

**FW: OCTOBER 3rd AGENDA: Item 6.1 - Municipal Utility Relationship to LS Power Transmission Project**

City Clerk <city.clerk@sanjoseca.gov>

Tue 9/26/2023 10:09 AM

To:Agendadesk <Agendadesk@sanjoseca.gov>

📎 1 attachments (2 MB)

Power the Bay - Projects Overview (Sept 2023).pdf;

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**From:** Erik Schoennauer [REDACTED]

**Sent:** Tuesday, September 26, 2023 10:07 AM

**To:** Mahan, Matt <Matt.Mahan@sanjoseca.gov>; Kamei, Rosemary <Rosemary.Kamei@sanjoseca.gov>; Jimenez, Sergio <sergio.jimenez@sanjoseca.gov>; Torres, Omar <Omar.Torres@sanjoseca.gov>; Cohen, David <David.Cohen@sanjoseca.gov>; Davis, Dev <dev.davis@sanjoseca.gov>; Doan, Bien <Bien.Doan@sanjoseca.gov>; Candelas, Domingo <Domingo.Candelas@sanjoseca.gov>; Foley, Pam <Pam.Foley@sanjoseca.gov>; Batra, Arjun <arjun.batra@sanjoseca.gov>; Ortiz, Peter <Peter.Ortiz@sanjoseca.gov>

**Cc:** Mitchell, Lori <Lori.Mitchell@sanjoseca.gov>; Harkness, Kip <Kip.Harkness@sanjoseca.gov>; Jacob Diermann [REDACTED]; Casey Carroll [REDACTED]; Lucy Marton [REDACTED]

**Subject:** OCTOBER 3rd AGENDA: Item 6.1 - Municipal Utility Relationship to LS Power Transmission Project

[External Email]

Good morning, Mayor and City Council.

I represent LS Power Grid California in San Jose. As you may know, LS Power Grid California was recently selected by CAISO, the grid operator, to undertake two important electric reliability projects in and around San Jose in the coming years. The attached overview provides information about the projects.

LS Power wanted to be clear that **the significant benefits the projects provide to San Jose and surrounding communities are independent of the Council's consideration of the formation of a municipal utility. Further, the projects do not generate any deadlines related to such considerations.**

If you have any questions regarding LS Power Grid California's projects, we will be happy to meet with you in person or virtually at your convenience to discuss.

Thank you,

ERIK

--

**Erik F. Schoennauer**  
[REDACTED]

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## Power the Bay HVDC Projects: Power the South Bay and Power Santa Clara Valley

### Key Takeaways

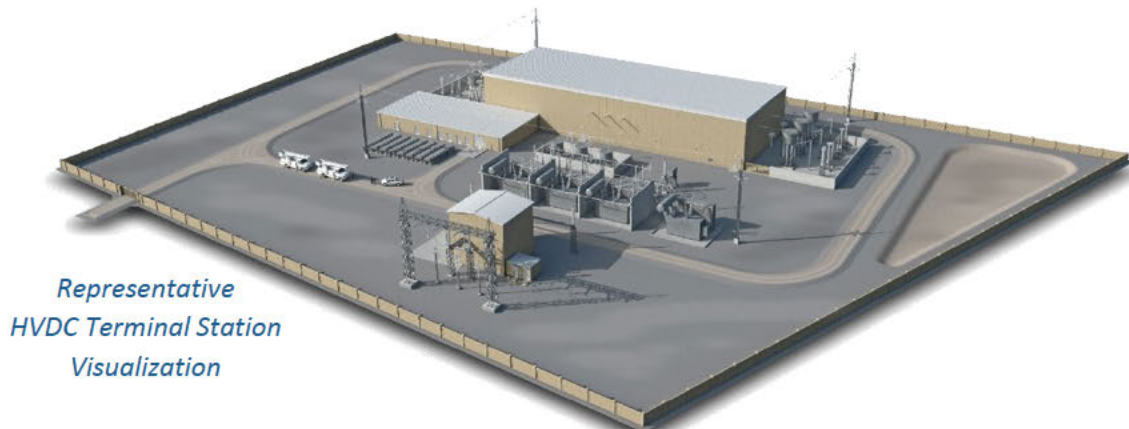
- LS Power Grid California’s two projects provide robust new grid connections to move power efficiently around the area – vital to supporting economic growth, affordable housing, and climate initiatives like Climate Smart San José.
- The projects bring substantial reliability and other benefits to the bulk electric system in the area.
- Our projects were identified by CAISO, the grid operator throughout most of California, as necessary to address current and projected electric reliability needs.
- **The need for and timing of the projects is entirely independent from the City of San José’s decision for or against forming a municipal electric department.**
- CAISO held a competitive process in 2022 determining that LS Power Grid California is the most qualified, experienced, and financially capable company to “*cost effectively, and reliably license, finance, construct, operate, and maintain [these] particular project[s] at the lowest cost and by the specified in-service date*”.
- LS Power Grid California has committed to cost overrun and schedule protections for electric consumers.

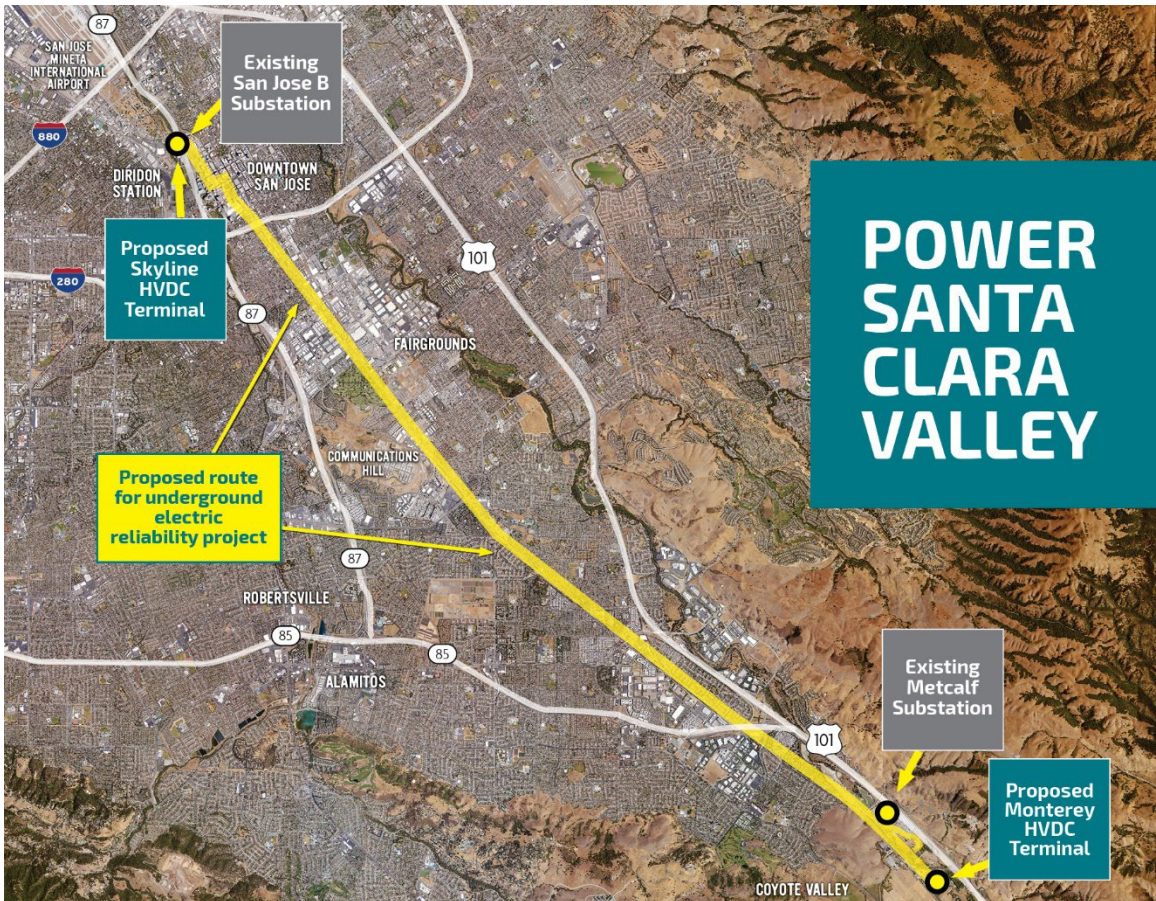
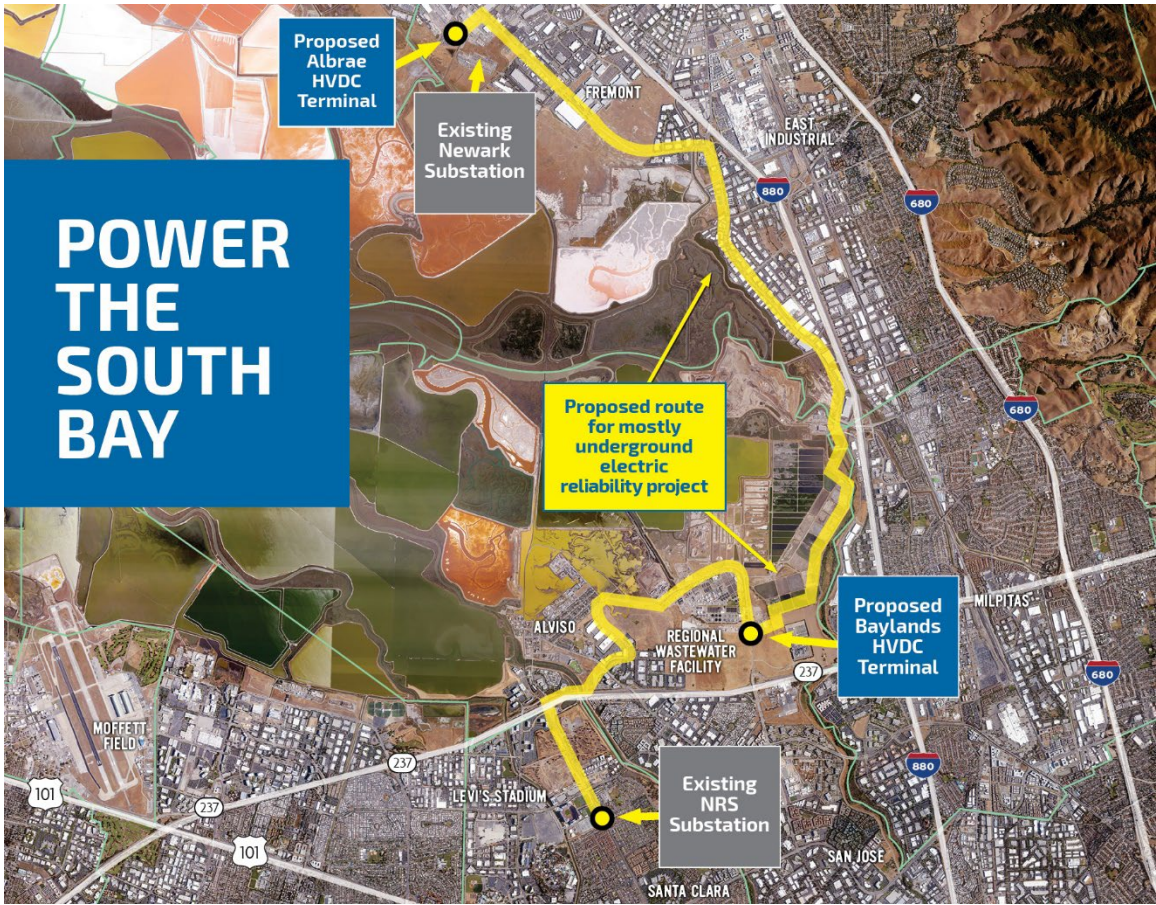


### Power the South Bay: Newark to NRS HVDC Project



### Power Santa Clara Valley: Metcalf to San Jose B HVDC Project





## Fw: Follow Up

Garaffo, Erica <Erica.Garaffo@sanjoseca.gov>

Thu 9/28/2023 3:53 PM

To:Agendadesk <Agendadesk@sanjoseca.gov>

Cc:Harkness, Kip <Kip.Harkness@sanjoseca.gov>;CMOAgendaServices <cmoagendaservices@sanjoseca.gov>

📎 1 attachments (249 KB)

KipHarkness\_IBEW1245\_Concerns ltr.pdf;

Hello,

The attached letter should be entered into Public Comment for Item 6.1, October 3 City Council Meeting.

-Erica

### Erica Garaffo

Lead Resilience Strategist (Assistant to the City Manager)

City of San José | City Manager's Office

c: 408-477-4293 | [erica.garaffo@sanjoseca.gov](mailto:erica.garaffo@sanjoseca.gov)

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**From:** Harkness, Kip <Kip.Harkness@sanjoseca.gov>

**Sent:** Thursday, September 28, 2023 1:09 PM

**To:** Mitchell, Lori <Lori.Mitchell@sanjoseca.gov>; Struyk, Zachary <Zachary.Struyk@sanjoseca.gov>; Garaffo, Erica <Erica.Garaffo@sanjoseca.gov>; Schembri, Jennifer <Jennifer.Schembri@sanjoseca.gov>

**Subject:** Fwd: Follow Up

FYI

Kip Harkness  
Deputy City Manager  
[REDACTED]

Begin forwarded message:

**From:** "Stern, Hunter" <[REDACTED]>

**Date:** September 26, 2023 at 11:04:32 AM PDT

**To:** "Harkness, Kip" <Kip.Harkness@sanjoseca.gov>, "Klein, Nanci" <Nanci.Klein@sanjoseca.gov>

**Cc:** "Mitchell, Lori" <Lori.Mitchell@sanjoseca.gov>, "Caldwell, Jim" <Jim.Caldwell@sanjoseca.gov>, Javier Casillas <[REDACTED]>, "Dean, Robert L., Jr." <[REDACTED]>

**Subject:** Follow Up

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[External Email]

Kip and Nanci,

Attached is a letter from IBEW 1245 outlining our ideas and concerns with proposed actions by the City of San Jose. This is based on our conversations to date.

As previously stated, changing the Municipal Code is our "line in the sand." The attached letter reiterates this view and outlines the reasons behind it.

I want to restate how much we have appreciated sitting down with you. It has been very helpful to discuss the City's existing concerns with electric service and future needs for growth and development. But it is critical to understand who is responsible for what in California's electric industry. Overall electric supply in San Jose is constrained by lack of electric transmission infrastructure. Increasing capacity can be only evaluated and approved by California Independent System Operator, which has belatedly approved two key transmission lines for construction into San Jose just last year. As you know, those lines will be built by LS Power.

The electric supply problem in San Jose and Silicon Valley is not unique; lack of transmission capacity plagues all of California. CAISO has identified over \$30 BILLION in transmission infrastructure construction that needs to be built over the next 20 years to alleviate this problem. [Draft20-YearTransmissionOutlook \(caiso.com\)](https://www.aiso.com/~/media/CAISO/PDF/Draft20-YearTransmissionOutlook.pdf). The Metcalf-Station B HVDC Project and the Newark-Los Esteros HVDC Project are part of the first tranche of this work and will provide the additional power City of San Jose businesses and residents require into the future.

But this is a steep hill to climb and the costs associated with this large amount of transmission work will be borne by all electric customers, no matter who serves them. Starting a municipal utility will do nothing to address transmission costs, not to mention creating risk for higher costs for electricity and delivery to customers. The best step the City can take to reduce transmission costs is to urge Congress to pass legislation that accelerates transmission infrastructure siting and permitting, clarifies cost allocation, and creates an investment tax credit to incentivize the construction of this infrastructure.

Hunter Stern  
IBEW 1245



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www.ibew1245.com



# IBEW 1245

THE POWER IS IN OUR HANDS

BOB DEAN, BUSINESS MANAGER  
CECELIA DE LA TORRE, PRESIDENT

VIA ELECTRONIC MAIL

September 26, 2023

**Mr. Kip Harkness**                      **Ms. Nanci Klein**  
**Assistant City Manager**      **Deputy Director, Office of Economic Development**  
San Jose City Hall  
200 E. Santa Clara Street  
San Jose, California 95113

**RE: San Jose City Proposal to Launch a Municipal Electric Utility**

Thank you for taking the time to meet with Brother Casillas with IBEW Local 332 and me recently to discuss the interests the City of San Jose has identified as determinative to launch a municipal electric utility. The meetings were helpful in understanding CSJ's concerns regarding its electric service, needs regarding public safety and grid hardening, as well as future economic development plans. Additionally, this exchange of ideas has been helpful in understanding future opportunities for expansion of electricity services within the City.

**IBEW 1245 Opposes Amending the Municipal Code**

However, from the perspective of IBEW 1245, the City has not established any viable connection between how launching a municipal electric utility to serve only a portion of San Jose residents and businesses will provide CSJ with solutions to the problems in electric service it has identified. As a reminder, IBEW Local 1245 represents more than 27,000 members overall and nearly 500 members working in and around the San Jose. Launching a municipal electric utility will eventually displace some IBEW 1245 members working for Pacific Gas and Electric Company. We cannot support this action, particularly when CSJ has not reviewed the financial risks to the City associated with providing direct retail electric service.

When this issue was brought forward by Staff in September 2022, Council members expressed concerns as to the feasibility of starting an electric utility. The July 28, 2023, Staff Memo has no analysis of the size or scale of the planned proposal. There is no estimate of costs, especially the need for CSJ to build a new substation or interconnection to new transmission lines. There is no estimate of customer rates or load forecasts. Finally, there is no clear delineation of how this new CSJ utility will operate relative to the existing San Jose Clean Energy entity. These issues are acknowledged in the critical questions you have identified during our meetings. Yet those questions have not been answered.

**CSJ Plan Will Create a Fully Functioning Electric Municipal Utility**

As outlined in the July Staff Memo, the proposed Ordinance creates a fully functional municipal electric utility that will provide retail electric service to San Jose residents and businesses. There is no limitation on service or costs to residents. The Ordinance allows the City of San Jose to build electric infrastructure. It allows CSJ to take over existing infrastructure owned by PG&E and operated and maintained by IBEW 1245 members. It allows the City to spend billions of dollars in support of these purposes. There is no restriction on how much will be spent or whether these expenditures are affordable for San Jose residents. Based on the lack of details shared by City Staff in connection with these actions, it is necessary to

determine whether the funds will be used appropriately. Because of the real harm to our members, Local 1245 strongly opposes any change to the Municipal Code to provide retail electric service.

### **Representing Utility Workers Gives IBEW 1245 Unique Perspective and Knowledge**

IBEW 1245 represents almost every electric utility worker in Northern and Central California. We were chartered in 1941 and have organized these workers over many years. Our members work for Investor Owned Utilities (IOUs) like Pacific Gas and Electric Company and Publicly Owned Utilities (POUs) like City of Santa Clara, City of Alameda, Sacramento Municipal Utility District, Modesto Irrigation District and 24 others. Collectively, IBEW 1245 has the unique perspective of seeing the California electric industry from the point of view of its workers. 1245 members build and maintain transmission towers and wires, substations, and distribution circuits and transformers. They work in warehouses and garages supporting the workers in the field. They build and rehabilitate transformers and other electrical equipment. They answer customer calls and respond to outages at homes and businesses. As a result, we know more about the industry than anyone. Starting a municipal utility from scratch, as contemplated by the proposed Ordinance, is a very challenging and expensive undertaking. The rate comparisons to PG&E identified in the July 2023 Staff Memo use electric rates from public utilities that have been operating for over 400 years cumulatively. They have built and paid for their infrastructure many times over, including significant generation resources. These utilities are vastly experienced operating their systems and equipment. The new CSJ municipal utility will be run by City Staff that have none of this experience and cannot expect to operate an electric utility with the same efficiency or effectiveness.

### **IBEW 1245 Members Need “Status Quo” for Job Security**

As we have communicated during our meetings, a new CSJ retail electric utility will cause the displacement of hundreds of IBEW 1245 members working for PG&E. Representing workers working for both IOUs and POUs gives IBEW 1245 great insight into each structure. POUs are no better or worse at successfully providing retail electric service than IOUs. Utilities are well run or poorly run because of how they are managed, not whether they are IOU or POU. But there are significant differences in the wages and benefits IBEW 1245 workers earn from each type of electric utility. Significantly, there is no effective way for IBEW 1245 workers to move between IOUs and POUs because of the lack of portability of pension, health and retiree benefits. As a result, IBEW 1245 consistently advocates for no change to the “Status Quo” of the utility that provides your retail electric service. If you are a PG&E customer today, we want you to be a PG&E customer tomorrow. Same for a customer of City of Santa Clara Silicon Valley Power. There is a widespread assumption among public power advocates that existing PG&E workers will quit and work for a newly created public utility. This is false. ERISA qualified plans, like PG&E’s, cannot be converted into public sector retirement plans. In the few instances in which a public utility has acquired PG&E customers over the last 40 years, PG&E workers have stayed with PG&E.

### **Various Officials in San Jose Wrongly Cite PG&E Failures as Basis for New Electric Utility**

San Jose has experienced almost no blackouts associated with wildfire risk, which is the most frequent cause of long-term power outages for PG&E customers. Former Mayor Liccardo complained constantly about this and spent months attacking PG&E. But neither he, nor other officials, have produced evidence of widespread blackouts. In fact, there has only been two instances in which PG&E initiated a wildfire related shutdown, when there was a risk for potential wildfire in neighborhoods contiguous with open spaces filled with dry brush and trees.

The most common cause of PG&E outages are operational issues related to weather or equipment. These outages typically impact individual circuits, or parts of circuits. Therefore, the outages impact small numbers of customers for a limited time. To be clear, rates of operational outages in San Jose are not higher than outages in other areas of PG&E’s service territory. PG&E customers have power 98% of the time, at a minimum. In addition, PG&E electricity has very high content clean energy content of 96% greenhouse gas emissions free energy from 2022. [PG&E Customers' Electricity 96% Greenhouse Gas-Free in 2022 \(prnewswire.com\)](https://www.prnewswire.com) This is higher than San Jose Clean Energy and will remain high for 2023 and

2024 because of increased hydro resources from record high rainfall last winter and expected above average rainfall this winter, due to El Nino conditions.

What is true is PG&E has had major issues connecting new customers, or customers that are upgrading their electric service, in a timely manner. These problems have been ongoing. PG&E has, appropriately, faced increasing public criticism over this issue. However, PG&E is not the only utility with this problem; both Southern California Edison and San Diego Gas & Electric have similar problems. Part of the problem is the California Public Utilities Commission has consistently underfunded this work for all utilities. But PG&E is particularly slow, and they have created an internal cross-functional team to help solve the problem. IBEW 1245 knows these shortcomings well and sponsored a bill before the California legislature designed to fix the customer connection problem – SB 410 (Becker) “Powering Up California Act.” The bill explicitly requires PG&E to hook up/energize customers within specified time limits. Failing to do so will result in fines. The bill also requires the CPUC to establish these requirements and enforce them. The lack of CPUC action identifying and establishing these target dates in the past has led to a lack of commitment by the IOUs. The bill corrects this approach. SB 410 is on the Governor’s desk awaiting his signature.

Finally, there are current CSJ officials which claim that a new CSJ electric utility will serve customers better than PG&E. But neither they nor City Staff have presented any evidence to suggest that a new CSJ utility will do better – these officials only complain about PG&E. The CSJ plan seems to be that the City will own newly built electric infrastructure, but only for new development in select areas in which the developers would build and pay for this infrastructure. Such an approach is wildly optimistic – developers want to pay for only the minimum amount of any infrastructure costs associated with their projects, especially in light of the fact that PG&E performs a portion of this work. Plus, CSJ would be forced to negotiate with developers to build this infrastructure *without ANY real knowledge* of what this work entails. The City will fail to include all costs or equipment that will be necessary for the infrastructure to operate. These costs will then be forced upon existing San Jose residents, as the City will have no other option to raise funds, since the future customers that will occupy the development will not buy electricity for some time.

### **The City of San Jose has Demonstrated Inferior Performance in Key Areas of Energy Operations**

In 2018, CSJ started a community choice aggregation entity to procure electricity on behalf of its residents and businesses, called San Jose Clean Energy. When SJCE was being formed, CSJ Staff and advocates claimed the new agency would reduce rates by at least 15% over PG&E, despite presenting no evidence on how this would occur. To date, there has been only a fractional (1%-3%) differential in rates, which amounts to maybe \$15-\$90 per year for most residential and business customers. [Joint Rate Comparisons: PG&E - SJCE \(pge.com\)](#) Additionally, San Jose residents were promised local clean energy projects to provide clean energy and jobs to benefit the San Jose economy. No such local projects have been built. Instead, SJCE largest single procurement of clean energy is from New Mexico, meaning San Jose ratepayers are sending their dollars out-of-state to benefit the New Mexican economy.

Worse, SJCE has been fined more than *any* other power procurement entity in California for failing to meet state requirements for Resource Adequacy procurement. SJCE was hit with a \$6.8 million fine (largest in history) in 2019, \$1.12 million fine in 2020 and \$760,000 in 2021. They were fined earlier this year but no amount was disclosed. [Book1 \(ca.gov\)](#) This is not a victimless crime. The lack of Resource Adequacy by SJCE and most other procurement entities means the state of California, in the aggregate, is not buying sufficient amounts of electricity to meet its demand, especially on the hottest days during the summer when electricity use reaches its highest levels. This causes economic harm. Large industrial and commercial electricity users in San Jose and elsewhere must curtail energy use, meaning they stop production and send their workers home. The insufficient supply of electricity can cause rolling blackouts throughout the state, which causes widespread economic harm and loss of wages for hundreds of thousands of workers throughout California. To be clear, SJCE is not the only offender – most other community choice aggregators in California are being fined as well. But SJCE is the worst, and this failing goes back to poor procurement decisions at the outset of its operations.



**IBEW 1245 Urges CSJ Staff to Answer Outstanding Questions and Consider other Possible Actions**

In our latest meeting, City Staff identified several questions that should be answered before determining whether it is in the interest of San Jose residents and businesses to launch a municipal electric utility. That Staff has proposed changing the Municipal Code *before* answering these fundamental questions on whether San Jose should provide retail electric service is frankly government at its worst. This is literally putting the cart before the horse and then waiting for the cart to move.

We also discussed the technical aspects of how City Staff can advise Council on the various options Council has before it regarding future electric services. As has been stated earlier, the proposed changes to the Municipal Code contained in the July 28 Staff Memo harms IBEW 1245 members. We find this intolerable. Therefore, IBEW 1245 proposes that changes to the Municipal Code be conditional upon full review by City Staff of the identified questions and subsequent review, including analysis that current San Jose City residential and business customers of PG&E will NOT PAY any costs associated with future retail electric service provided by CSJ. In the alternative, we propose that Council table the existing item until City Staff meets with representatives from PG&E to identify services that the Company can better provide to CSJ, as well as the parties negotiate improved services, including grid hardening and redundancies at key San Jose City facilities. In this regard, the City and the Company must jointly agree to the various actions and sign a memorandum of understanding summarizing the actions that will be taken by each party as well as which party will bear the relative costs associated with each of these actions. At that point, City Staff would then provide answers to the questions identified during our discussions and determine if CSJ still desires to provide retail electric service to its residents and businesses.

Again, I appreciate the opportunity to work with you on these complex issues. These issues and the questions they raise are not easily answered. If they were, we likely would not need to discuss them. I also appreciate the interests expressed by CSJ and your need to urgently address them. As stated before, we urge CSJ to file formal interconnection request with CAISO immediately and get into the queue.

On behalf of the members of IBEW 1245, particularly those working in San Jose, I respectfully urge you to accept the approach outlined above and work with PG&E to find the right combination of electrical services. The City of San Jose and PG&E together have a long and positive relationship. IBEW 1245 members enjoy serving San Jose customers. We want these relationships to remain active and beneficial for each party.

Sincerely,

*s/ Hunter Stern*

Assistant Business Manager

cc: Robert Dean, Business Manager IBEW 1245  
Javier Casillas, Business Manager IBEW 332

## City Council Agenda 10/3/23 Item 6.1 ORDINANCE AMENDING TITLES 2, 4, AND 26 AND ADDING TITLE 28

Ramos, Christina <[REDACTED]>

Mon 10/2/2023 1:07 PM

To:Agendadesk Agendadesk@sanjoseca.gov ;Alvarado, Teresa [REDACTED] Brooks, Anna  
<[REDACTED]> Noonan, James <[REDACTED]> Yoell, Sarah <[REDACTED]>

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📎 2 attachments (309 KB)

Attachment City of San Jo e Propo ed Ordinance Manatt pdf City of San Jo e Item 6 1 2023 10 02 pdf

[External Email]

**Classification: Public**

Dear San Jose City Council Offices and City Clerk,

Please see attached letter from Regional Vice President, Teresa Alvarado and supporting documents for public record for the October 3, 2023 City Council Agenda on Item 6.1 for public record.

Thank you!

**Christina Ramos | Local Government Affairs**

Santa Clara County

Pacific Gas and Electric Company

[REDACTED] mobile | [REDACTED]



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To: Joshua Levenberg

From: David T. Moran  
George M. Soneff

Date: September 26, 2023

Subject: Proposed Ordinance re San José Power electric utility

**Question Presented:** Before applying for transmission service from (or sending a letter of interest to) a Participating Transmission Owner, is it necessary for the City of San José to first pass an ordinance formally establishing a utility?

**Brief Answer:** No, the City of San José’s Charter confers the City with all of the same powers that a municipal corporation possesses. Those powers already include the right of the City’s legislative body to own, construct, maintain and operate works for the provision of electric services.

**Analysis:**

The City of San José (“City”) currently operates San José Clean Energy, a Community Choice Aggregation utility (a community choice aggregation program) to administer energy it generates or procures through the City’s Community Energy Department. The City is considering whether to formally establish a retail electric utility, in addition to its existing aggregation utility, in order to take transmission service from LS Power and provide retail electric service in San José.

The City’s Charter, Article II, Section 200, states that the City “shall have the power to make and enforce all laws and regulations in respect to municipal affairs, subject only to such restrictions and limitations as may be provided in this Charter and in the Constitution of the State of California.” The Charter further provides that the City “shall also have the power to exercise any rights, powers and privileges heretofore or hereafter established, granted or prescribed by any law of the State, by this Charter or by other lawful authority, or which a municipal corporation might or could exercise under the Constitution and laws of the State of California.” Nothing in the City’s Charter suggests that any additional action or authority is necessary to apply for transmission service from LS Power.

In addition, Article XI, Section 9 of the California Constitution provides that a municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with electricity. Thus, the California Constitution also empowers the City to establish and operate public works to furnish its inhabitants with electricity. That authority would include applying for

Manatt, Phelps & Phillips, LLP

Telephone:

Fax:

transmission service from LS Power, if those transmission services are being used to furnish the inhabitants of the City with electricity. Nothing in the California Constitution suggests that cities are required to pass ordinances or take other formal actions or measures to perform utility functions.

Similarly, Government Code §39732(a) provides that the City's legislative body may "acquire, own, construct, maintain, and operate . . . works for light, power, and heat . . ." This existing authority is distinct from the legislative body's authority to "[g]rant franchises for the construction of public utilities it deems proper . . ." Govt. Code §39732(b).

Therefore, although the City *may* formally establish a public utility before applying for transmission service from LS Power, it is not required to do so. The California Constitution, the City's Charter and the state's government code authorize the City's *legislative body* to own and operate works for light, power and heat. Nowhere under state law is the City required to establish a formal public utility to act or otherwise provide those services.



Teresa Alvarado  
Vice President  
South Bay and Central Coast Regions



October 2, 2023

City of San José  
200 E. Santa Clara St.  
San José, CA 95133

RE: City Council Agenda 10/3/23 Item 6.1 – Ordinance Amending Title 2, 4 and 26 and Adding Title 28 to the San José Municipal Code to Establish a Municipal Utility for Electric Service

Dear Mayor Mahan and San José City Council,

Since this item was initially discussed by Council in August, our team has had the chance to meet with staff and city officials to discuss the weighty proposal that is before you this week.

For over 100 years, PG&E has powered the transformation of San José from an agricultural center to the capital of Silicon Valley. We have invested in a robust transmission and distribution network that has enabled the city and its residents to thrive. As the city continues to evolve and innovate, we will continue to work to be the utility that enables that vision and vibrancy.

Over the past year, we have made significant improvements to our new business connection process, building a faster, easier process to connect new customers. We have existing capacity to serve new load coming into San José today and we are ready to serve the growth that San José envisions in the future. In our recent meetings, we shared our detailed infrastructure investment plans for the near and long term. Our planned distribution investments in Santa Clara County exceed \$1.5B over the next 10 years, which is in addition to operations and maintenance costs, new business improvements, capacity work, and system hardening. We are investing more in San José than any other city in California. We have a robust grid that allows for the resiliency and redundancy that large tech companies require, and we have a skilled and trained workforce that works tirelessly to support this community every day.

We have appreciated staff's willingness to discuss the shared goals of the City and PG&E. Our plans align in many areas and together we have identified a number of topics where we will partner to better support the residents and businesses of San José. We are, however, still struggling to understand why the City is proposing to change the municipal code to create a new electric utility prior to studying the risks of this weighty decision.

If the city does choose to move forward with exploring the creation of a retail electric utility, it is unnecessary to change the municipal code to do so. A thorough study is important for many reasons, including some referenced in our letter below.

A Change to the Municipal Code is Not Needed

The City does not need to adopt the recommended Title 28 to explore the creation of a municipal utility, gather data or apply for a transmission interconnection.

In a meeting between PG&E and City staff in September, staff shared that the city needed to change the municipal code in order to study transmission interconnection with LS Power. This is inaccurate.

The City of San José previously submitted a transmission interconnection application to a transmission operator without a change to the municipal code. This application was submitted to PG&E (as the transmission operator) and was accepted in 2020. While the associated project, Downtown West, is on hold, the application that the City of San José submitted is still active, pending the project's recommencement.

Because the City's opinion is contradictory to current municipalization precedent, we also asked for the opinion of a third party, the Manatt, Phelps & Phillips law firm, who specialize in municipalization efforts. They agreed that there is no legal basis for the City to change its municipal code in order to apply for transmission service to a Participating Transmission Owner. That memo is attached for your reference.

We're working closely with LS Power and they've also confirmed to PG&E that there are no deadlines related to the formation of a municipal utility and the electric reliability projects. According to LS, "the need for and timing of the projects is entirely independent from the City of San José's decision for or against forming a municipal electric department."

### Municipalization Case Studies

Forming a government-run utility is an extremely difficult and complex endeavor that poses significant financial risks to the city and its taxpayers. Examples of government-run utilities that have failed, either in the formation or operational phases, can be found across the nation, including here in Northern California.

In 2002, the City of Hercules made the decision to municipalize the electric assets of Pacific Gas and Electric Company (PG&E) with the goal of increasing revenue. After completing the transition, the city started purchasing power at wholesale prices and assured customers that they would benefit from competitive rates and the profits would contribute to the general fund. However, these plans were based on growth assumptions for Hercules that didn't materialize<sup>i</sup>.

Instead, the operating expenses of the government-run utility far exceeded its revenues, leading to a situation where the city had to continuously subsidize the utility from its general fund. The city also encountered difficulties with its utility investments, including the cancellation of a planned substation that ended up costing customers millions of dollars. This series of setbacks coincided with Standard & Poor's downgrading two of the city's bonds to junk status or near-junk and placing the city on credit watch negative.

Recognizing the escalating costs and operational losses that were resulting in increased rates for the government-run utility customers, a measure to sell the municipal utility was approved by 77 percent of voters in June 2012. As a result, the electric distribution system was eventually sold back to PG&E in 2014. The accumulated losses, both in terms of capital and operating expenses, just through 2011 were estimated to be around \$9 million.

While this is a stark example, it must be noted that even the process of forming a government-run utility carries significant financial risk.

In Boulder, Colorado, the city spent more than \$28.75 million gathering permission and information around a takeover effort that spanned more than a decade. After that process, voters approved a new franchise agreement with Xcel, which halted the municipalization effort, on a 53-46 margin.<sup>ii</sup> In recent years, voters are becoming more aware of the financial risks associated with a government takeover of the electric system and are voicing their opposition.

In 2020 voters in Pueblo, Colorado overwhelmingly voted down a ballot measure to form a new municipal utility, with 77 percent of voters rejecting the idea. Earlier this year, voters in El Paso, Texas took a similar position, with more than 81 percent of voters rejecting a proposed government takeover of El Paso Electric's assets.

We have seen cities and counties attempt to create municipal utilities for decades, taking on financial risk and shifting scarce resources away from basic municipal services, like addressing high cost of living, homelessness or public safety concerns. This is no time to be taking on the massive responsibility and risk of creating a new utility.

PG&E is committed to working closely with you to create an innovative, resilient energy grid in San José that serves the economic development that the City envisions. This commitment is part of our larger mission to build the clean energy future that San José residents and all Californians expect and deserve. We are here to address any concerns you or your constituents have as we work towards this shared vision.

Sincerely,



**Teresa Alvarado, Vice President  
South Bay and Central Coast**

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<sup>i</sup> [Hercules: Sale of municipal utility ends multimillion-dollar fiasco – East Bay Times](#)

<sup>ii</sup> <https://www.cpr.org/2020/11/20/boulder-ends-decade-long-pursuit-of-city-owned-power-utility/>

## FW: Council Agenda 10.3 23 Item 6.1 Updated Support letter - Amending the Muni Code to Establish a Municipal Utility for Electric Service

City Clerk <city.clerk@sanjoseca.gov>

Mon 10/2/2023 3:59 PM

To:Agendadesk Agendadesk@sanjoseca.gov

📎 1 attachments (222 KB)

10 3 23 item 6 1 Community support updated for Title 28 (San Jo é Power) pdf

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**From:** Ruth Merino <[REDACTED]>  
**Sent:** Monday, October 02, 2023 3:56 PM  
**To:** District3 <district3@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; The Office of Mayor Matt Mahan <mayor@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; City Clerk <city.clerk@sanjoseca.gov>  
**Cc:** Webmaster Manager <webmaster.manager@sanjoseca.gov>; Mitchell, Lori <Lori.Mitchell@sanjoseca.gov>; Struyk, Zachary <Zachary.Struyk@sanjoseca.gov>; Linda Hutchins-Knowles <[REDACTED]> Glen Garfunkel <[REDACTED]> Karen Nelson <[REDACTED]> Adam Sweeney <[REDACTED]>  
**Subject:** Council Agenda 10.3 23 Item 6.1 Updated Support letter - Amending the Muni Code to Establish a Municipal Utility for Electric Service

[External Email]

Attached is a public comment letter regarding tomorrow's City Council meeting agenda item 6 1 in support of Amending the Muni Code to Establish a Municipal Utility for Electric Service. This is an updated version of our letter submitted on August 15 Please let us know if you have any questions

Thank you,

Ruth Merino, Chair  
San Jose Community Energy Advocates, a volunteer community group  
[REDACTED]

Adam Sweeney (Co-Chair), Karen Nelson (Executive Team), Glen Garfunkel (Co-Chair), Climate Reality Project: Silicon Valley Chapter [www.climaterealitysiliconvalley.org](http://www.climaterealitysiliconvalley.org)



Linda Hutchins Knowles, Co Founder and Team Coordinator, Mothers Out Front Silicon Valley [www.mothersoutfront.org/team/california/siliconvalley/](http://www.mothersoutfront.org/team/california/siliconvalley/)

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October 2, 2023

To: Honorable Mayor Matt Mahan, Vice Mayor Kamei, and Members of the City Council

Re: 10.3.23 Agenda Item 6.1: **Support:** Ordinance Amending Titles 2, 4, and 26 & Adding Title 28 to the San José Municipal Code to Establish a Municipal Utility for Electric Service – Updated Comments

Dear Mayor Mahan, Vice Mayor Kamei, and Members of the City Council:

On behalf of San José Community Energy Advocates, Climate Reality Project: Silicon Valley Chapter, and Mothers Out Front Silicon Valley, we urge you to **support the ordinance amending Titles 2, 4 and 26 and adding Title 28 to the San Jose Municipal Code**. Title 28 will allow for the formation of a City-owned utility called San José Power, to provide electric service for selected new loads in the City. Our volunteer community groups represent thousands of San José residents that support renewable energy, climate action and climate resiliency including the City of San Jose’s community choice energy program, San José Clean Energy (SJCE).

This item was originally scheduled to be considered on August 15, 2023. Given issues raised during the deferral discussion, SJCE has met with PG&E and the International Brotherhood of Electrical Works (IBEW). Those meetings are described in the SJCE supplemental memorandum dated 9.28.2023.

We submitted a previous letter to you on August 15, 2023 and it is shown below these additional comments. Given that the item was deferred until October 3, 2023, we offer these additional comments, because our prior letter was submitted before the comment letter from PG&E was posted on the agenda webpage in August.

- PG&E claims that a new city-run utility would likely have to raise rates in order to administer financial assistance programs. However, SJCE currently administers a variety of financial assistance programs to help its low-income customers, including CARE and FERA —the same programs that PG&E administers that are funded through the State of California. SJCE administers these programs and yet is able to offer rates to all customers that are lower than PG&E’s rates. Clearly, there is no reason why San José Power won’t be able to do the same thing.
- PG&E claims that City government has little to no experience running an energy company. In reality, SJCE management and staff is extremely experienced. As a key example, SJCE Director Lori Mitchell has spent her entire 25-year career in the energy and utility industries. Her exceptional leadership during the past six years in San Jose has successfully guided SJCE to provide 60% renewable energy to the City of San Jose, while keeping rates lower than PG&E. She is currently the President of the California [Community Choice Association \(CalCCA\)](#) Board of Directors and Vice Chair of [California Community Power](#).
- PG&E states that this project is not a top priority for voters. However, the new transmission lines serve as “freeways” to bring energy from sources like solar from the Central Valley to the load

centers in San José. Our thousands of supporters have demonstrated their concern for access to reliable clean energy and commitment to investment in renewable energy in many ways. In addition, SJCE enjoys a very high SJCE customer participation rate, demonstrating widespread community support.

- One additional point: It's important to keep in mind that a municipal utility does not take a profit, nor does it pay its executive management exorbitant salaries and compensation, such as stock, paid for by the ratepayers. In contrast, PG&E paid its CEO in 2021 over \$50 million in direct compensation, including \$41 million in stock and an almost \$7 million bonus.<sup>1</sup>

Refuting PG&E's claims is backed by clear evidence and demonstrates that amending the City Ordinance has an overwhelming value to our clean energy and emission reduction goals.

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**Below are our prior comments from August 15, 2023.**

We appreciate San Jose Clean Energy's highly credentialed and very experienced staff who have thoroughly developed and analyzed their recommendations in coordination with other City departments. The proposal has been in development for a couple years, and has received extensive review, including analysis of all other municipal utilities in the state. Title 28 will allow San José to submit an Interconnection Application(s) to LS Power (which is a Participating Transmission Owner), for access to the California Independent System Operator's wholesale electric transmission grid. However, it does not commit the City to serve any load at this time. That will require further analysis, public review and Council action.

Making these amendments to the Municipal Code at this time is important to ensure sufficient capacity to meet the electricity needs of San José businesses and residents. PG&E currently has a significant backlog for interconnection of new loads to the electric grid, slowing the time it takes to complete new construction and exacerbating our housing crisis. Fortunately, the new LS Power transmission lines **will significantly increase the electrical capacity of the region**. By forming a municipal utility, and thus gaining access to the new transmission lines, San Jose can ensure support and timely interconnection for critical city development projects, including housing, the Regional Waste Water Facility and San Jose International Airport improvement projects, among others. The municipal utility formation is required to enable larger microgrids, with improved resilience and likely reduced emissions, for these new developments.

A microgrid utilizes internal energy generation and storage, and thus can maintain service to critical loads within the microgrid during a regional grid outage. Advanced microgrids in new developments and City facilities could accommodate more onsite clean distributed energy resources and yield lower GHG emissions than would be possible under the PG&E standard, while also improving reliability and resiliency for San Jose businesses and residents in the new developments.

Using San José Power to provide electrical service in new developments will also be cheaper as it will not provide returns to shareholders and will be tax-exempt. This would result in **decreasing customer rates by 15-25% and would be an important factor in retaining and attracting businesses in many fields**.

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<sup>1</sup> [PG&E's top boss harvests total exec pay that tops \\$50 million \(mercurynews.com\)](https://www.mercurynews.com/2021/12/01/pg-e-ceo-pay/)

**In conclusion, please support this ordinance to give San José more options to ensure timely interconnection to the new transmission lines and cheaper and more reliable power (with advanced microgrids) to attract and retain businesses, as well as to facilitate the City of San Jose’s renewable energy, climate, and resiliency goals.**

Sincerely,

Ruth Merino, Chair, San Jose Community Energy Advocates, a volunteer community group

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Adam Sweeney (Co-Chair), Karen Nelson (Executive Team), Glen Garfunkel (Co-Chair), Climate Reality Project: Silicon Valley Chapter [www.climaterealitysiliconvalley.org](http://www.climaterealitysiliconvalley.org)

Linda Hutchins-Knowles, Co-Founder and Team Coordinator, Mothers Out Front Silicon Valley [www.mothersoutfront.org/team/california/siliconvalley/](http://www.mothersoutfront.org/team/california/siliconvalley/)

cc Jennifer Maguire

Lori Mitchell

**FW: Public Comment - Jordan Moldow 95112 - 10/3/2023 Council Item 6.1 File 23-1326 "Ordinance Amending Titles 2, 4, and 26 and Adding Title 28 to the San José Municipal Code to Establish a Municipal Utility for Electric Service."**

City Clerk <city.clerk@sanjoseca.gov>

Tue 10/3/2023 10:03 AM

To:Agendadesk <Agendadesk@sanjoseca.gov>

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**From:** Jordan Moldow <[REDACTED]>

**Sent:** Tuesday, October 03, 2023 9:59 AM

**To:** City Clerk <city.clerk@sanjoseca.gov>; Garaffo, Erica <Erica.Garaffo@sanjoseca.gov>; city.manager@sanjoseca.gov; Harkness, Kip <Kip.Harkness@sanjoseca.gov>

**Cc:** District3 <district3@sanjoseca.gov>; The Office of Mayor Matt Mahan <mayor@sanjoseca.gov>

**Subject:** Public Comment - Jordan Moldow 95112 - 10/3/2023 Council Item 6.1 File 23-1326 "Ordinance Amending Titles 2, 4, and 26 and Adding Title 28 to the San José Municipal Code to Establish a Municipal Utility for Electric Service."

[External Email]

Public Comment from Jordan Moldow (95112; District 3) regarding Environmental & Utility Services Item 6.1 File 23-1326 "Ordinance Amending Titles 2, 4, and 26 and Adding Title 28 to the San José Municipal Code to Establish a Municipal Utility for Electric Service." - City Council 10/3/2023:

I am Neutral on this ordinance change. However, in reading the staff memorandum and the public comments from IBEW, I do find the Opposition to be much more convincing than the Supporters. The Opposition presents many detailed arguments backed by numeric data and facts, whereas the Support arguments, while still fact-based, are much less numeric, more flimsy, and rely on hand-waving and best-case scenario assumptions.

I would be Supportive of a municipal electric service utility, only if it can be shown, with extremely high confidence, that it would be successful, and that the city realistically has the resources to tackle it. So far this hasn't been demonstrated.

The argument from staff seems to be that the creation of Title 28 is needed in order to make any more progress on this work. This argument hasn't been sufficiently explained. I hope that, during the Council Meeting, this point will be explained. What are the immediate next steps of this exploratory project, and why is Title 28 needed to take these steps? e.g. why do we need to define "Rates and Charges" right now?

Additionally, I'm concerned that the creation of an "Energy Department", and a Director of that department, will create perverse incentives for that Department, for them to push for the creation of the electric service utility, even if it turns out to not be in the city's best interests. Can this work be performed without creating such an incentive? Also to reduce incentives to spend endless time on this: can the Title change come with an automatic sunset clause? So that if, six years from now, we still don't have a utility, Title 28 gets automatically expired?

If this Title change is approved, I hope that Staff can be directed to study how other municipalities (if any) have successfully (or unsuccessfully) switched from PG&E to their own power utilities, ideally as close to present-day as possible.

Thank you,  
Jordan Moldow  
District 3  
95112