

July 15, 1991

REPORT TO THE COMMITTEE ON RULES, LEGISLATION,  
AND INTERGOVERNMENTAL RELATIONS

CITY PUBLIC UTILITY ADVISORY COMMISSION;  
PROPOSED FORMATION OF

I. UPDATE ON POST-MERGER RELATIONSHIP  
WITH SAN DIEGO GAS & ELECTRIC COMPANY

On May 8, 1991, the California Public Utilities Commission ("CPUC") rendered their decision denying the application for the proposed merger of San Diego Gas & Electric Company ("SDG&E") and Southern California Edison Company ("Edison") based on the companies' failure to sustain their burden of proof on all criteria established by PUC section 854 (SB 52-Rosenthal) for the approval of large utility mergers.

On May 21, 1991, by Resolution R-277968, the City Council approved conceptual changes to the City's franchise agreement with SDG&E to prevent further hostile takeover attempts and to provide the public greater access to, and influence on, the public utility. A copy of the Resolution was forwarded with a cover letter from John Witt to Tom Page, Chief Executive Officer of SDG&E, on May 22, 1991, requesting a meeting to discuss same. A response was received from Mr. Page on May 28, 1991.

II. CITY PUBLIC UTILITY ADVISORY COMMISSION

Pursuant to Resolution R-277968, the City Attorney's Office has made a preliminary assessment of the potential composition, power, responsibilities and function of a City Public Utility Advisory Commission. Following discussions with and reviewing documents of those cities and counties with such committees/ commissions, the following observations and suggestions are made.

1. Nine (9) person advisory board whose members are appointed by the Mayor with confirmation by City Council; Chairperson to be appointed by the Mayor.
2. Commission members would serve four (4) year, staggered terms with a minimum of two terms expiring each year. Provisions to deal with conflicts of interest, residency requirements and procedures for removal should be included (see Washington, D.C. Commission ordinance, attached).
3. Commission could create sub-committees to deal with particular areas, i.e. cable television, telecommunications, etc.

4. Functions would include advising and making recommendations to the City Council on problems of public relations, standards of service, acquisition and/or franchising of gas and electric and telecommunication utilities, and implementing new technologies. This commission could also address matters and policies related to: water supply cost and rates, wastewater quality control, cable television, and municipal transportation systems.
5. Staffing of the Commission could include: legal counsel (general counsel and ratepayer advocate - see Washington, D.C. ordinance to be furnished through the City Attorney and the City Manager), and experts obtained by contract and qualified to deal with specialized fields of communication, utilities, etc.

### III. FRANCHISE LITIGATION

The City of San Diego filed a Complaint in Declaratory Relief against SDG&E, Southern California Edison and SCEcorp on February 13, 1990 requesting a judicial declaration generally regarding the power of the City of San Diego to approve or disapprove any transfer of the franchise from SDG&E to Southern California Edison should the proposed merger between those two companies be approved. The matter was transferred to the Superior Court for Monterey County at the request of the defendants. All defendants answered and filed cross-complaints for declaratory relief on other, discreet issues concerning the merger. In early 1991, the defendants undertook some discovery regarding the history of the franchise. That has been the only activity undertaken with regard to the litigation.

Because the merger application has been disapproved, the case against Southern California Edison and SCEcorp has now become moot. Accordingly, the City has requested those parties to agree to a dismissal of the entire case as it pertains to them. The City Attorney's Office proposes to leave the litigation pending against SDG&E because it appears there's still a dispute regarding the powers of the City concerning the franchise as it relates to SDG&E. At the present time, the City has not received a response from Southern California Edison or SCEcorp in response to its offer of dismissal.

Respectfully submitted,  
JOHN W. WITT  
City Attorney

DB:CMF:wk:js:480.3(043.1)  
RC-91-36