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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN DIEGO

11 HARRY C. POWELL; JOHN W. STUMP
12 III; JEROME WANETICK; CODY
13 PETTERSON; RUTH HENRICK; NANCY
14 CASADY; DEREK CASADY;

15 Petitioners and Plaintiffs,

16 v.

17 JENNIFER CAMPBELL, VIVIAN
18 MORENO, and SCOTT SHERMAN, in
19 their official capacities as Members of the
20 City of San Diego Environment Committee;
21 CITY OF SAN DIEGO, a municipal
22 corporation; and DOES 1 through 100,
23 inclusive,

24 Respondents and Defendants.

Case No.

**PETITION FOR WRIT OF MANDATE,
PROHIBITION, OR OTHER
EXTRAORDINARY RELIEF
[CCP §§1060, 1085];
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF; ACTION TO
VOID PAST ACTS OF THE CITY OF SAN
DIEGO CITY COUNCIL ENVIRONMENT
COMMITTEE
[GOVT CODE §§ 54960, 54960.1]**

25 **INTRODUCTION**

26 1. Petitioners and plaintiffs are interested persons because they are residents of the
27 City of San Diego and utility customers directly affected by the terms of the utility franchise
28 agreement described in this operative complaint.

2. Under California Government Code §§ 54960.1 and 56960, Plaintiffs and
Petitioners seek a judicial declaration that prior to the City of San Diego Council Environment

1 Committee's Special Meeting on July 16, 2020, a majority of the Environment Committee made a
2 collective commitment or promise in a series of secret serial meetings to approve an Environment
3 Committee resolution for the City Council to let a 20-year electric utility franchise agreement, all
4 in violation of Govt Code § 54952.2(b)(1).¹

5 3. Under Govt Code § 54960.1, Plaintiffs and Petitioners bring this action for
6 declaratory relief, mandamus and for an injunction based on a majority of the members of the San
7 Diego City Council Environment Committee, outside a duly authorized meeting² and using a
8 series of communications directly or through intermediaries, to discuss, deliberate, or take action
9 to draft a Resolution of Intent for the City of San Diego to call for bids for a 20-year San Diego
10 City electric utility franchise agreement. On these facts, Plaintiffs and Petitioners seek an order
11 declaring the action taken by the Environment Committee approving a resolution calling for the
12 City of San Diego to invite bids for a 20-year franchise agreement to be void under Govt Code §
13 §54960.1.

14 4. Under Govt Code §54960, Plaintiffs and Petitioners bring this action for
15 declaratory relief, mandamus and for an injunction based on a majority of the members of the San
16 Diego City Council Environment Committee, outside a duly authorized meeting³ and using a
17 series of communications directly or through intermediaries, to discuss, deliberate, or take action
18 to draft a Resolution of Intent for the City of San Diego to call for bids for a 20-year San Diego
19 City electric utility franchise agreement.

20 _____
21 ¹ Serial meetings can be held with a chain of communications involving contact from member A
22 to member B who then communicates with member C would constitute a **serial meeting** in the
23 case of a five-person body. Similarly, when a person acts as the hub of a wheel (member A) and
24 communicates individually with the various spokes (members B and C), a **serial meeting** has
25 occurred. In addition, a **serial meeting** occurs when intermediaries for board members have a
26 meeting to discuss issues. For example, when a representative of member A meets with
27 representatives of members B and C to discuss an agenda item, the members have conducted a
28 **serial meeting** through their representatives as intermediaries. Who's Afraid of the Big, Bad
Wolfe? A Call for a Legislative Response to the Judicial Interpretation of the Brown Act, 39
McGeorge L. Rev. 1073, 1075.

² Authorized under Chapter 9 of Part 1, of Division 2 of Title 5 of the Government Code.

³ Authorized under Chapter 9 of Part 1, of Division 2 of Title 5 of the Government Code.

1 University City neighborhood. Mr. Wanetick is the former Director, Information Systems
2 (Retired), Scripps Institution of Oceanography, UC San Diego.

3 12. Petitioner and plaintiff Cody Petterson is an interested person because he is a San
4 Diego resident, taxpayer and an SDG&E ratepayer. Mr. Petterson is a resident of the La Jolla
5 neighborhood. Mr. Petterson is a distinguished anthropologist.

6 13. Petitioner and plaintiff Ruth Henrick is an interested person because she is a San
7 Diego resident, taxpayer and an SDG&E ratepayer. Ms. Henrick operates Special Delivery in the
8 Hillcrest neighborhood. Special Delivery provides home-delivered meals for those in need.

9 14. Petitioner and plaintiff Nancy Casady is an interested person because she is a San
10 Diego resident and taxpayer who receives his electric power from SDG&E. Ms. Casady is a
11 resident of the La Jolla neighborhood. She is the former General Manager of Ocean Beach
12 People's Organic Food Co-op.

13 15. Petitioner and plaintiff Derek Casady is an interested person because he is a San
14 Diego resident and taxpayer who receives his electric power from SDG&E. Mr. Casady is a
15 resident of the La Jolla neighborhood. Mr. Casady is the president of a local Democratic Party
16 Club.

17 **B. Defendants and Respondents**

18 16. Defendant City of San Diego is a municipal corporation of the State of California
19 and Defendants' and Respondents' employer.

20 17. Defendant San Diego City Councilmember Jennifer Campbell is sued in her
21 official capacity.

22 18. Defendant San Diego City Councilmember Vivian Moreno is sued in her official
23 capacity

24 19. Defendant San Diego City Councilmember Scott Sherman is sued in his official
25 capacity.

26 20. Petitioners and Plaintiffs are informed and believe, and thereupon allege, that at all
27 times relevant and mentioned herein, Defendants/Respondents and DOES 1 through 100,
28 inclusive, and each of them, were the agents, servants, employees, independent contractors, co-

1 conspirators, subsidiaries and/or joint ventures of the remaining Defendants, and each of them,
2 and were at all times material hereto acting within the authorized course, scope and purpose of
3 said agency and employment, and/or that all of said acts were subsequently performed with the
4 knowledge, acquiescence, ratification and consent of the respective principals, and the benefits
5 thereof accepted by said principals.

6 **THE PUBLIC'S INTEREST IN OPEN MEETINGS AND ELECTRIC POWER**

7 21. There is a deep and fundamental public interest in the proposed 20-year franchise
8 agreement. San Diego Gas & Electric (SDG&E), the franchisee of the existing electric franchise
9 agreement, has inflicted great financial and physical damage to the people of San Diego while
10 operating under the existing and sunseting 50-year franchise agreement.

11 22. SDG&E has operated as a monopoly under the existing franchise agreement. At
12 the turn of the century, working in collusion with the other two electricity monopolies in
13 California (Pacific Gas & Electric and Southern California Edison), SDG&E pushed California
14 into an under-regulated wholesale electricity system that SDG&E represented would lower
15 customer electricity rates. Rather than going down, San Diego electricity customers faced
16 staggering price increases and rampant electricity blackouts. The price of wholesale electricity
17 started escalating around June 2000, reaching unprecedented levels over the remainder of that
18 year. From June 2000 through July 2000, wholesale electricity prices increased on average 270
19 percent over the same period in 1999. By December 2000, wholesale prices reached \$376.99 per
20 megawatt hour (MWh) -- **over 11 times higher** than the average clearing price of \$29.71 per
21 MWh in December 1999.

22 23. Officials from SDG&E and its parent company, SEMPRA, made the price spikes
23 worse. Evidence showed these SDG&E and Sempra officials held a clandestine meeting in a
24 Phoenix, Arizona Embassy Suites hotel room in September 1996. Eleven senior executives
25 (including two presidents) from SoCalGas, SDG&E and a third company -- without any legal
26 counsel present -- met and agreed that they would cooperate rather than compete in supplying and
27 delivering natural gas. The net result of this unlawful agreement was to enable them to artificially
28 constrain the supply of natural gas to California and to escalate the price of gas and ultimately

1 electricity produced from natural gas. A lawsuit alleged that these acts were the major cause of
2 the state's energy crisis in 2000-2001. Sempra and SDG&E reported to the U.S. Securities &
3 Exchange Commission that Sempra and SDG&E and their affiliated companies had to pay the
4 City of Long Beach and other victims of the SDG&E/Sempra illegal electricity price fixing
5 scheme over \$300 million to settle the price fixing claims. San Diego customers are still paying
6 the costs of the wholesale electricity scheme for which SDG&E and its fellow electricity
7 monopolies are responsible. To stabilize electricity prices, a California state fund was created to
8 assist in mitigation of the effects of the statewide energy supply emergency. SDG&E and the
9 other electricity monopolies used their combined power to force the CPUC to impose rate
10 increases on San Diego and other customers to pay for the needed electricity at costs far above
11 fair market prices.

12 24. SDG&E also caused other catastrophic damage to San Diego and San Diego
13 electricity customers. In 2007, SDG&E failed to complete needed vegetation management and to
14 safely operate its electricity facilities. SDG&E failures resulted in the catastrophic fires that
15 struck San Diego in 2007—injuring 40 fire fighters, killing two, destroying 1300 homes and
16 burning over 206,000 acres. For over 10 years, SDG&E tried to force its customers to pay over
17 \$379 million in uninsured 2007 fire costs. SDG&E took the case all the way to the U.S. Supreme
18 Court. Ultimately, SDG&E was turned away by the Courts. However, with the two other
19 electricity monopolies, SDG&E obtained an order from the California Public Utilities
20 Commission (CPUC) making SDG&E customers pay an increased rate for fires the utilities
21 caused. They also were able to remove consumer rate protections that required utilities to prove
22 they were prudent before recovering any uninsured fire costs. Under the new 2019 law, there is a
23 presumption of prudence whereas before the law, the burden was on the utilities to prove they
24 acted prudently before recovering any money from ratepayers.

25 25. SDG&E has used its domination of the CPUC to obtain an ever-increasing amount
26 of revenue from SDG&E utility customers. Since 2014, the CPUC has authorized SDG&E to
27 take over \$23 billion from its customers. This last year (2019) alone, the amount was over \$4.2
28 billion, as shown here:

Table 2.1: 2019 Electric IOU Authorized Revenue Requirements (\$000)

Revenue Component	SDG&E
Generation / Energy Procurement	1,680,674
Purchased Power	1,189,836
Utility Owned Generation	312,010
General Rate Case	244,650
Other Regulatory	(65,622)
Distribution	1,296,667
Transmission	634,909
Public Purpose Programs	517,218
Bonds and Fees	82,233
Total 2019 Revenue Requirement	4,211,701

CPUC 2020 AB 67 Report

26. SDG&E also imposes very high electricity rates on its customers. For an average consumption of electricity, residents in San Diego pay \$220 compared to \$118 paid by customers in Sacramento.

27. SDG&E has also used its domination of the CPUC to block efforts by the City of San Diego and its activist residents who organized to purchase electricity at lower rates and with less carbon.

28. SDG&E was the only utility in the state to form a lobbying arm to fight to interfere with the City of San Diego’s new program known as Community Choice Aggregation (CCA) – a program wherein cities like San Diego and those other participating cities can purchase or generate electricity for its residents and businesses. SDG&E used its domination of the CPUC to impede San Diego’s CCA by getting the CPUC to impose draconian exist fees with the goal of making CCA’s not viable.

29. SDG&E also uses its vast wealth to retain power trade associations to use their lobby power with the San Diego City Council Environment Committee to adopt the resolution calling for bids for a 20-year franchise agreement. Two examples are the San Diego Chamber of Commerce and the San Diego Economic Development Corporation. In 2019, Sempra paid \$126,5000 to the San Diego Regional Chamber of Commerce. The Chamber’s call for a City of San Diego 25-year electric franchise agreement was delivered to the Environment Committee on or before July 16, 2020. In 2019, Sempra paid the San Diego Economic Development

1 Corporation \$87,500. The Economic Development Corporation's call for a City of San Diego 25-
2 year electric franchise agreement was delivered to the Environment Committee on or before July
3 16, 2020.

4 **SDG&E REGULATORY CAPTURE OF THE CPUC**

5 30. "Regulatory capture" is a form of political corruption that occurs when a
6 regulatory agency, created to act in the public interest, instead advances the commercial or
7 political concerns of special interest groups that dominate the industry or sector it is charged with
8 regulating. A regulatory agency succumbs to regulatory capture when special interests co-opt
9 policymakers to further the special interests' own ends.

10 31. SDG&E exercised regulatory capture through two Commission Presidents:
11 Michael Peevey and Michael Picker.

12 32. SDG&E has high-stake interests in the outcome of the CPUC's policies and
13 regulatory decisions such as rate increases. Meanwhile, ratepayers such as SDG&E customers
14 have little or no chance of affecting the decisions of the CPUC Commissioners, even when these
15 decisions have a significant impact on their communities.

16 33. The resources and energies used by SDG&E to implement its regulatory capture of
17 the CPUC includes extensive campaign contributions to the legislators whom the CPUC turns to
18 for their budget. Sempra Energy, SDG&E's parent company, contributed thousands of dollars to
19 both Democrats and Republicans running for California state offices, including members up for
20 re-election on both the California Senate Energy, Utilities, and Communications Committee and
21 the California Assembly Committee on Utilities and Energy. Further, Sempra regularly spends
22 millions of dollars on lobbying efforts at the CPUC and at the legislature.

23 **FIRST CAUSE OF ACTION**

24 (Declaratory Relief Govt Code § §54960.1
25 to Void Resolution Calling for Franchise Agreement)

26 34. Petitioners and Plaintiffs incorporate by reference and reallege the previous
27 paragraphs as though set forth fully herein.

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1 35. As of September 12, 2019, staff members from the Mayor’s office were acting as
2 intermediaries (Intermediaries) to develop a majority consensus of the City Council Environment
3 Committee to pass a resolution calling for the City Council to issue an invitation for bids for a 20-
4 year electricity franchise agreement.

5 36. The Intermediaries appeared before the Environment Committee on September 12,
6 2019, and the City Council on October 1, 2019, to obtain approval of two contracts related to the
7 City’s franchise agreement with SDG&E: (1) Award of Contract No. 10089559-19-K to NewGen
8 Strategies and Solutions, LLC, for Electric and Gas Franchise Agreement Consultant Services;
9 and (2) Award of Contract No. 10089572-19-K to JVJ Pacific Consulting, LLC, for Strategic
10 Pathway Consultant Services.

11 37. The Intermediaries represented to the public that the City request the Council to
12 engage two teams of outside professional consultants to properly resource the preparation and
13 execution of a competitive bidding process for new electric and gas franchise agreements.
14 Intermediaries told the public the first consulting team would support the City efforts to establish
15 a valuation of existing electric and gas infrastructure and provide an analysis and an audit of the
16 City’s existing electric and gas franchise agreements. The Intermediaries told the public the
17 second consulting team would serve as the City’s principal strategic advisor on franchise-related
18 energy issues. The Intermediaries represented the second team would serve as the City’s lead in
19 the development of the City’s approach for the next electric and gas franchise agreement. The
20 Intermediaries represented the consultants would work closely with a cross-functional team
21 represented by City staff designated by the City’s Chief Operating Officer under the direction of
22 the Mayor. At no time did the Intermediaries disclose they would be working to develop a
23 consensus of most of the Environment Committee to call for bids for a 20-year franchise
24 agreement.

25 38. The consultants’ reports were finished in March 2020. After the reports were
26 finished, the Intermediaries provided the reports to and met with most of the members of the
27 Environment Committee to develop a majority consensus to call for bids for a 20-year electric
28 franchise agreement. To develop a majority consensus of the Environment Committee to call for

1 bids for a 20-year electric franchise agreement, the Intermediaries met several times with the
2 Environment Committee chairperson, her team and the Environment Committee adviser, and the
3 consultants.

4 39. As the Intermediaries met with the Environment Committee chairperson, the
5 Intermediaries also met with other members of the Environment Committee to develop a
6 consensus for the City to call for bids for a 20-year franchise agreement. To secure a majority
7 consensus, the Intermediaries agreed to add to and alter the consultants' recommendations.

8 40. After the City Council approved the two consultant reports on October 1, 2019, the
9 City Council Environment Committee did not hold a single public meeting to consider a call for
10 bids for a 20-year franchise agreement until July 16, 2020. On that date (July 16, 2020), the
11 Environment Committee approved the resolution calling for the Council to invite bids for a 20-
12 year franchise agreement. The public was not permitted to witness or participate in any public
13 meeting between October 1, 2019, and July 16, 2020, the date the Environment Committee
14 announced its decision to issue to the City Council a call for bids for a 20-year franchise
15 agreement.

16 41. Upon the facts alleged, Petitioners and Plaintiffs seek a judicial determination that
17 the Environment Committee's decision on July 16, 2020, to present a resolution to the City
18 Council calling for bids for a 20-year franchise agreement is null and void because prior to the
19 Committee meeting, a majority of the Committee made a collective commitment or promise to
20 issue the resolution calling for the bids, all in violation of Govt Code § 54952.2(b)(1).⁴

21 ///

22 _____
23 ⁴ Serial meetings can be held with a chain of communications involving contact from member A
24 to member B who then communicates with member C would constitute a **serial meeting** in the
25 case of a five-person body. Similarly, when a person acts as the hub of a wheel (member A) and
26 communicates individually with the various spokes (members B and C), a **serial meeting** has
27 occurred. In addition, a **serial meeting** occurs when intermediaries for board members have a
28 meeting to discuss issues. For example, when a representative of member A meets with
representatives of members B and C to discuss an agenda item, the members have conducted a
serial meeting through their representatives as intermediaries. Who's Afraid of the Big, Bad
Wolfe? A Call for a Legislative Response to the Judicial Interpretation of the Brown Act, 39
McGeorge L. Rev. 1073, 1075

1 **SECOND CAUSE OF ACTION**

2 (Injunctive Relief Govt Code § 54960 to Stop
3 City Council Meeting Based on Serial Meeting)

4 42. Plaintiffs and Petitioners incorporate by reference and reallege the previous
5 paragraphs as though set forth fully herein.

6 43. Plaintiffs and Petitioners are informed and believe the City Council will authorize
7 the call for bids for a 20-year franchise agreement at their next meeting on August 4, 2020, based
8 on the decision reached during the serial meetings held in violation of Govt Code §
9 54952.2(b)(1).

10 44. On these facts, Petitioners and Plaintiffs are entitled to an injunction to stop the
11 City Council calling for bids for a 20-year franchise agreement.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs and Petitioners pray judgment as follows:

14 1. For a judicial determination that the Environment Committee’s decision on July
15 16, 2020, to present a resolution to the City Council calling for bids for a 20-year franchise
16 agreement is null and void because, prior to the Committee meeting, a majority of the Committee
17 made a collective commitment or promise to issue the resolution calling for the bids all in
18 violation of Govt Code § 54952.2(b)(1).

19 2. For an injunction to stop the City Council calling for bids for a 20-year franchise
20 agreement based on the decision reached during the serial meetings held in violation of in
21 violation of Govt Code § 54952.2(b)(1).

22 3. For attorney fees and costs pursuant to Cal. Gov. Code section 1021.5 and any
23 other relevant statute; and

24 4. For all other relief, the Court determines is warranted.

25 AGUIRRE & SEVERSON, LLP

26 Dated: July 30, 2020

/s/ Michael Aguirre
Michael J. Aguirre

/s/ Maria Severson
Maria C. Severson, Attorneys for Plaintiffs