RD:KMM:ERD
1/20/2010

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ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING ORDINANCE NO. 15879 AS AMENDED BY ORDINANCE NO. 21676 AND ORDINANCE NO. 26913 WHICH GRANTED A FRANCHISE FOR THE TRANSMISSION AND DISTRIBUTION OF GAS WITHIN THE CITY OF SAN JOSE TO PACIFIC GAS AND ELECTRIC COMPANY 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

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Ordinance No. 15879, as amended by Ordinance No. 21676 and Ordinance No. 26913, is amended to add a new Section 4.1, to be numbered and entitled and to read as follows:

SECTION 4.1 Franchise Fee Surcharge.

(a) In addition to the annual compensation specified above in Section 4, and subject to the provisions set forth in Section 4(a)-(c), Grantee shall remit to the City during the term an additional sum of money equal to three tenths of one percent (0.3%) of the annual gross receipts of Grantee (the "Franchise Fee Surcharge") in consideration thereof and as compensation for the use of the streets of the City as herein authorized and permitted. Grantee shall remit to the City the Franchise Fee Surcharge, in lawful money of the United States, in the manner and on the conditions hereinafter set forth in Section 5, for each of the calendar years (or fractional calendar years) following the effective date of this Ordinance.

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(b) Prior to Grantee's remittance to City of the Franchise Fee Surcharge, Grantee shall receive approval from the California Public Utilities Commission ("Commission") to collect the Franchise Fee Surcharge in accordance with Commission Decision 89-05-063, *Guidelines for the Equitable Treatment of Revenue Producing Mechanisms Imposed by Local Government Entities on Public Utilities*, 32 CPUC 2d 60, May 26, 1989.

SECTION 2. Section 5 of Ordinance No. 15879, as amended by Ordinance No. 21676 and Ordinance No. 26913, is amended to read as follows:

SECTION 5. Reports, Dates of Payment.

(a) On each Quarterly Payment Date, Grantee shall pay to the City an amount equal to the Quarterly Payment Amount. Grantee shall make Quarterly Payments on each Quarterly Payment Date until such time as ~~the Cumulative Value equals~~ specified in Section 5(f), notwithstanding anything to the contrary specified above in Section 1(j) that Grantee shall not be required to make a quarterly payment, or may pay a lesser Quarterly Payment Amount, if payment of the full Quarterly Payment Amount would result in a Cumulative Value equivalent exceeding Three Million Four Hundred Thousand Dollars ($3,400,000).

(b) Within three (3) months from and after the expiration of each calendar year, or fractional calendar year, following the effective date of this Ordinance, Grantee shall file with the City Clerk of the City the original, and with the Director of Finance of City a copy, and with the City Auditor of City another copy, of a duly verified statement showing in detail the gross receipts of Grantee ~~and, if Quarterly Payments are required to be made pursuant to the provisions herein~~

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~~contained, the Cumulative Value of said Quarterly Payments, during the preceding calendar year or fractional calendar year~~, and such other data or information as City may need to calculate or determine the amounts which Grantee is obligated to pay City pursuant to the provisions of Section 4. Said statement shall be in such form and details as from time to time may be reasonably prescribed by City.

(c) Within fifteen (15) days from and after the time for filing such statement, Grantee shall pay to City, at the office of City's Director of Finance, in lawful money of the United States, the sum of money hereinabove required to be paid by Grantee to City for the calendar year, or fractional calendar year, covered by the statement, minus the sum of the Quarterly Payment Amounts ~~if any are required to be made pursuant to the provisions herein contained,~~ paid during the year. In the event the total Quarterly Payment Amounts exceed the total annual payment due to City, upon the prior written acknowledgement by the Director of Finance that an overpayment appears to have occurred, Grantee shall deduct from each of the next year's Quarterly Payment Amounts the overpayment in equal amounts, without interest. The acknowledgement by the Director of Finance of an overpayment does not in any way limit City's rights to seek payment in full from Grantee in the event City determines there was an underpayment of the annual payment due to City.

(d) Any neglect, omission or refusal by Grantee to file such verified statement, or to pay said percentage at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and of all rights and privileges of Grantee hereunder.

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(e) In the event Grantee fails to make the payments for this franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration both of the following amounts:

(i) A sum of money equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment, including, but not limited to, the cost of administering, accounting and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving revenue.

(ii) A sum of money equal to one percent (1%) of the amount due per month as interest and for loss of use of the money due.

(f) ~~At such time as the Cumulative Value of said Quarterly Payment equals the sum of Three Million Four Hundred Thousand Dollars ($3,400,000) as specified in subsection (a) hereinabove,~~ Grantee shall no longer be required to make Quarterly Payments if Grantee provides City with at least six (6) months' advance written notice of its intent to make annual payments instead as set forth below. The parties agree that such notice shall not be provided earlier than June 30, 2021. At said time, Grantee shall be required to pay City the sum of money required to be paid as consideration for the rights, privileges, and franchise granted herein on or before the fifteenth (15^{th}) day from and after the time for filing of the duly verified statement showing in detail the gross receipts of Grantee during the prior calendar year or fractional calendar year in accordance with the procedures of this Section 5(b-e).

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SECTION 3. If the Franchise Fee Surcharge is approved by the Commission, Grantee shall implement collection of the Franchise Fee Surcharge as soon as reasonably possible thereafter, but not later than 120 days following the Commission's approval. Grantee shall remit to the City the first Franchise Fee Surcharge payment on the first Quarterly Payment Date following the initial collection of the Franchise Fee Surcharge.

SECTION 4. The City and Grantee each expressly waives its rights under Section 4c of the franchise to provide the other with notice of its intent to change the amount or kind of consideration or compensation to be paid City or measure or formula to which the consideration and compensation is determined (for the franchise fee which is two percent (2%) of gross receipts and the Franchise Fee Surcharge which is three tenths of one percent (0.3%) of gross receipts) at any time before the last six (6) calendar months following calendar year 2021.

SECTION 5. This Ordinance amending Ordinance No. 15879, as amended by Ordinance No. 21676 and Ordinance No. 26913, is conditioned upon the filing by Grantee with the City Clerk of a written acceptance of this amendment to the franchise granted by Ordinance No. 15879, as amended by Ordinance No. 21676 and Ordinance No. 26913, which said written acceptance shall be so filed no later than ten (10) days of the adoption date of this amending Ordinance. If Grantee shall fail to so file its written acceptance with the City Clerk as specified in the preceding sentence, this amendment shall be deemed revoked and of no force and effect.

SECTION 6. All other terms, conditions, and provisions of Ordinance No. 15879, as amended by Ordinance No. 21676 and Ordinance No. 26913, not amended herein shall remain in full force and effect.

PASSED FOR PUBLICATION of title this _____ day of _____, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

_____
CHUCK REED
Mayor

ATTEST:

_____
LEE PRICE, MMC
City Clerk

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ACCEPTANCE

AMENDMENT TO ORDINANCE NO. 15879, AS AMENDED BY ORDINANCE NO. 21676 and ORDINANCE NO. 26913

Pacific Gas and Electric Company hereby accepts and agrees to the Amendment to Ordinance No. 15879, as amended by Ordinance No. 21676 and Ordinance No. 26913, as contained in Ordinance No. _____, and agrees to abide by and to be bound by all of its terms, conditions and provisions.

PACIFIC GAS AND ELECTRIC COMPANY

Dated: _____

By_____
Name:
Title:
Address:

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