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April 17, 2019

BPW-2018-0295

City Council
Room No. 395
City Hall

FRANCHISE AGREEMENT 18-MONTH TERM EXTENSION - SOUTHERN CALIFORNIA GAS COMPANY FRANCHISE ORDINANCE (COUNCIL FILE NO. 12-1800-S8)

As recommended in the accompanying report of the Director of the Office of Petroleum and Natural Gas Administration & Safety, which this Board has adopted, the Board of Public Works recommends that City Council:

1. Approve an 18-month extension of the Southern California gas Company Natural gas Franchise Ordinance from June 30, 2019 to December 31, 2020, subject to City Council approval; and
2. Request the Office of the City Attorney to transmit the proposed Ordinance prepare and presented by the Office of the City Attorney to extend the term of the Southern California Gas Company Natural Gas Franchise Ordinance No. 168164 from June 30, 2019 to December 31, 2020.

There is no impact to the General Fund.

Sincerely,

DR. FERNANDO CAMPOS,
Executive Officer, Board of Public Works


FC:CH



APR 17 2019

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

April 17, 2019
CD: All


Executive Officer
Board of Public Works

REQUEST FOR AN 18 MONTH TERM EXTENSION TO THE SOUTHERN CALIFORNIA GAS COMPANY FRANCHISE ORDINANCE (COUNCIL FILE NO. 12-1880-S8)

RECOMMENDATIONS

Recommending the Board:

1. APPROVE an 18-month extension of the Southern California Gas Company Natural Gas Franchise Ordinance from June 30, 2019 to December 31, ~~2019~~ * 2020 * , subject to City Council approval; and
2. REQUEST ~~City Council to ADOPT~~ * the Office of the City Attorney to transmit * 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 No. 168164 from June 30, 2019 to December 31, ~~2024~~ * 2020 *.

TRANSMITTALS

1. Draft Ordinance 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 set to expire on June 30, 2019.

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 Supreme Court limited its review to the following issue: "*Is the City of Santa Barbara's 1*

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.

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 expects the contract to be awarded by late May 2019.

OPNGAS anticipates the evaluation and determination the value of the SCG franchise will take an additional six (6) to nine (9) months or tentatively January 2020. After which, a final negotiation period with SCG of three (3) to six (6) months is anticipated or ending approximately July 2020. The additional 5 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 18 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. 185271 beyond the June 30, 2019, 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 18-month extension to the Ordinance No. 168164 will extend the term end date from June 30, 2019 to December 31, ~~2021~~. * 2020 * Franchise fees will continue to be billed and collected at the current franchise rate. No negative fiscal impact is anticipated.

FC/UN/tlm

Respectfully Submitted by:



DR. FERNANDO CAMPOS

Respectfully Submitted by:



UDUAK-JOE NTUK
Petroleum Administrator

For questions regarding this report, please contact:
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