



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Amendments to Pacific Gas and
Electric Company (PG&E)
Franchise Fee Ordinances

DATE: January 28, 2010

RECOMMENDATION

It is recommended that the City Council:

- (a) Approve an ordinance amending the franchise with PG&E for the sale of gas within the City (Ordinance No. 15879 as amended by Ordinance Nos. 21676 and 26913) to add a franchise fee surcharge of 0.3% resulting in a total franchise fee remitted to the City of 2.3% of gross receipts and to provide for the waiver of certain negotiation and arbitration rights under the franchise.
- (b) Approve an ordinance amending the franchise with PG&E for the sale of electricity within the City (Ordinance No. 15880 as amended by Ordinance Nos. 21677 and 26914) to add a franchise fee surcharge of 0.3% resulting in a total franchise fee remitted to the City of 2.3% of gross receipts and to provide for the waiver of certain negotiation and arbitration rights under the franchise.

OUTCOME

Approval of the proposed amending ordinances will add a franchise fee surcharge of three tenths of one percent (0.3%) to the existing franchise fee rate of 2.0%, resulting in a total franchise fee paid to the City of 2.3% of PG&E's gross receipts from the sale of gas and electricity in the City of San José through 2021.

BACKGROUND

On September 20, 1971, the City Council approved ordinances granting PG&E franchises for the use and construction of electricity and gas transmission and distribution infrastructure on city-owned property. PG&E, as consideration and compensation for receiving the franchises, paid an amount equal to one percent of PG&E's gross receipts during each calendar year covered by the original franchises (the franchise fee). Since their approval in 1971, the electricity and gas franchise

ordinances have been amended in 1984 to increase the franchise fee to 2% of gross receipts, and in 2003 to allow PG&E, in the event of an overpayment, to deduct from the next year's quarterly payments the overpayment in equal amounts, without interest.

In 2005, a dispute arose between the City and PG&E regarding the interpretation of the *Municipal Public Lands Use Surcharge Act (codified in California Public Utilities Code Section 6350 et seq)*. The City believes that PG&E should be remitting the municipal surcharges to the City at the rate set forth in the franchise ordinances for gas and electricity sold by PG&E, which is 2%. PG&E disagrees with the City's interpretation and remits municipal surcharges to the City at a rate less than 2%. The parties agreed to mediate their dispute in December 2009.

Following the mediation, and in exchange for the City dismissing its case against PG&E, PG&E agreed to pay six million dollars (\$6,000,000.00) for past due municipal surcharges for the period from 2002-2009, apportioned 75% to the General Fund, 25% to a clean energy fund, to give the City a credit for approximately \$1.1 million that the City owes to PG&E for electricity used for the operation of street lights, and to increase the franchise fee rate from 2.0% to 2.3% of PG&E's gross receipts from the sale of gas and electricity in the City of San José through 2021. The 0.3% rate increase is subject to approval by the California Public Utilities Commission ("CPUC").

ANALYSIS

Pursuant to the current franchise ordinances, PG&E pays to the City 2% of its gross receipts from the sale of gas and electricity in the City. Franchise fee payments for both electricity and gas are paid on a calendar year quarterly basis and are based on total gross receipts from the previous calendar year. Pursuant to the franchise ordinances, PG&E pays the City an estimated franchise fee by submitting one quarter of the previous year's total franchise fee payments on June 1, September 1, and December 1. PG&E is required to file with the City, by April 1 of the following year, a duly verified statement showing in detail the actual annual gross receipts and franchise fees due for sales of electricity and gas during the previous year. By April 15, PG&E is required to remit the remaining portion of franchise fees due for the previous year (referred to as the "true up payment"). However, once PG&E's cumulative quarterly payments as defined in the current franchise ordinances equal \$3.4 million, PG&E may make annual payments on April 15 instead of quarterly payments.

The proposed amending ordinances increase the franchise fee rate from 2.0% to 2.3% of PG&E's gross receipts from the sale of gas and electricity in the City of San Jose through 2021, subject to approval by the CPUC in accordance with the CPUC's guidelines on franchise fee surcharges. Within 10 days of the effective date of these amending ordinances, PG&E has agreed to file an Advice Letter with the CPUC seeking approval of the 0.3% rate increase.

In addition, PG&E has agreed to continue to make quarterly payments to the City through December 31, 2021 even though the language in the current franchise ordinances allows PG&E to make annual payments to the City as described above. Upon written notice by PG&E, PG&E may commence making annual payments to the City after December 31, 2021.

Finally, City and PG&E each expressly waives its right to renegotiate the amount or kind of consideration or compensation to be paid City through 2021.

The amending ordinances are subject to acceptance by PG&E and PG&E will be under no obligation to pay at the increased rate of 2.3% unless and until the rate increase of 0.3% is approved by the CPUC.

PUBLIC OUTREACH/INTEREST

This memorandum and the draft amending ordinances have been posted on the City's website for the February 9, 2010 agenda.

COORDINATION

This item has been coordinated with the City Manager's Office and the Finance Department.

CEQA

Not a Project.

RICHARD DOYLE
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cc: Debra Figone, City Manager
Scott P. Johnson, Director of Finance

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