



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: September 10, 2013

TO: Mayor and Councilmembers

FROM: City Administrator's Office

SUBJECT: Intent to Award Gas Franchise to SoCalGas

RECOMMENDATION:

That Council adopt, by reading of title only, A Resolution of the Council of the City of Santa Barbara Declaring its Intent to Grant a 30-year Franchise, with an Option to Extend for 10 Additional Years, to Southern California Gas Company and to Set the Time and Place for a Public Hearing Pursuant to Article XIV of the City Charter.

DISCUSSION:

On October 11, 1983, the City Council granted Southern California Gas Company ("SoCalGas") a non-exclusive franchise to install, use, maintain, repair and replace pipes and appurtenances for the purposes of transmitting and distributing gas within the City. The term of the franchise was for a period of 30 years. The franchise is scheduled to expire in October 2013. SoCalGas approached the City to renew its franchise and City staff has been meeting with SoCalGas in negotiations for the last several months.

Franchise Fee

The current franchise provides for payments to the City by SoCalGas for the use of City rights of way to provide gas service as provided by the City Charter. These payments are for SoCalGas's use of the public right of way within the City, which typically involves placing pipes in or along City streets and roadways. The 1983 franchise contained what is called a "most favored nations" provision, i.e., a contract term which allowed the City to require SoCalGas to pay to the City an increased franchise fee equivalent to the fee paid by SoCalGas for any other franchise agreement with a California public agency which SoCalGas may enter into during the term of its Santa Barbara franchise.

When the 1983 franchise was first negotiated, the franchise fee was initially set at the state statutory maximum applicable to general law cities of the greater of two percent (2%) of gross annual SoCalGas receipts derived from the use, operation or possession of the franchise, or a minimum of one percent (1%) of gross annual receipts from the

sale, transmission, or distribution of gas within the limits of the municipality (otherwise known as the "2%/1%" formula). In 1997, the City followed the lead of other charter cities (specifically, the city of Pasadena) and invoked the "most favored nation" provision of the 1983 franchise to increase the SoCalGas franchise fee to the "2%/2%" formula.

With the proposed new franchise, staff is proposing to continue the current "2%/2%" franchise fee formula. SoCalGas has not negotiated higher franchise fees with any other charter city in decades. However, under the terms of the proposed new franchise, if SoCalGas agrees to a franchise with a higher franchise fee formula with some other charter city or other municipality in the future, Santa Barbara would have the option to re-negotiate our franchise in a way that could require SoCalGas to also pay Santa Barbara the higher franchise fee. In this event, if SoCalGas sought to itemize that additional fee separately on the bills for the triggering agency, SoCalGas could also obtain approval from the California Public Utilities Commission (as required by state law) to itemize a portion of the City fees separately on the bills that they send out to their Santa Barbara customers in a manner similar to the triggering agency.

Term

The term of the agreement will initially be for 30 years, with an option for extension to 40 years. SoCalGas will have the opportunity to request the additional ten years under the franchise on the same terms and conditions, subject to the Council's ability to deny that extension at its sole discretion. Given that the most favored nation clause, above, should ensure that the City's franchise fee remains as high as any in SoCalGas's service area, such an extension is likely to be beneficial to both parties, provided that other terms and conditions of the franchise remain agreeable.

In Lieu Fee

In addition to the franchise fee, SoCalGas pays the City an "in lieu" fee. The Municipal Public Lands Act established this surcharge to be applied to natural gas (and electricity) transported within a municipality, to replace franchise fees that would have been collected pursuant to the franchise if not for changes in the regulatory environment, such as the "unbundling" of the gas industry. This fee was not specifically identified in the prior franchise agreement, but has been delineated in the new franchise.

Other Terms

As part of the renewal, the language and terms of the franchise were modernized to reflect current practices and requirements of utility franchisees and achieve the best utility franchise terms available. For example, modern provisions addressing the indemnification of the City were added in consultation with the City Attorney's Office and insurance requirements were added under the guidance of Risk Management. The franchise fee payment schedule and method were also altered at the request of the

Finance Department to make budget projections and reconciliation more manageable. The current system provides for payments based on the prior year's actual, with a true up afterward, but the new requirements will be for quarterly payments based on actual. The franchise provides for the City's right to audit and inspect property and records. The City plans to conduct a gas franchise fee and Utility Users Tax audit concurrent with the Cable franchise audit planned for this fall.

Pursuant to the City Charter, before granting any franchise, the City Council must adopt a resolution declaring its intention to grant the same, stating the name of the proposed grantee, describing the character of the franchise and summarizing the terms and conditions upon which it is proposed to be granted. The resolution of intention must fix a public hearing during which anyone having any interest in or objection to the proposed franchise may appear before the City Council. The hearing must occur not less than twenty (20) nor more than sixty (60) days after the passage of the resolution. The Charter also calls for the City Council to direct the City Clerk to publish the resolution at least once, within fifteen (15) days of adoption, in an official newspaper.

The public hearing will be held on Tuesday, October 1, 2013 at 2:00 p.m. in the City Council chambers of the Santa Barbara City Hall. At the hearing the City Council will hear and pass upon all protests and make a final decision. Thereafter it may adopt an ordinance approving the franchise by a super- majority approval on the terms and conditions specified in the resolution of intention, subject to the right of referendum of the people, or it may deny the same. If the City Council determines that changes should be made in the terms and conditions upon which the franchise is proposed to be granted, a new resolution of intention will need to be adopted and the process re-initiated.

BUDGET/FINANCIAL INFORMATION:

Under the franchise, the City will continue to receive a franchise fee from SoCalGas under the 2%/2% formula. This estimated amount of \$456,800 is already included in the FY 2014 adopted budget.

PREPARED BY: Kristine Schmidt, Employee Relations Manager

SUBMITTED BY: Marcelo López, Assistant City Administrator

APPROVED BY: City Administrator's Office



Gas Franchise Agreement

With Southern California Gas Company

September 10, 2013



Gas Franchise

- ◆ Current 30-year franchise with Southern California Gas Company (SoCalGas)
- ◆ Allows SoCalGas to place pipes & maintain and appurtenances in City right of way
- ◆ Expires October 2013



Regulation of Franchise

- ◆ City's franchise granted under City Charter Article XIV
- ◆ SoCalGas is also heavily regulated by the California Public Utilities Commission (CPUC)
 - Rates, safety, transmission and distribution pipeline systems, storage, procurement, metering and billing
 - Safety also regulated by the federal Pipeline and Hazardous Material Safety Administration



Negotiation of Franchise

- ◆ City team from CAO, City Attorney, Finance, and Public Works
- ◆ Met regularly with SoCalGas team over a period of 7 months
- ◆ Modern franchise agreement terms



Franchise Terms

- ◆ Scope and Term: 30-years
- ◆ Definitions
- ◆ Duties of SoCalGas
- ◆ Fees & payment of fees
- ◆ Insurance
- ◆ Indemnification
- ◆ Right to audit and inspect
- ◆ Transfer of franchise



Franchise Terms (cont.)

- ◆ Collection of Utility Users Tax
- ◆ Location and installation of property (pipes, etc.)
 - Submitting plans and getting permits
 - Manner and quality of road work
 - Cooperation to relocate pipes as necessary for City street improvements
 - Limits on road work during Fiesta
 - Removal or abandonment of pipes



Fees

- ◆ Franchise fee is greater of two percent (2%) of gross receipts from:
 - The use, operation or possession of the franchise, or
 - The sale, transmission, or distribution of gas within City limits
- ◆ Same as current
 - Increased from 2%/1% in 2007
 - Highest in SoCalGas service area
 - Includes “most favored nations” clause
- ◆ City also receives “In lieu Fee”



Fees

- ◆ Estimated fee revenue amount of \$456,800 is already included in the FY 2014 General Fund adopted budget.
- ◆ Quarterly payment will be made based on prior quarter receipts



Minor Change to Resolution

- ◆ Adjustment to Resolution Exhibit to reflect that the final true-up of October-December quarterly franchise payment will be due March 31 instead of February 25 each year
- ◆ Add the following language to Exhibit Section 11(C) : “, except for the final quarterly true-up payment for the year, which shall be paid on or prior to March 31st.”

Franchise Adoption Process

Step	Timing	Date
Council Resolution of Intention to Award/ Notice of Hearing	With franchise terms <u>Motion should include approval of adjustment to true-up date in Section 11(C)</u>	September 10, 2013
Publish Resolution in Paper	Within 15 days of adoption of Resolution of Intent to Award	September 11, 2013
Council Hearing & Introduction of Ordinance	At least 20, but no more than 60 days following Resolution of Intent to award	October 1, 2013
Adoption of Ordinance	7 Days following introduction of Ordinance [5 votes]	October 8, 2013
Earliest Effective Date of Franchise	Date Grantee files a written acceptance of this franchise with the City Clerk of City	October 8, 2013

If Council requests changes to franchise terms, new Resolution of Intent, etc.



Other issues not in Franchise

- ◆ SoCalGas granted permission from the CPUC to install Advanced Metering Infrastructure (AMI) in CA.
- ◆ Related future topics of discussion
 - Placement and installation of data receiver poles in rights of way
 - Possible installation of poles on City property
 - Possible transmission of City water meter data via SoCalGas infrastructure