DATE: August 31, 1989

SUBJECT: Proposed Merger of San Diego Gas & Electric Company and Southern California Edison Company

REQUESTED BY: Mayor Maureen O'Connor

PREPARED BY: C. M. Fitzpatrick, Assistant City Attorney and Nina B. Deane, Deputy City Attorney

QUESTION PRESENTED

By a memorandum dated August 1, 1989, you asked whether the proposed merger of San Diego Gas & Electric Company (SDG&E) with and into Southern California Edison Company (SCE) by the exchange of SDG&E stock for the stock of SCEcorp would constitute a transfer of certain franchises heretofore granted to SDG&E by The City of San Diego.

CONCLUSION

It is our opinion that the proposed merger of SDG&E and SCE as described herein would constitute a transfer of certain franchises heretofore granted to SDG&E by The City of San Diego.

BACKGROUND

On November 30, 1989 SDG&E and SCE jointly announced a proposed merger of SDG&E with and into SCE by the exchange of certain SDG&E stock for the stock of SCEcorp. The proposal was further described in an Agreement and Plan of Reorganization which was made public at the time of the announcement. Subsequently, additional details were provided in a Joint Proxy Statement and Prospectus dated March 10, 1989.

At various times in the past The City of San Diego has granted SDG&E franchises to use the public streets and highways and rights-of-way to transmit and distribute gas, electricity and steam.1/ The franchises were granted pursuant to the provisions of the Charter of The City of San Diego, Sections 103, 103.1, 104 and 105 in particular. These Charter Sections provide as follows:

> SECTION 103. FRANCHISES.
> The Council shall have power to grant to any person, firm or corporation, franchises, and all renewals, extensions and amendments thereof, for the use of any public property under the jurisdiction of the City. Such grants shall be made by ordinance adopted by vote of two-thirds (2/3) of the members of the Council and only after recommendations thereon

have been made by the Manager and an opportunity for free and open competition and for public hearings have been given. No ordinance granting a franchise or a renewal, extension or amendment of an existing franchise shall be effective until thirty days after its passage, during which time it shall be subject to the referendum provisions of this Charter. No franchises shall be transferable except with the approval of the Council expressed by ordinance.

SECTION 103.1. REGULATION OF PUBLIC UTILITIES.

No person, firm or corporation shall establish and operate works for supplying the inhabitants of The City of San Diego with light, water, power, heat, transportation, telephone service, or other means of communication, or establish and carry on any business within said City which is designed to or does furnish services of a public utility nature to the inhabitants of said City, without the consent of said City manifested by ordinance of the Council. The Council shall

1/ The opinions expressed herein are not intended to encompass the so-called constitutional franchises held by SDG&E to transmit and distribute gas and electricity for lighting purposes only.

have power to provide reasonable terms and conditions under which such businesses may be carried on and conducted within The City of San Diego.

SECTION 104. TERM AND PLAN OF PURCHASE.

Within six months after this Charter takes effect, copies of all franchises existing at the time shall be deposited with the Manager. The Council shall certify to the existence of such franchises and shall recognize them for periods not longer than the date of expiration on each. The Manager shall keep a public record of all franchises, leases or permits granted for the use of the public property of the City. The Council may fix the terms of each new franchise in accordance with the laws of the State of California, provided that any franchise may be terminated by ordinance

> whenever the City shall determine to acquire by condemnation or otherwise the property of any utility necessary for the welfare of the City, such termination to be effective upon and not before payment of the purchase price for the property to be acquired. The method of determining the price to be paid for the property so acquired shall be that provided by law affecting the purchase of public utility properties in effect at the time of the purchase or condemnation of such public utility property.
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> SECTION 105. RIGHT OF REGULATION. Plenary control over all primary and secondary uses of its streets and other public places is vested in the City. Franchises may be granted upon such terms, conditions, restrictions or limitations as may be prescribed by ordinance. Every ordinance granting a franchise shall provide that the grantee therein named, as consideration for such grant, shall pay compensation to the City in an amount and in the manner set forth in said ordinance.

The franchises themselves contain language relevant to transfer or assignment.

Ordinance No. 10465 (New Series) dated December 17, 1970, granted SDG&E a franchise to use the public streets to transmit and distribute gas.

Section 1(a) provides:

> (a) The word "Grantee" shall mean San Diego Gas & Electric Company, its lawful successors and assigns;

Section 15 provides:

> Grantee shall not sell, transfer or assign this franchise or the rights and privileges granted thereby without the consent of the City Council of The city of San Diego, as set forth in Section 103 of the Charter of The City of San Diego.

Ordinance No. 10466 (New Series) dated December 17, 1970, granted SDG&E a franchise to use the public streets to transmit and distribute electricity. Section 1(a) and Section 16 are identical to the Sections 1(a) and 15 referred to above.

Ordinances Nos. 8774 and No. 11342 (New Series) dated

January 17, 1963 and June 27, 1974, respectively, granted SDG&E franchises to use certain public streets to carry steam or steam condensate for heating and other purposes. Section 4(a) in both ordinances provides:

> (a) The word "Grantee" shall mean San Diego Gas & Electric Company and its lawful successors and assigns.

Section 7(i) in both ordinances provides:

> (i) This franchise shall not be transferred except with the approval of the Council expressed by ordinance.

In discussing the question of franchise transfers and consent, the Joint Proxy Statement referred to above states, at pages 58 and 59, as follows:

> The City of San Diego (the "City") has stated that SDG&E's franchises with the City may not be transferred to Edison without the
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> consent of the City pursuant to Section 103 of the Charter of the City of San Diego as well as Section 15 of SDG&E's 1970 franchise. These franchises allow SDG&E to locate facilities for the transmission and distribution of electricity, gas and steam in the City's streets, public places and ways. The City further contends that the Merger would result in such transfers. The City has stated that it would not consent to the transfer of SDG&E's franchises to Edison if the tax-exempt status of the IDBs would be lost as a result of the Merger. See "--Conditions." The City Council has authorized the City Manager and the City Attorney to prepare for full hearings before the City Council with respect to the issue of a transfer of SDG&E's franchises as a result of the Merger. The Mayor and City Council also have authorized the City Attorney and City staff to participate, to the extent possible, in administrative proceedings regarding the Merger before the CPUC, the FERC and other agencies. The City Council for the City of Chula Vista also has authorized its City Manager and City Attorney to prepare for a full hearing before that City Council with

> respect to the question of a transfer of SDG&E's franchise with the City of Chula Vista and to participate, to the extent possible, in the CPUC, FERC and other hearings. SDG&E has franchises with all cities in the County of San Diego, the County itself, the County of Orange, and cities in southern Orange County that SDG&E serves. A number of these franchises also provide that SDG&E may not sell, transfer, or assign its franchise rights without the consent of the governing body of the city or county. It is not known whether these other governmental agencies will take the position that the Merger will cause franchise transfers and that hearings should be held thereon. SCEcorp and SDG&E believe that the Merger does not constitute a transfer or assignment in violation of such franchises. No assurance can be given that a court or other governmental authority would concur with SDG&E's and SCEcorp's position. In the event
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> that a court or other governmental authority determines that the Merger requires franchisor approval, SDG&E and SCEcorp will take such actions as they deem appropriate under the circumstances, which might include appealing such determination, seeking such approval on terms satisfactory to SDG&E and SCEcorp or taking other steps. The receipt of approvals under such franchises, if required, would be a condition to the parties' respective obligations to consummate the Merger. Although the parties have reserved the right to waive such condition, they have no current intention to do so with respect to any consent the absence of which, in the opinion of the respective Boards of Directors, is likely to have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the combined entity.

As a result, on August 1, 1989, you asked us to advise you with respect to the validity of the assertions made by SDG&E and

SCEcorp that this proposed merger does not constitute a transfer or assignment of the franchises in question.

Upon receipt of your memorandum posing the question regarding transfer, we took the occasion to ask SDG&E and SCEcorp if they would care to furnish us with any comment or analysis buttressing their contentions with respect to the transfer issue. A copy of our letter to them is attached as Enclosure (1). On or about August 15, 1989 both companies responded and copies of their replies are attached as Enclosures (2) and (3). Their responses are self-explanatory.

As indicated above, we have concluded that this proposed merger of SDG&E and SCE, as more fully described in the Agreement and Plan of Reorganization and the Joint Proxy Statement and Prospectus, would constitute a transfer of the franchises heretofore granted to SDG&E by The City of San Diego. Our detailed analysis follows.

ANALYSIS

1. What is a Franchise?

A franchise from a California city to construct, maintain, and use gas or electric utility facilities in or on city streets is property in the nature of real property, Stockton Gas & Elec. Co. v. San Joaquin County, 148 Cal. 313, 316 (1905), and is transferable in the manner of other real property except where otherwise provided by statute or by the terms of the grant. 34 Cal.Jur.3d, Franchises From Government section 31, and cases cited therein. Indeed, the transferability of a franchise may be inferred from the language of the grant itself, e.g., to X "and such persons as he may associate with him. . . ." People ex rel. Spiers v. Lawley, 17 Cal.App. 331, 340 (1911). Such a franchise also constitutes a contract between the governmental unit and the grantee. See e.g., Tulare County v. City of Dinuba, 188 Cal. 664, 669 (1922).

2. What Constitutes a Transfer?

The definition of "transfer" found in the California code relating to property generally is "an act of the parties, or of the law, by which the title to property is conveyed from one living person to another." Cal. Civ. Code section 1039 (Deerings 1971). In citing this statutory definition in Commercial Discount Co. v. Cowen, 18 Cal.2d 610 (1941), the court noted that the term "in its ordinary use has a very general meaning, including the removal of a thing from one place or person to another, the changing of its control or possession or the conveyance of title to it." Id. at 614 (emphasis added).

In finding that there was an assignment of the rights and

obligations of a collective bargaining agreement by a sole proprietorship to a successor corporation, a lower court cited Section 1039 and Commercial Discount for the proposition that "╒tσhe transfer of title to any party or entity is an assignment of rights," even though in that case the transfer was to a corporation. Foreman Roofing Incorporated v. United Union of Roofers, Waterproofers and Allied Workers, Local 36, 144 Cal.App.3d 99, 107 (1983). Indeed, California Corporations Code section 18 states, "╒pσerson" includes a corporation as well as a natural person." Cal. Corp. Code section 18 (Deerings 1977).

3. How Does This Proposed Merger Affect the Concept of Transfer?

It is clearly the accepted view that when corporations consolidate or merge, the extent to which the resulting corporation may enjoy the franchises, rights and properties of the consolidated or merged corporations depends on the intent of the legislature as manifested in the relevant corporation merger statutes. Fletcher Cyc. Corp. section 7086 (Perm. ed. 1983). We note that Section 1.3 of the Merger Agreement and Plan of Reorganization between the parties provides that the merger shall have the effect set forth in Section 1107 of the California Corporation Code. That section provides in pertinent part that "╒uσpon merger pursuant to this chapter the separate existence of the disappearing corporations ceases and the surviving corporation shall succeed, without other transfer, to all the rights and property of each of the disappearing corporations ..." Cal. Corp. Code section 1107 (Deerings 1977) (emphasis supplied). The wording of the statute itself infers that the state legislature considers the succession pursuant to that statute to be a transfer, since the term "other" is appropriate only in the context of two or more. This transfer of assets from the disappearing corporation to the surviving corporation is carefully set forth by SCE and SDG&E in their Agreement and Plan of Reorganization, Article III and is specifically referred to as a "transfer" in Section 3.5.

An identical transfer issue was reviewed in a 1985 Public Utilities Commission filing which sought approval of a Section 1107 statutory merger between two gas utility companies pursuant to California Public Utilities Code Sections 851 and 854. The Commission, in its decision, stated that a statutory merger of two corporations is the "practical equivalent" of the transfer of utility property and thus would require PUC approval. Application of Southern California Gas Company and Pacific Gas Supply Company, decision no. 85-11-054, application no. 85-09-009, 1985.

As reflected in Corporations Code Section 1107, a true merger manifests the theory of continuity, i.e., that although one distinct corporate identity disappears, its corporate activities do not cease but are merely carried on through a new channel. See e.g., Jackson v. Continental Tel. Co., 212 Cal.App.2d 510, 513 (1963). In a number of jurisdictions, but not California, the courts have interpreted this theory of continuity to mean that the succession to property in a true merger is not really a "transfer" at all. Note, Effect of Corporate Reorganization On Nonassignable Contracts, 74 Harv. L. Rev. 393, 396-97 (1960) (hereinafter cited as Effect). An example of this reasoning

appears in Segal v. Greater Valley Terminal Corp., 199 A.2d 48, 50 (N.J. Super. Ct. App. Div. 1964) wherein the court held that the merger of parent and subsidiary corporations into one corporation did not change the beneficial ownership of the subsidiary's property.

A number of other courts have also rejected this limited concept of "transfer." In Diamond Parking, Inc., v. City of Seattle, 479 P.2d 47 (Wash. 1971), the Supreme Court of the State of Washington explicitly rejected the argument that the passing of rights from a disappearing to a surviving corporation pursuant to a merger statute, similar in relevant respects to California Corporations Code section 1107, was not a "transfer." Id. at 48-49. The court reached this conclusion even though the same individuals owned the stock of the disappearing and surviving corporations and served as the officers and directors of both entities. Id. at 47-48.

In construing a Delaware merger statute providing that property of constituent corporations "shall be vested" in the surviving corporation, the Third Circuit Court of Appeals also rejected the argument that there was no transfer thereby, terming it "metaphysical" and holding that the property was voluntarily transferred to the surviving corporation. Koppers Coal & Transportation Co. v. United States, 107 F.2d 706, 707-708 (3d Cir. 1939). Koppers was followed in PPG Industries, Inc. v. Guardian Industries Corp., 597 F.2d 1090 (6th Cir. 1979). In the latter case, the court reversed a district court which had held that a nonassignability clause with respect to certain patent licenses did not apply since the licenses were not "transferred" but passed by operation of law in a statutory merger. The Sixth Circuit criticized what it considered to be the district court's misplaced reliance on the theory of continuity, stating that the theory related:

> to the fact that there is no dissolution of

> the constituent corporations and, even though they cease to exist, their essential attributes are vested by operation of law in the surviving or resultant corporation. ╒Citation omitted.σ It does not mean that there is no transfer of particular assets from a constituent corporation to the surviving or resultant one. Id. at 1095-96.

The Sixth Circuit, in this opinion, was interpreting the applicable Ohio merger statute, which provided that property would be "deemed to be transferred to and vested in the surviving or new corporation without further act or deed . . ." Id. at 1096.

Rather than concluding that the succession of property pursuant to a statutory merger is not a transfer, the majority of courts deciding that a general nonassignment clause was not breached thereby have held that such a transfer was not within the language and intent of the parties to the nonassignment clause. One commentator has termed this the majority view, and noted that it is quite often based on a theory that the particular prohibition on assignment at issue prevents a voluntary assignment but does not preclude a transfer by operation of law. Effect, supra, at 396. Two illustrative cases that were cited in the PPG case are Segal v. Greater Valley Terminal Corp., 199 A.2d 48 (N.J. Super. App. Div. 1964) (both this theory and the no transfer theory presented as alternative grounds for the holding), and Dodier Realty & Inv. Co. v. St. Louis Nat. Baseball Club, 238 S.W.2d 321 (Mo. 1951).

The leading California case on the interpretation of nonassignment clauses in contracts and leases is Trubowitch v. Riverbank Canning Co., 30 Cal.2d 335, (1947). At issue in the Trubowitch case was a nonassignment clause in the context of a corporation which had been voluntarily dissolved, all the assets being then transferred to the stockholders of the corporation, who continued business as a partnership without change in management or personnel. The Supreme Court of California noted that "╒iσt is established that in the absence of language to the contrary in the contract . . . a provision against assignment in a contract or lease does not preclude a transfer of the rights thereunder by operation of law. . . ." Id. at 344. However, all four of the cases cited in Trubowitch in support of this proposition, including two California cases, involved transfers that were much more involuntary than that resulting from a voluntary agreement to merge. See, California Packing Corp. v.

Lopez, 207 Cal. 600 (1929), wherein a party to the contract at issue was accidentally killed and his brother, who was administrator of his estate, continued performance; Farnum v. Hefner, 79 Cal. 575 (1889), concerned the transfer of a leasehold in execution of a judgment; Gazlay v. Williams, 210 U.S. 41 (1908), involved the passage of lessee estate from the bankrupt's trustee; and Francis v. Ferguson, 159 N.E. 416 (N.Y. 1927), dealing with a transfer of a leasehold by executors following death of a tenant.

A merger, by contrast, is a voluntary act which transfers assets from a disappearing corporation to the surviving entity. It is "the result of the voluntary acts and expression of consent

to transfer by the resolution of the directors and the votes of the shareholders of the various constituents. It is a transfer by act of the parties, authorized by the merger statute." Ballantine and Sterling, Cal. Corp. Laws section 258.07 ╒3σ (1989) citing among other cases, Emporium Capwell Co. v. Anglim, 48 F. Supp. 292 (SD Cal 1943), Aff'd, 140 F 2d 224 (9th Cir. 1944), cert. denied, 322 U.S. 752 (1944).

4. Is the City Preempted by State Law From Taking Action?

Another legal concept that arises in the context of a local government's effort to enforce a nonassignment clause is illustrated in Diamond Parking, Inc., v. City of Seattle, 479 P.2d 47 (Wash. 1971), discussed above. This legal concept is referred to as preemption. The facts in Diamond Parking are similar to those in the instant matter, although there are some critical distinctions. Diamond Parking involved a Seattle city ordinance providing that a business license issued for the operation of a public garage was not transferable unless it specifically provided otherwise. Although, as noted above, the court explicitly rejected the argument that there was no "transfer" of rights by operation of the Washington merger statute, it still found that the Seattle ordinance was unenforceable. The court concluded that there was a transfer, but one that the city was preempted from enforcing on the grounds that the state law on corporations was controlling and such local control, which was construed by the court to constitute the imposition of a tax on the merger, would improperly interfere with the power granted to the state legislature. Id. at 49. The court distinguished the Seattle ordinance, enacted pursuant to its municipal police powers, from state law specifically regulating common carriers. Citing Don Williams Export, Inc. v. Timm, 477 P. 2d 15 (Wash. 1970), it stated, on page 52, that such state regulation is enforceable on the grounds that the "business

corporations statute is a general law, while the statute regulating carriers deals specifically with corporations engaged in transportation, and under the applicable rule of statutory construction would prevail over the general statute. (Citation omitted.)"

However, unlike Seattle's nonassignability ordinance, the transfer approval provisions of San Diego's franchise ordinances are mandated by Section 103 of the City Charter, which is itself a state legislative enactment. As the Charter has been held to take precedence in case of conflict with general laws relating to regulation of a municipal affair by the CPUC, City of San Diego v. Kerckhoff, 49 Cal.App. 473 (1920), so should the Charter and the ordinances enacted in conformance with its dictates be held

to take precedence over general laws relating to corporate reorganizations. See also, Bishop v. City of San Jose, 1 Cal.3d 56 (1969) and Southern Pacific Pipe Lines, Inc. v. City of Long Beach, 204 Cal.App.3d 716 (1988). Further, in contrast to the business license issued to Diamond Parking by the City of Seattle, the SDG&E franchises are negotiated agreements between the parties and the required consent procedures would not impose any financial burden or local tax upon the companies, as was the case in Diamond Parking.

In granting a franchise, California or its subordinate public bodies may prescribe terms and conditions for its use even in the absence of specific statutory authorization; and once voluntarily assumed, such terms and conditions become an enforceable part of the contract with the franchisee. County of Contra Costa v. American Toll Bridge Co., 10 Cal.2d 359, 363 (1937). In the case of the San Diego utility franchises, the nonassignment clause is included at the explicit direction of the City Charter. However, it should be noted that such a clause is consistent with state law governing general law cities. California Public Utilities Code section 6203 provides that the governing body of a California municipality in granting a franchise may "impose such other and additional terms and conditions not in conflict with this chapter . . . as in the judgment of the legislative body are to the public interest." Cal. Pub. Util. Code section 6203 (Deerings 1970). While the provisions of this statute are not binding on "any municipality having a freeholders' charter adopted and ratified under the Constitution and having in such charter provisions for the issuance of franchises by the municipality," such a city has the right to "avail itself of the provisions of this chapter wherever it may lawfully do so." Cal. Pub. Util. Code section 6205 (Deerings 1970).

5. What is the Effect of the "Successors and Assigns Clause?

As a further issue we should examine whether the general "successors and assigns" clause, which appears in the franchise documents, provides SDG&E with some concept of an automatic transfer by operation of law, negating City Council consent. We think not.

The most significant California case bearing on this question is People ex rel. Spiers v. Lawley, 17 Cal.App. 331, (1911), which involved a turnpike franchise granted by the state legislature to "John Lawley and his associates." Id. at 1090. Relevant issues in the case were whether the franchise terminated upon the death of Lawley, and whether the franchise was forfeited by reason of its transfer by Lawley without the consent of the state.

Although noting some early California cases holding that certain ferry franchises were mere licenses, personal trusts or privileges, the Lawley court concluded that a franchise is an interest in real property. Id. at 338. Citing California Civil Code section 1044, a statute providing in pertinent part that property of any kind may be transferred, the Lawley court concluded that, generally, franchises are transferable just like other real property. Id. at 340. Lawley was cited as dispositive on this point by Menzel Estate Co. v. City of Redding, 178 Cal 475, 481 (1918).

The court, at page 342, found that Lawley's power to transfer or assign "certain interests" in the franchise was implied by the language of the grant to him and his associates. It further concluded that this meant persons in whom he could vest an interest in the franchise, not merely employees who assisted him in constructing and maintaining the turnpike. Holding that an estate in fee in the franchise had been vested in Lawley and his associates, the court at page 346 stated that:

> ┌sσince there is no provision in the grant itself or of any statute to which my attention has been directed expressly requiring that the consent of the state shall first be obtained before the right to sell or transfer the franchise may be exercised, manifestly said franchise may be transferred without the consent of the granting power. I do not, however, intend to be understood as holding that the state could not have made the procurement of its consent a prerequisite or a condition precedent to the exercise of the

> right by the grantee to transfer the franchise; but the state has not done so in this case by express language or by language reasonably capable of the construction that such was its intention. (Emphasis added.)

Clearly, the Lawley case holds that an express reservation of the right to consent to a transfer of the franchise is enforceable, even if the franchise is deemed to be transferable by its characterization as real property and/or the express language of the grant.

There are a number of non-California cases, including Owensboro v. Cumberland Tel. & Tel. Co., 230 U.S. 58, (1913), and City of Baird v. West Texas Utilities Co., 174 S.W.2d 649 (Texas Civ. App. 1943), opining that a franchise granted to a company

and its successors and/or assigns is transferable without consent given by the granting governmental entity. However, these cases and the cases cited therein are distinguishable from the instant matter involving the San Diego franchises on the ground that each of them involved franchises granted without any express reservation of a right to approve a transfer.

In contrast, State ex rel. City of Tacoma v. Sunset Tel. & Tel. Co., 150 P. 427 (Wash. 1915), involved a franchise granted to a named individual and "his successors and assigns" that also contained an express requirement to obtain city council approval prior to the sale, lease, transfer, or assignment of the franchise to any entity other than a corporation organized by the named grantee to carry on a telephone and telegraph business. Id. at 427-28. While ultimately holding that the non-assignment clause did not apply to the particular kind of transfer at issue in that case, the court expressly rejected the argument that the city did not have the power to attach such a condition to its franchise grant. It further emphasized that the city's assent to the grant was given upon those conditions contained in the franchise which were explicitly accepted by the franchisee. Id. at 430-432.

6. Construction of Grant - Policy Considerations.

The transfer provisions in the Charter and in the franchise ordinances are included as legislative enactments and should be liberally construed to accomplish the desired public purposes. In that regard, it is well established that public grants, such as franchises, are to be strictly construed against the grantee, so that no rights thereunder will pass by implication unless such circumstances will effectuate the obvious interest of the granting entity. See 34 Cal.Jur.3d, Franchises from Govt. Bodies

section 19 and cases cited therein. This rule has been embodied in California Civil Code section 1069 which states:

> A grant is to be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor.
> Cal. Civ. Code section 1069 (Deerings 1971).

Furthermore, this rule of construction is specifically articulated in the gas and electricity franchises, at Sections 11 and 12 respectively, which provide that such "franchise is granted upon each and every condition herein contained, and shall ever be strictly construed against the Grantee." Therefore, although we believe the language and terms of the franchises are

abundantly clear and specific, if there exists any ambiguity or vagueness therein, the rule of strict construction against the franchise leads to the undeniable conclusion that the City has consent authority over any transfer, including the proposed merger between SDG&E and SCE.

* * * * * * * * * * * * * * * * * * * *

Thus, we conclude that the proposed merger of SDG&E with and into SCE would result in a transfer of the franchises from the disappearing corporation to the surviving corporation. Further, we conclude that the merger would result in a transfer of the rights and privileges granted thereby from SDG&E to SCE; that neither Cal. Corp. Code section 1107 nor the "successors and assigns" language in the franchises provide for an automatic transfer by operation of law; that the prohibition against transfer of franchises without consent in the City Charter is not preempted by state law; and that the prohibitions against transfer without consent found in the franchises themselves should be strictly construed against the parties to the proposed merger.

Respectfully submitted,
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CMF:NBD:wk(x043)
Enclosures
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