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(O-2002-49) Cor. Copy
01/28/02ORDINANCE NUMBER O- 19030 (NEW SERIES)ADOPTED ON JAN 28 2002

WHEREAS, San Diego Gas and Electric Company [SDG&E] was granted a franchise to transmit and distribute electricity by the City of San Diego [City] effective January 17, 1971 for a period of fifty years (Ordinance No. O-10466, adopted December 17, 1970) [Electric Franchise]; and

WHEREAS, Section 4 of said Electric Franchise provides that during the first thirty years of the Electric Franchise term, SDG&E shall pay three percent of gross receipts as compensation for the right to use City rights-of-way, for such purposes [Franchise Fee]; and

WHEREAS, Section 4 of said Electric Franchise further provides that the City and SDG&E shall establish the Franchise Fee for the last twenty years by good faith negotiations or binding arbitration; and

WHEREAS, as a result of public hearings and good faith negotiations, SDG&E and the City [Parties] have agreed that the Franchise Fee shall be three percent of "gross receipts" as defined in Section 1(g) of the Electric Franchise; and

WHEREAS, in Decision No. 80234 dated July 11, 1972, the California Public Utilities Commission [CPUC] approved SDG&E implementing a franchise fee surcharge of 1.9 percent [Electric Franchise Fee Surcharge] within the City to capture the difference between the City Franchise Fee and the average franchise fee within the SDG&E service territory; and

WHEREAS, the Parties have agreed that, subject to CPUC approval, gross receipts as defined in Section 1 of the Franchise shall include revenues from said Electric Franchise Fee Surcharge, as well as other statutory or CPUC approved surcharges solely on the City ratepayers and as a result of such changes, the Electric Franchise Fee Surcharge will be increased by .35%; and

WHEREAS, the Parties have agreed that, subject to CPUC approval, the funding for the obligations of SDG&E to underground its facilities as set forth in Section 9 [Undergrounding Program], of the Electric Franchise shall be structured as follows after the effective date of this Ordinance:

- (a) collecting a portion of the funds from ratepayers in base rates (1.15%) approved by the CPUC;
- (b) with the remainder to be collected from ratepayers in the City through a CPUC approved surcharge (3.53%) which will be paid directly to the City, as set forth herein;
- (c) for a total obligation of four and one-half percent (4.5%) of gross receipts, plus .18% for 1/19th of 2001 allocation (which amount is included within the 3.53%),

NOW, THEREFORE;

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Section 1(g) of the Electric Franchise shall be amended to provide as follows:

Section 1. DEFINITIONS

- (g) The phrase "gross receipts" shall mean all gross operating revenues received by Grantee from the sale of electricity to Grantee's customers with points of service within the corporate limits of the City (including, but not limited to, sales to military reservations with points of service within the City's corporate limits) which are credited in Account Nos. 440, 442, 444, 445 and 446 of the current Uniform System of Accounts of the Federal Power Commission as adopted by the California Public Utilities Commission or similar superseding accounts plus all revenues collected from CPUC authorized surcharges rendered solely upon the ratepayers within the City as a result of this Franchise accounted for in Account 45 (less any portion of such surcharges which may be approved by the CPUC to capture the franchise fee on these revenues), less uncollectible amounts and less any refunds or rebates made by Grantee to such customers pursuant to California Public Utilities Commission orders or decisions.

Section 2. That Sections 4(b) through (h) are deleted in their entirety and 4(b) of the Electric Franchise is hereby amended to provide as follows:

Section 4. CONSIDERATION

- (b) For the remaining years of the term of the Electric Franchise, Grantee, as consideration and compensation for the rights and privileges herein granted and for the use of the streets of the City as herein authorized and permitted, shall pay each year to City in lawful money of the United States, a sum equal to three percent (3%) of Grantee's gross receipts during the preceding calendar year, or a fractional year, commencing with the effective date of this ordinance adopted by the City Council, for the remaining years of the term of this franchise by the dates, in the manner, and on the conditions as set forth in Section 5 hereof. In addition Grantee shall pay any applicable statutory surcharges, such as the Municipal Public Lands Use Surcharge required pursuant to Public Utility Code section 6350 et seq. Any Grantor imposed fees for right of way usage [Right of Way Fee] shall be credited with consideration paid herein. Any revenues which remain after this credit of Right of Way Fees will be credited towards any additional fees Grantor imposes for inspection, trenching, cutting or deterioration of the right of way.

Section 3. That Sections 9(b), and 9(c) of the Electric Franchise shall be amended to provide as follows:

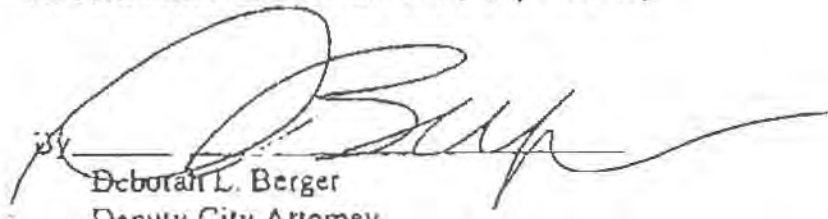
allocated to undergrounding projects and revert to the original 1.9% Electric Franchise Fee Surcharge.

- (c) Until and unless Grantor elects to assume the obligation, Grantee shall be responsible, to the extent within the reasonable control of Grantee, for ensuring that all funds allocated for any calendar year, are expended by the end of the succeeding calendar year, provided that Grantee and Grantor may agree in writing otherwise.

Section 4. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 5. That this ordinance shall take effect and be in force as of the effective date of the CPUC approval of the Advice Letter approved by City Council.

APPROVED: CASEY GWINN, City Attorney


Deborah L. Berger
Deputy City Attorney

DLB:pev:jc

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