

(R-99-188)

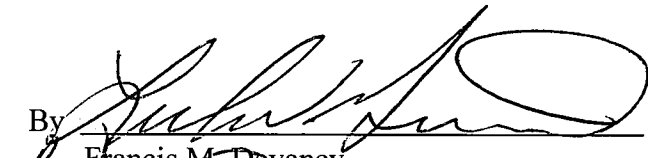
RESOLUTION NUMBER R- 290618

ADOPTED ON JUL 28 1998

WHEREAS, in Closed Session on July 28, the City Council, by the following vote:
Yeas, Districts 1, 2, 3, 4, 6, 7, 8 and Mayor, Nays, District 5, approved the following; NOW,
THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Attorney be
and he is hereby authorized and empowered to enter into the attached Stipulation For Entry Of
Judgment in Superior Court Case No. 696935, *CAUSE, et al. v. City of San Diego*.

APPROVED: CASEY GWINN, City Attorney

By 
Francis M. DeVaney,
Deputy City Attorney

FMD:kjk:Civ.
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Or.Dept:CityAtty
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JUL 29 '98 PM 12:05
F I L
KENNETH E. MARTONE
Clerk of the Superior Court
JUL 29 1998
By: D. ANN MORRIS, **LEWIS**
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

CAUSE, an unincorporated association,
JOAN TUKEY, KAREN JOHANSON,
and PAMELA WAYNE,

Plaintiffs,

v.

CITY OF SAN DIEGO, a municipal
corporation, and CITY COUNCIL
OF CITY OF SAN DIEGO,

Defendants.

Case No. 696935

STIPULATION FOR ENTRY
OF JUDGMENT

Dept: 50
I/C Judge: Honorable S. Charles Wickersham

Plaintiffs by and through their attorney, Charles Wolfinger, and Defendants by and through their attorney, Deputy City Attorney Francis M. Devaney, have met and conferred on the issues presented by this lawsuit and, to avoid the expense and uncertainty of a trial, have agreed to settle the matters in dispute and hereby stipulate for entry of judgment as follows:

A. Declaratory Judgment

The court may issue a declaratory judgment that:

1. Defendants' notice for the closed session on March 28, 1995, attached as Exhibit 1, which cited Government Code section 54956.9, subdivision (b)¹ to close the session, but which should have cited subdivision (c), violated the posting subdivision requirement in Sections 54954.5,

¹All citations are to the Government Code unless otherwise noted.

1 subdivision (c) and 54956.9 (§ after subdivision (c)) because it cited the wrong subdivision for
2 closing the session for pending litigation.

3 2. Defendants' posted agenda for the April 10, 1995 public meeting concerning the
4 Settlement Agreement, attached hereto as Exhibit 2, violated Section 54954.2, subdivision (a) by
5 failing to adequately notify the public:

6 a. That the proposed Settlement Agreement included provisions that would
7 amend the undergrounding allocations and requirements contained in the Electric Franchise
8 Agreement (EFA);

9 b. That the amendment to the EFA contained in the proposed Settlement
10 Agreement in effect reduced the 4.5% annual undergrounding allocation to approximately 1.5% for
11 the years 1995-2000;

12 c. That the amendment to the EFA contained in the proposed Settlement
13 Agreement reduced the dollar amount of undergrounding allocations by a total of approximately
14 \$19 million for the years 1990-1994, as had previously been set in the 1986 Settlement Agreement;
15 and

16 d. Of the nature and dollar amounts of any consideration received by the City in
17 exchange for the above-noted reductions.

18 3. Defendants' posted agenda for the April 10, 1995 public meeting concerning the
19 Settlement Agreement violated Section 54954.2, subdivision (a), because it was misleading in
20 referring to the attorney fees of \$40,000 three times while failing to state the greater dollar amounts
21 involved with the other terms of the undergrounding portion of the Settlement Agreement.

22 4. Any future change (a) in the percentages contained in the undergrounding formula in
23 the EFA by capping the allocation or by other means, or (b) in the dollar amounts in the Settlement
24 Agreement shall be considered to be an amendment to that franchise agreement under City Charter
25 section 103.

26 5. Defendants failed to comply with City Charter section 103 by not holding at least two
27 public hearings, which were noticed as an amendments to the franchise agreement, before approving
28 the Settlement Agreement on April 10, 1995.

1 B. Other Agreements

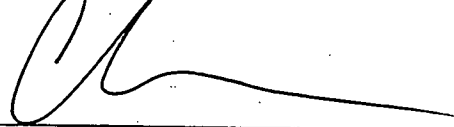
2 The court may order that:

3 1. Prior to making or agreeing to any future change (a) in the percentages contained in
4 the undergrounding formula in the EFA, including by capping the allocation or by other means, or
5 (b) in the dollar amounts in the Settlement Agreement, Defendants will hold an open, public hearing
6 in which any interested parties can comment on the proposed changes. Nothing in this paragraph
7 should be construed to prohibit Defendants from actually making or agreeing to any change in the
8 percentages in a duly authorized Closed Session hearing, so long as it is preceded by the above-noted
9 public hearing.

10 2. Defendants will specially send, without any request therefor, all notices, agendas and
11 publicly available records required by the Brown Act for any meetings relating to undergrounding
12 electric power lines, including under the Electric Franchise Agreement and the Settlement
13 Agreement, to the named Plaintiffs at their addresses supplied to the San Diego City Manager's
14 Office and to local community planning boards, on or before the time they are first distributed to any
15 member of the public.

16 3. Plaintiffs' counsel Charles Wolfinger is entitled to, and is hereby awarded,
17 \$80,000 in reasonable attorney fees and costs for this litigation.

18 FOR PLAINTIFFS

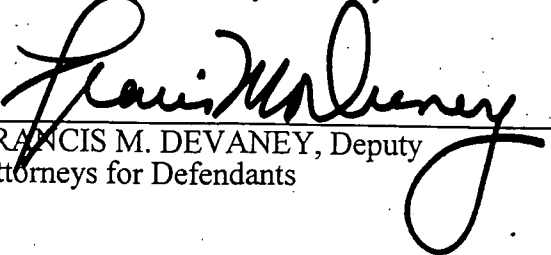
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20 CHARLES WOLFINGER
21 Attorney for Plaintiffs

22 Dated: 7/28/98

23 FOR DEFENDANTS

24 CASEY GWINN, City Attorney

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26 FRANCIS M. DEVANEY, Deputy
27 Attorneys for Defendants

28 Dated: 7-28-98

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BY PLAINTIFFS.
CAUSE, an unincorporated association

Dated: July 26, 1998

Hal Tyvoll
by HAL TYVOLL

Dated: July 26, 1998

Joan Tukey
JOAN TUKEY

Dated: July 23, 1998

Karen Johanson
KAREN JOHANSON

Dated: July 26, 1998

Pamela Wayne
PAMELA WAYNE

R-290618