franchise and as compensation for the use by Grantee of the streets of the City as herein authorized and permitted, or of its desire to change the manner, measure or formula pursuant to which such annual consideration and compensation shall thereafter be determined. Said notice shall specify the change or changes desired. Within ninety (90) days from and after the date of service of such notice, or at such other time or times as the parties may mutually agree upon, City and Grantee shall meet and confer and attempt in good faith to resolve the matters at issue by mutual agreement. No such agreement shall be effective unless it is in writing, and unless it is approved and signed by both City and Grantee. No such agreement shall be deemed approved by City unless it shall have been approved and authorized by written ordinance adopted by the governing body of the City. Unless otherwise provided in the agreement, any change or changes agreed upon in any such agreement shall be effective from and after the commencement of the calendar year immediately following the expiration of the "six-month-notice period."

In the event that City and Grantee should fail to arrive at any agreement with respect to the proposed change or changes within ninety (90) days from and after the service of the above-mentioned notice, either party may thereafter serve upon the other a written notice of its intent to present the proposed change or changes to a Board of Arbitration for its consideration and decision. Unless otherwise agreed to by both parties, said notice must be served no later than the 30th day of June next following the expiration of the above-mentioned "six-month-notice period."

Unless otherwise agreed to by both parties in writing, the Board of Arbitration shall consist of seven (7) members, two (2) to be selected by the City, and two (2) to be selected by the Grantee. The four (4) arbitrators selected by the parties shall select three (3) neutral arbitrators. Within thirty (30) days after service of said notice of intent to submit said matter to arbitration, or within

such time as the parties may mutually agree upon in writing, each of the parties, respectively, shall select its two (2) members of the Board, and within thirty (30) days after the four (4) are selected, they shall select the three (3) neutral arbitrators. The Board of Arbitration shall then consider the proposed change or changes, and, after giving both parties a reasonable opportunity to be heard, shall determine what change or changes, if any, are to be made. The change or changes, if any, ordered by the Board, may differ from those requested or desired by either of the parties. The determination shall be fair and reasonable to both parties, and in arriving at it, the Board shall consider the nature and value of the rights and privileges granted by this ordinance to the Grantee, the costs, expenses and damages, if any, which City has, or will incur or suffer because of the grant of said rights and privileges to Grantee or because of Grantee's exercise of such rights and privileges, the amount to be paid to comparable cities for similar franchise rights and any and all other relevant factors. The Board's determination shall be in writing, shall be by the majority vote of its seven (7) members, and shall be final and conclusive and binding upon both parties. Unless otherwise agreed to by both parties in writing, the Board shall render its written decision on or before, and no later than, the last day of the first twelve (12) calendar months immediately following the expiration of the above-mentioned "six-month-notice period." Any change or changes made by the Board shall be effective retroactively as of the first day immediately following the end of the aforementioned "six-month-notice period," and shall continue in effect until such time as the consideration payable by Grantee to City is again changed pursuant to any of the provisions of this Section 4.

If said Board shall fail to arrive at a determination within the twelve (12) months immediately following the expiration of the above-mentioned "six-month-notice period," said Board, unless otherwise agreed to by both parties in writing, shall be deemed discharged, and, unless otherwise agreed to by both parties in

writing, a second Board, no members of which shall have been a member of the previous Board, shall be established as follows: City and Grantee shall each appoint two (2) new arbitrators; City and Grantee, or either of them, shall petition the Superior Court of the State of California in and for the County of Santa Clara to appoint three (3) neutral arbitrators and to order all seven (7) of said arbitrators to consider the proposed change or changes, to give both parties a reasonable opportunity to be heard, and to arrive at a determination within a reasonable time specified by the Court, as to what change or changes, if any, shall be made. The determination shall be fair and reasonable to both parties, and in arriving at it, the second Board shall consider all matters and factors which the former Board was required to consider. The second Board's determination shall be in writing, and must be by majority vote of all seven (7) members; and its determination shall be final and conclusive and binding upon both parties. Any change or changes made or ordered by the Board shall be effective retroactively as of the first day immediately following the end of the aforementioned "six-month-notice period" and shall continue in effect until such time as the consideration payable by Grantee to City is again changed pursuant to any of the provisions of this Section 4.

Unless otherwise agreed to by both parties in writing, all costs and expenses of the Boards of Arbitration, and court costs in the event recourse is had to the Superior Court as aforesaid, shall be paid equally by City and Grantee.

In the event any person appointed to serve as an arbitrator on either of the above-mentioned Boards should die or fail or be unable to perform the duties of an arbitrator, a substitute shall be appointed to serve in his place and stead by the party or body which appointed his predecessor.

In the event that the arbitrators fail to comply with the order of the court and to reach a decision by the majority vote of its seven (7) members within the period specified by the court, or within three (3) years from and after the date of expiration of the

above-mentioned "six-month-notice period," whichever is the shorter period of time, the party who proposed the change or changes shall thereafter have the right to terminate the rights, privileges and franchise granted by City to Grantee, and upon such termination, the rights, privileges and franchise of Grantee granted by this ordinance shall be at an end; provided, however, that such right of termination shall be deemed waived if not exercised within one hundred eighty (180) days immediately following the expiration of the time, specified by the court, within which the Board was required to reach a decision.

SECTION 3. That Section Five (5) of Ordinance No. 15880 is hereby amended, to be numbered and entitled and to read as follows:

SECTION 5. Reports, Dates of Payment. (a) On each Quarterly Payment Date Grantee shall pay to the City an amount equal to the Quarterly Payment Amount. Grantee shall make Quarterly Payments on each Quarterly Payment Date until such time as the Cumulative Value equals Three Million Four Hundred Thousand Dollars (\$3,400,000).

(b) Within three (3) months from and after the expiration of each calendar year, or fractional calendar year, following the effective date of this ordinance, Grantee shall file with the City Clerk of City the original, and with the Director of Finance of City a copy, and with the City Auditor of City another copy, of a duly verified statement showing in detail the gross receipts of Grantee and, if Quarterly Payments are required to be made pursuant to the provisions herein contained, the Cumulative Value of said Quarterly Payments, during the preceding calendar year or fractional calendar year, and such other data or information as City may need to calculate or determine the amounts which Grantee is obligated to pay City pursuant to the provisions of Section 4. Said statement shall be in such form and details as from time to time may be reasonably prescribed by City.

(c) Within fifteen (15) days from and after the time for filing such statement, Grantee shall pay to City, at the office of City's Director of Finance, in lawful money of the United States, the sum of

money hereinabove required to be paid by Grantee to City for the calendar year, or fractional calendar year, covered by the statement, minus the sum of the Quarterly Payment amounts if any are required to be made pursuant to the provisions herein contained, paid during the year.

(d) Any neglect, omission or refusal by Grantee to file such verified statement, or to pay said percentage at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and of all rights and privileges of Grantee hereunder.

(e) In the event Grantee fails to make the payments for this franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration both of the following amounts:

(1) A sum of money equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment, including, but not limited to, the cost of administering, accounting and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving revenue.

(ii) A sum of money equal to one percent (1%) of the amount due per month as interest and for loss of use of the money due.

(f) At such time as the Cumulative Value of said Quarterly Payment equals the sum of Three Million Four Hundred Thousand Dollars (\$3,400,000) as specified in subsection (a) hereinabove, Grantee shall no longer be required to make Quarterly Payments. At said time, Grantee shall be required to pay City the sum of money required to be paid as consideration for the rights, privileges, and franchise granted herein on or before the fifteenth (15th) day from and after the time for filing of the duly verified statement showing in detail the gross receipts of Grantee during the prior calendar year or fractional calendar year in accordance with the procedures of this Section 5(b-e).

SECTION 4. That Ordinance No. 21177, passed for publication of title on November 23, 1982, is hereby repealed.

SECTION 5. That this ordinance amending Ordinance No. 15880, is conditioned upon the filing by Grantee with the City Clerk of a written acceptance of this amendment to the franchise granted by Ordinance No. 15880, which said written acceptance shall be so filed within ten (10) days of the adoption date of this amending ordinance. If Grantee shall fail to so file its written acceptance with said City Clerk within said ten (10) day period, this amendment shall be deemed revoked and of no force and effect.

SECTION 6. That all other terms, conditions, and provisions of Ordinance No. 15880 not amended herein shall remain in full force and effect.

PASSED FOR PUBLICATION OF TITLE this 5th day of June, 1984, by the following vote:

AYES: ALVARADO, BEALL, ESTRUTH, FLETCHER, HAMMER, IANNI, LEWIS, RYDEN, SAUSED0, WILLIAMS AND McENERY

NOES: NONE

ABSENT: NONE


THOMAS McENERY, Mayor

ATTEST:


HELEN E. JACKSON, City Clerk

ORDINANCE NO. 26914

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
ORDINANCE NO. 15880 AS AMENDED BY ORDINANCE
NO. 21677, WHICH GRANTED A FRANCHISE FOR THE
TRANSMISSION AND DISTRIBUTION OF ELECTRICITY
WITHIN THE CITY OF SAN JOSE TO PACIFIC GAS &
ELECTRIC COMPANY, TO ALLOW A CREDIT IN THE
EVENT OF OVERPAYMENTS**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 5 of Ordinance No. 15880, as amended by Ordinance No. 21677,
is amended to read as follows:

SECTION 5. Reports, Dates of Payment.

(a) On each Quarterly Payment Date Grantee shall pay to the City an amount equal to the Quarterly Payment Amount. Grantee shall make Quarterly Payments on each Quarterly Payment Date until such time as the Cumulative Value equals Three Million Four Hundred Thousand Dollars (\$3,400,000).

(b) Within three (3) months from and after the expiration of each calendar year, or fractional calendar year, following the effective date of this Ordinance, Grantee shall file with the City Clerk of the City the original, and with the Director of Finance of City a copy, and with the City Auditor of City another copy, of a duly verified statement showing in detail the gross receipts of Grantee and, if Quarterly Payments are required to be made pursuant to the provisions herein contained, the Cumulative Value of said Quarterly Payments, during the preceding calendar year or fractional calendar year, and such other data or information as City may need to calculate or determine the amounts which Grantee is obligated to pay City pursuant to the provisions of Section 4. Said

statement shall be in such form and details as from time to time may be reasonably prescribed by City.

(c) Within fifteen (15) days from and after the time for filing such statement, Grantee shall pay to City, at the office of City's Director of Finance, in lawful money of the United States, the sum of money hereinabove required to be paid by Grantee to City for the calendar year, or fractional calendar year, covered by the statement, minus the sum of the Quarterly Payment Amounts if any are required to be made pursuant to the provisions herein contained, paid during the year. In the event the total Quarterly Payment Amounts exceed the total annual payment due to City, upon the prior written acknowledgement by the Director of Finance that an overpayment appears to have occurred, Grantee shall deduct from each of the next year's Quarterly Payment Amounts the overpayment in equal amounts, without interest. The acknowledgement by the Director of Finance of an overpayment does not in anyway limit City's rights to seek payment in full from Grantee in the event City determines there was an underpayment of the annual payment due to City.

(d) Any neglect, omission or refusal by Grantee to file such verified statement, or to pay said percentage at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and of all rights and privileges of Grantee hereunder.

(e) In the event Grantee fails to make the payments for this franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration both of the following amounts:

(i) A sum of money equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment, including, but not limited to, the cost of administering, accounting and collecting said

delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving revenue.

(ii) A sum of money equal to one percent (1%) of the amount due per month as interest and for loss of use of the money due.

(f) At such time as the Cumulative Value of said Quarterly Payment equals the sum of Three Million Four Hundred Thousand Dollars (\$3,400,000) as specified in subsection (a) hereinabove, Grantee shall no longer be required to make Quarterly Payments. At said time, Grantee shall be required to pay City the sum of money required to be paid as consideration for the rights, privileges, and franchise granted herein on or before the fifteenth (15th) day from and after the time for filing of the duly verified statement showing in detail the gross receipts of Grantee during the prior calendar year or fractional calendar year in accordance with the procedures of this Section 5(b-e).

SECTION 2. This Ordinance amending Ordinance No. 15880, as amended by Ordinance No. 21677, is conditioned upon the filing by Grantee with the City Clerk of a written acceptance of this amendment to the franchise granted by Ordinance No. 15880, as amended by Ordinance No. 21677, which said written acceptance shall be so filed within ten (10) days of the adoption date of this amending Ordinance. If Grantee shall fail to so file its written acceptance with the City Clerk within said ten (10) day period, this amendment shall be deemed revoked and of no force and effect.

SECTION 3. All other terms, conditions, and provisions of Ordinance No. 15880, as amended by Ordinance No. 21677, not amended herein shall remain in full force and effect.

SECTION 4. This Ordinance shall be effective as of June 1, 2003, *nunc pro tunc*.

PASSED FOR PUBLICATION of title this 10th day of June, 2003, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, DANDO,
GREGORY, LeZOTTE, REED, WILLIAMS, YEAGER;
GONZALES

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE



RON GONZALES
Mayor

ATTEST:



PATRICIA L. O' HEARN
City Clerk

The foregoing instrument is
a correct copy of the original
on file in this office.

Attest:

PATRICIA L. O'HEARN
City Clerk

City Clerk of the city of San Jose.
County of Santa Clara, State of California.

By  Deputy

ORDINANCE NO. 28720

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING ORDINANCE NO. 15880 AS AMENDED BY ORDINANCE NO. 21677 AND ORDINANCE NO. 26914 WHICH GRANTED A FRANCHISE FOR THE TRANSMISSION AND DISTRIBUTION OF ELECTRICITY WITHIN THE CITY OF SAN JOSE TO PACIFIC GAS AND ELECTRIC COMPANY TO ADD A FRANCHISE FEE SURCHARGE OF 0.3% RESULTING IN A TOTAL FRANCHISE FEE REMITTED TO THE CITY OF 2.3% OF GROSS RECEIPTS AND TO PROVIDE FOR THE WAIVER OF CERTAIN NEGOTIATION AND ARBITRATION RIGHTS UNDER THE FRANCHISE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Ordinance No. 15880, as amended by Ordinance No. 21677 and Ordinance No. 26914, is amended to add a new Section 4.1, to be numbered and entitled and to read as follows:

SECTION 4.1 Franchise Fee Surcharge.

(a) In addition to the annual compensation specified above in Section 4, and subject to the provisions set forth in Section 4(a)-(c), Grantee shall remit to the City during the term an additional sum of money equal to three tenths of one percent (0.3%) of the annual gross receipts of Grantee (the "Franchise Fee Surcharge") in consideration thereof and as compensation for the use of the streets of the City as herein authorized and permitted. Grantee shall remit to the City the Franchise Fee Surcharge, in lawful money of the United States, in the manner and on the conditions hereinafter set forth in Section 5, for each of the calendar years (or fractional calendar years) following the effective date of this Ordinance.

(b) Prior to Grantee's remittance to City of the Franchise Fee Surcharge, Grantee shall receive approval from the California Public Utilities Commission

("Commission") to collect the Franchise Fee Surcharge in accordance with Commission Decision 89-05-063, *Guidelines for the Equitable Treatment of Revenue Producing Mechanisms Imposed by Local Government Entities on Public Utilities*, 32 CPUC 2d 60, May 26, 1989.

SECTION 2. Section 5 of Ordinance No. 15880, as amended by Ordinance No. 21677 and Ordinance No. 26914, is amended to read as follows:

SECTION 5. Reports, Dates of Payment.

(a) On each Quarterly Payment Date, Grantee shall pay to the City an amount equal to the Quarterly Payment Amount. Grantee shall make Quarterly Payments on each Quarterly Payment Date until such time as specified in Section 5(f), notwithstanding anything to the contrary specified above in Section 1(i) that Grantee shall not be required to make a quarterly payment, or may pay a lesser Quarterly Payment Amount, if payment of the full Quarterly Payment Amount would result in a Cumulative Value equivalent exceeding Three Million Four Hundred Thousand Dollars (\$3,400,000).

(b) Within three (3) months from and after the expiration of each calendar year, or fractional calendar year, following the effective date of this Ordinance, Grantee shall file with the City Clerk of the City the original, and with the Director of Finance of City a copy, and with the City Auditor of City another copy, of a duly verified statement showing in detail the gross receipts of Grantee, and such other data or information as City may need to calculate or determine the amounts which Grantee is obligated to pay City pursuant to the provisions of Section 4. Said statement shall be in such form and details as from time to time may be reasonably prescribed by City.

(c) Within fifteen (15) days from and after the time for filing such statement, Grantee shall pay to City, at the office of City's Director of Finance, in lawful money of the United States, the sum of money hereinabove required to be paid by Grantee to City for the calendar year, or fractional calendar year, covered by the statement, minus the sum of the Quarterly Payment Amounts paid during the year. In the event the total Quarterly Payment Amounts exceed the total annual payment due to City, upon the prior written acknowledgement by the Director of Finance that an overpayment appears to have occurred, Grantee shall deduct from each of the next year's Quarterly Payment Amounts the overpayment in equal amounts, without interest. The acknowledgement by the Director of Finance of an overpayment does not in any way limit City's rights to seek payment in full from Grantee in the event City determines there was an underpayment of the annual payment due to City.

(d) Any neglect, omission or refusal by Grantee to file such verified statement, or to pay said percentage at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and of all rights and privileges of Grantee hereunder.

(e) In the event Grantee fails to make the payments for this franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration both of the following amounts:

(i) A sum of money equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment, including, but not limited to, the cost of administering, accounting and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving revenue.

(ii) A sum of money equal to one percent (1%) of the amount due per month as interest and for loss of use of the money due.

(f) Grantee shall no longer be required to make Quarterly Payments if Grantee provides City with at least six (6) months' advance written notice of its intent to make annual payments instead as set forth below. The parties agree that such notice shall not be provided earlier than June 30, 2021. At said time, Grantee shall be required to pay City the sum of money required to be paid as consideration for the rights, privileges, and franchise granted herein on or before the fifteenth (15th) day from and after the time for filing of the duly verified statement showing in detail the gross receipts of Grantee during the prior calendar year or fractional calendar year in accordance with the procedures of this Section 5(b-e).

SECTION 3. If the Franchise Fee Surcharge is approved by the Commission, Grantee shall implement collection of the Franchise Fee Surcharge as soon as reasonably possible thereafter, but not later than 120 days following the Commission's approval. Grantee shall remit to the City the first Franchise Fee Surcharge payment on the first Quarterly Payment Date following the initial collection of the Franchise Fee Surcharge.

SECTION 4. The City and Grantee each expressly waives its rights under Section 4c of the franchise to provide the other with notice of its intent to change the amount or kind of consideration or compensation to be paid City or measure or formula to which the consideration and compensation is determined (for the franchise fee which is two percent (2%) of gross receipts and the Franchise Fee Surcharge which is three tenths of one percent (0.3%) of gross receipts) at any time before the last six (6) calendar months following calendar year 2021.

SECTION 5. This Ordinance amending Ordinance No. 15880, as amended by Ordinance No. 21677 and Ordinance No. 26914, is conditioned upon the filing by Grantee with the City Clerk of a written acceptance of this amendment to the franchise granted by Ordinance No. 15880, as amended by Ordinance No. 21677 and Ordinance No. 26914, which said written acceptance shall be so filed no later than ten (10) days of the adoption date of this amending Ordinance. If Grantee shall fail to so file its written acceptance with the City Clerk as specified in the preceding sentence, this amendment shall be deemed revoked and of no force and effect.

SECTION 6. All other terms, conditions, and provisions of Ordinance No. 15880, as amended by Ordinance No. 21677 and Ordinance No. 26914, not amended herein shall remain in full force and effect.

PASSED FOR PUBLICATION of title this 9th day of February, 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NONE.

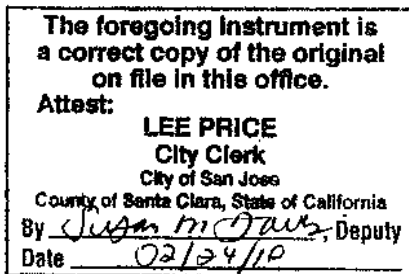
DISQUALIFIED: NONE.

ATTEST:


LEE PRICE, MMC
City Clerk



CHUCK REED
Mayor



**PG&E Gas and Electric
Advice Filing List
General Order 96-B, Section IV**

Aglet	Day Carter Murphy	Occidental Energy Marketing, Inc.
Alcantar & Kahl	Defense Energy Support Center	OnGrid Solar
Ameresco	Department of Water Resources	Praxair
Anderson & Poole	Department of the Army	R. W. Beck & Associates
Arizona Public Service Company	Dept of General Services	RCS, Inc.
BART	Division of Business Advisory Services	Recon Research
BP Energy Company	Douglass & Liddell	SCD Energy Solutions
Barkovich & Yap, Inc.	Downey & Brand	SCE
Bartle Wells Associates	Duke Energy	SMUD
Bloomberg New Energy Finance	Dutcher, John	SPURR
Boston Properties	Economic Sciences Corporation	Santa Fe Jets
C & H Sugar Co.	Ellison Schneider & Harris LLP	Seattle City Light
CA Bldg Industry Association	Foster Farms	Sempra Utilities
CAISO	G. A. Krause & Assoc.	Sierra Pacific Power Company
CLECA Law Office	GLJ Publications	Silicon Valley Power
	Goodin, MacBride, Squeri, Schlotz & Ritchie	Silo Energy LLC
CSC Energy Services	Green Power Institute	
California Cotton Ginners & Growers Assn	Hanna & Morton	Southern California Edison Company
California Energy Commission	International Power Technology	Sunshine Design
California League of Food Processors	Intestate Gas Services, Inc.	Sutherland, Asbill & Brennan
California Public Utilities Commission	Los Angeles Dept of Water & Power	Tabors Caramanis & Associates
Calpine	Luce, Forward, Hamilton & Scripps LLP	Tecogen, Inc.
Cameron McKenna	MBMC, Inc.	Tiger Natural Gas, Inc.
Casner, Steve	MRW & Associates	Tioga Energy
Chamberlain, Eric	Manatt Phelps Phillips	TransCanada
Chris, King	McKenzie & Associates	Turlock Irrigation District
City of Glendale	Merced Irrigation District	U S Borax, Inc.
City of Palo Alto	Mirant	United Cogen
Clean Energy Fuels	Modesto Irrigation District	Utility Cost Management
Coast Economic Consulting	Morgan Stanley	Utility Specialists
Commerce Energy	Morrison & Foerster	Verizon
Commercial Energy	NRG West	Wellhead Electric Company
		Western Manufactured Housing Communities Association (WMA)
Consumer Federation of California	New United Motor Mfg., Inc.	eMeter Corporation
Crossborder Energy	Norris & Wong Associates	
Davis Wright Tremaine LLP	North Coast SolarResources	