

***Amended to Modify: Recommendation #1
and last sentence in First paragraph
under Discussion (Background)**

**BPW - 2020 - 0664
AS AMENDED***

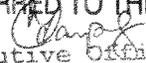
Department of Public Works
Board of Public Works,
Office of Petroleum and Natural Gas Administration & Safety
Report No. 1

ADOPTED BY THE BOARD
PUBLIC WORKS OF THE CITY
of Los Angeles California

OCT 23 2020

October 23, 2020
CD: All

AND REFERRED TO THE CITY COUNCIL


Executive Officer
Board of Public Works

**REQUEST FOR A 12 MONTH TERM EXTENSION TO THE SOUTHERN CALIFORNIA GAS
COMPANY FRANCHISE ORDINANCE (COUNCIL FILE NO. 12-1880-S8)**

RECOMMENDATIONS

Recommending the Board:

1. APPROVE a 12-month extension of the Southern California Gas Company Natural Gas Franchise Ordinance from December 31, 2020 to December 31, 2021 or sooner, subject to City Council approval; and
2. REQUEST City Council to ADOPT the proposed Ordinance prepared and presented by the Office of the City Attorney to extend the term of the Southern California Gas Company Natural Gas Franchise Ordinance Nos. 168164 * **and 186137** from December 31, 2020 to December 31, 2021 or sooner.

TRANSMITTALS

1. Draft Ordinance and Report from the Office of the City Attorney via CF 12-1880-S8.

DISCUSSION

Background

In 1992, the City of Los Angeles adopted Ordinance No. 168164 to grant the Southern California Gas Company a 20-year franchise authority to install, construct, replace, reconstruct, repair and retain its natural gas system in streets located in the City of Los Angeles, including the maintenance and operations of said gas system among other authorities. Between 2012 and 2019, the City of Los Angeles has agreed to extend said franchise authority through various amending Ordinances until such time as a new franchise Ordinance (agreement) would take effect. As adopted via Ordinance No. 185271, the current franchise Ordinance (agreement) * term ~~is~~ **was** set to expire on June 30, 2019 **and subsequently extended to December 31, 2020 per Ordinance No. 186137.**

Since 2014, many legal pleadings have been filed with the court system on the matter of Jacks (Rolland) et al. v. City of Santa Barbara. More specifically, in February 2015, a judgement to reverse and remand was ordered by the Court of Appeal, which directed the trial court to grant the appellant's motion for summary adjudication¹. The matter was then referred to the Supreme Court of California and subsequently, on April 4, 2017, oral arguments were heard. According to the Supreme Court calendar session bulletin, the

¹ See Certified Publication in the Court of Appeal of the State of California, Second Appellant District, 2d Civil No. B253474 (Super. Ct. No. 1383959) Santa Barbara County.

Supreme Court limited its review to the following issue: *“Is the City of Santa Barbara’s 1 percent increase on its electricity bill a tax subject to Proposition 218’s voter approval requirement or a franchise fee that may be imposed by the City without voter consent?”*

On June 29, 2017, the California Supreme Court decided the matter of *Jacks et al. v. City of Santa Barbara*, the outcome of which has significant impacts on the terms to be negotiated in a new franchise agreement with Southern California Gas Company. The ruling requires an expert determination of the value of the franchise agreement, which significantly changed the nature of the ongoing negotiations and provided necessary guidance by setting forth a two-part test. The ruling requires parties to negotiate in good faith negotiation, and specifies that the franchise fee must be “reasonably related to the value of the franchise and cannot “exceed any reasonable value of the franchise.” Based on the second part of the legal test, the Office of Petroleum and Natural Gas Administration and Safety (OPNGAS), in collaboration with the City Attorney, CLA, CAO and various other city departments, determined the criteria and need for a third party financial valuation study of the franchise agreement to capture the reasonable value of the franchise. Based on these discussions and input, OPNGAS drafted a proposed scope of work. Additionally, the funds appropriated for the study were placed in the unappropriated balance (UB) budgetary category, which were not available to be transferred to the department until the second half of FY 18-19.

Value of Franchise Process

On March 11, 2019, OPNGAS posted the Request for Proposals (RFP) soliciting companies to perform a valuation analysis for the Southern California Gas Utility Franchise Agreement Valuation Study on LABAVN. OPNGAS expected the contract to be awarded by late May 2019, however only one proposal was received. The proposal evaluation team consisted of three members, two from OPNGAS and one from the CLA’s office. The proposal evaluation team reviewed the proposal and deemed it non-responsive.

In January 2020 a new approach was suggested by the Mayor’s Office: to use the Bureau of Engineering’s (BOE) pre-approved bidder list for the work. There were delays due to Covid-19 and staff turnover, but an RFP was released by BOE on May 13, 2020 and a Pre-bid meeting was held on May 18, 2020 at 10 a.m. One bidder attended, but later declined to bid due to concerns about conflicts of interest. No bids were received on May 29, 2020, the bid close date. On July 1, 2020, the funds set aside (\$250,000) were swept.

In July 2020 BPW worked with the CAO’s office on a new bid using their Economic Development pre-approved consultants. The RFB went out in August 2020 and bids were due back in September. One bid was received and is currently being evaluated.

OPNGAS anticipates the evaluation and determination the value of the SCG franchise will take an additional three (3) to six (6) months or tentatively April –June 2021. After which, a final negotiation period with SCG of three (3) to six (6) months is anticipated ending approximately September 2021 or sooner. The additional 3 months is required to allow for

unforeseen delays in report completion, negotiation, calendaring, and approval of the final ordinance. In total, up to an additional 12 months is anticipated until a new franchise Ordinance (agreement) may be complete. Therefore, it is necessary to extend the term of the current franchise set forth in Ordinance No. 186137 beyond the December 31, 2020, expiration date previously adopted to ensure that Southern California Gas Company continues to operate in the City under the terms set forth in Ordinance No. 168164.

FISCAL IMPACT STATEMENT

The proposed 12-month extension to the Ordinance No. 168164 will extend the term end date from December 31, 2020 to December 31, 2021 or sooner. Franchise fees will continue to be billed and collected at the current franchise rate. No negative fiscal impact is anticipated.

FC/EB

Respectfully Submitted by:



DR. FERNANDO CAMPOS
Executive Officer
Respectfully Submitted by:



ERICA BLYTHER
Acting Petroleum Administrator

For questions regarding this report, please contact:
Erica Blyther (213) 978-2679
Via e-mail at Erica.Blyther@lacity.org