PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-4346**
August 12, 2010

R E S O L U T I O N

Resolution E-4346. Southern California Edison Company (SCE) requests Commission approval to bill and collect a franchise surcharge from customers in the City of Buenaventura.

PROPOSED OUTCOME: Authorizes SCE to collect a franchise surcharge from customers in the City of San Buenaventura in accordance with the provisions of D.89-05-063.

ESTIMATED COST: An increase of approximately $958,000 (1.134%) in annual electric revenues collected from SCE's customers in the City of San Buenaventura.

By Advice Letter 2377-E filed on August 26, 2009.

SUMMARY

SCE is authorized to bill and collect a franchise surcharge, including its costs of administering and collecting the surcharge, from its customers in the City of San Buenaventura.

This resolution authorizes SCE to bill and collect a franchise surcharge from its customers in the City of San Buenaventura (City). The surcharge is 1.134% of the customers' total electricity charges and applies to all classes of SCE customers in the City.

SCE will remit to the City, surcharge revenues equal to 1% of the total electricity charges collected from customers within the City. The remaining portion of revenues collected through the surcharge, 0.134% of the total electricity charges collected from customers within the City, will pay SCE's costs for administering and billing the surcharge. The 0.134% portion of the surcharge that collects SCE's costs will be effective for approximately 2 years.

The surcharge is authorized in accordance with the provisions of Decision (D.)89-05-063 in Investigation (I.)84-05-002 on the treatment of revenue-producing mechanisms imposed by local government entities.

SCE shall implement the surcharge within 180 days of today's date.

BACKGROUND

SCE pays franchise fees to local governments in its service territory and recovers funds to pay these fees in its Commission authorized revenue requirements.

California's counties and cities grant franchises to privately owned utilities which serve the general public in their jurisdictions. In exchange the utilities pay franchise fees which are negotiated under long-term contracts that compensate the governmental entities for the utilities' privilege to use or occupy public property within the franchise area.[1]

SCE's franchise payments are based on a percentage of revenues it collects from customers within a local jurisdiction and vary depending on the franchise agreement between SCE and the governmental entity. The Commission adopts a franchise fee factor in SCE's general rate cases (GRC) based on a forecast of the aggregate of franchise payments to all government entities in SCE's service territory divided by total forecasted revenues. The Commission-authorized revenue requirements that SCE recovers in rates are grossed up by a franchise factor so that SCE may collect franchise payments from all customers. SCE's current franchise factor adopted in D.09-03-025 in its 2009 test year GRC is 0.00906 (0.906%).[2]

---

[1] The amount paid under franchise agreements depends on the local governmental jurisdiction. Franchise fees that SCE pays the City are covered under the Franchise Act of 1937 (PU Code Sections 6201, *et seq*).

[2] D.09-03-025, Appendix C, p. C-26.

D.89-05-063 authorized utilities to file an advice letter to request Commission approval to charge customers a local government fee surcharge to recover excess franchise fees and associated costs.

D.89-05-063 in I.84-05-002 addressed possible solutions to spiraling local municipal taxes and fees required to be passed on by utilities to their ratepayers. That decision authorized the utilities to file an advice letter for approval by the Commission to institute and charge a local government fee surcharge. Such a surcharge is to be applied equally and based on consumption or use of the utility's product, to the billings of all customers within the boundaries of a local governmental entity. The surcharge is authorized, under specified circumstances, when a local governmental entity has imposed taxes or fees, or has placed a tax or fee collection obligation without recompense upon the utility.[3]

The circumstances under which D.89-05-063 authorizes a surcharge include when the local governmental entity imposes franchise fees on the utility which in the aggregate significantly exceed the aggregate of fees imposed by other local governmental entities. The decision allows the utility to recover costs incurred in unrecompensed administration and collection incidental to the imposition of the surcharge.[4]

SCE entered into a new franchise agreement with the City in July 2009 and filed an advice letter to bill and collect a surcharge from customers in the City pursuant to D.89-05-063.

The Franchise Act of 1937 (1937 Act) requires that SCE pay the City, (a) 2% of SCE's gross annual receipts derived from the use, operation, or possession of the franchise; except that the payment shall not be less than, (b) 1% of the gross annual receipts of SCE derived from the sale of electricity within the limits of the City.[5] In most jurisdictions covered under the 1937 Act where SCE provides retail electric service, the payment derived from the calculation described above

---

[3] See 32 CPUC 2d, p. 73, Ordering Paragraph 1.

[4] Ibid.

[5] PU Code Section 6231(c).

in (b) is higher, and determines the franchise payment made by SCE. The payment calculated according to the method in (a) above, depends on the miles of transmission and distribution (T&D) systems within the jurisdiction compared to SCE's total miles of T&D systems.[6]

On July 27, 2009 the San Buenaventura City Council adopted Ordinance No. 2009-015 granting SCE a new 25-year franchise to use and construct facilities within the City. Upon Commission approval, franchise fees paid by SCE to the City under the franchise are to be calculated as the higher of:

(a) 2% of the gross annual receipts of SCE derived from the use, operation, or possession of the franchise; or
(b) 2% percent of the gross annual receipts of SCE derived from the sale of electricity within the limits of the City under the franchise, of which one percent of such gross annual receipts is surcharged to SCE's ratepayers within the limits of the City.

Under Ordinance No. 2009-015, prior to Commission approval of SCE's request to bill and collect a franchise surcharge from customers in the City, franchise payments calculated according to part (b) above shall be 1% of the gross annual receipts of SCE derived from the sale of electricity within the limits of the City (i.e., the minimum payment required by the 1937 Act).

On August 26, 2009 SCE filed advice letter (AL) 2377-E proposing to implement a franchise surcharge equal to 1.134% of a customer's total electricity charges, applicable to all of its customers in the City. A portion of the surcharge is to cover SCE's costs for administering and collecting the surcharge, and is expected to last for 2 years, until SCE has recovered its costs. SCE proposes that the surcharge be reduced to 1% of a customer's electricity charges after SCE has recovered its costs.

---

[6] According to SCE's May 26, 2010 response to Energy Division's May 17, 2010 data request, the method is based on the Broughton Act franchise (PU Code Sections 6001-6017), as clarified by the CA Supreme Court in the County of Tulare v. City of Dinuba (1922) 188 Cal. 664, 670.

NOTICE

Notice of AL 2377-E was made by publication in the Commission's Daily Calendar. SCE states in AL 2377-E it served the advice letter in accordance with General Order (G.O.) 96-B.

Ordering Paragraph 2 of D.89-05-063 requires that a copy of the advice letter be served on the local governmental taxing entity. To comply with this order SCE served a copy of AL 2377-E on Rebecca Mendoza, Assistant City Attorney for San Buenaventura, on August 27, 2009.

General Rule 4.2 of G.O. 96-B requires that a utility shall give affected customers at least 30 days' notice before the effective date of an advice letter requesting higher rates or charges. Accordingly, SCE notified its customers in the City of San Buenaventura of the franchise surcharge proposed in AL 2377-E by means of an enclosure included with bills issued during the March 2010 billing cycle. That billing cycle started on March 6, 2010 and ended April 3, 2010.

The protest period on SCE's AL 2377-E was extended until May 14, 2010 for SCE's customers in the City.

PROTESTS

One protest was received opposing the surcharge.

On April 27, 2010 Energy Division received a protest on SCE's AL 2377-E from James E. Cochran, an SCE customer and resident of the City. Mr. Cochran opposes the 1.134% franchise surcharge, and notes that voters in the City have previously rejected tax increases to encourage fiscal responsibility. Mr. Cochrane states that SCE should not be a third party taxing agency for the City, and requests that the Commission deny the surcharge.

In reply to the protest, SCE states that it filed AL 2377-E pursuant to D.89-05-063.

SCE replied to Mr. Cochran's protest on May 21, 2010. In its reply SCE states that it is involved only in implementation of the franchise surcharge, and that Mr. Cochran should seek clarification from the City regarding the future use and administration of the franchise surcharge revenues. In addition, SCE states that

D.89-05-063 authorizes a utility to file an advice letter for approval to institute a local government surcharge.

DISCUSSION

The City has acted to increase its franchise fees.

The 1937 Act requires that SCE pay the City not less than 1% of its gross annual receipts derived from sale of electricity within the City.[7] The City has negotiated a franchise agreement with SCE that increases the payment to 2% of SCE's gross annual receipts, of which 1% will be surcharged to SCE's customers within the City. The franchise agreement establishes that the increase in payment and surcharge shall be implemented upon Commission approval.[8]

D.89-05-063 states that the Commission does not dispute the authority or right of any local governmental entity, such as the City, to impose or levy any form of tax or fee upon utility customers. That decision determined that the Commission does have jurisdiction over the ratemaking treatment of the costs of local taxes and fees imposed on the utilities it regulates, and the ratemaking treatment of the costs incurred by the utilities in the administration and collection of such taxes and fees.[9]

In Ordinance No. 2009-015 the City increased SCE's franchise fees and provided for the increase to be collected by means of a surcharge on SCE's customers within the City. This resolution establishes whether SCE's proposal filed in AL 2377-E regarding the ratemaking treatment of the surcharge, and the administrative costs to bill and collect the surcharge, conforms with the requirements of D.89-05-063.[10]

---

[7] See PU Code Section 6231(c).

[8] See Sections 10.A.2(b), and 10.B. of City Ordinance No. 2009-015.

[9] See 32 CPUC 2d, pp. 69, 71-72, Findings 9 and 10, and Conclusion of Law 1.

[10] See 32 CPUC 2d, p.71, Finding 9.

The costs sought by SCE for administration and collection of the City's franchise surcharge are allowed by D.89-05-063.

SCE proposes in AL 2377-E to bill and collect a surcharge from customers in the City equal to 1.134% of customers' electricity charges. One percent reflects the surcharge adopted by the City in Ordinance No. 2009-015. The additional 0.134% is to compensate SCE for its costs to bill and administer the surcharge.

In AL 2377-E SCE estimates that its costs to bill and administer the surcharge will be approximately $226,000. On September 24, 2009, SCE provided detailed information to Energy Division showing that the costs amount to $226,127. SCE expects that it will take two years to recover its costs through the 0.134% portion of the surcharge. SCE proposes to file an advice letter to notify the Commission that it has recovered its costs when that has occurred, and to reduce the surcharge to 1% at that time.

The costs that SCE seeks to recover through the temporary, 0.134% portion of the surcharge are for developing a program to augment its billing and reporting systems. SCE must modify and test these systems to calculate and bill the surcharge to customers within the City, and ensure that revenues collected through the surcharge are properly separated between the 1% portion that will be remitted to the City, and the portion that recovers SCE's costs.

We approve the $226,127 in costs that SCE proposes to recover through the temporary, 0.134% portion of the surcharge for administration and collection of the surcharge. These costs are allowed by D.89-05-063, and the magnitude of the portion of the surcharge that will recover the costs, about 13% of the total surcharge, is reasonable considering that we expect this portion will be in place for just two years. SCE shall seek Commission approval of any costs in excess of $226,127 in a future advice letter described later in this resolution.

SCE shall not seek recovery of costs for administration and collection of the City's surcharge through general rates.

D.89-05-063 allows a utility to recover costs for administration and collection of the surcharge assessed by a local governmental entity, within the surcharge. The

decision also requires that the utility shall not seek recovery of the same costs in a general rate case (GRC), as such double counting is strictly prohibited.[11]

SCE has informed Energy Division that it will record its costs in an internal work order. According to SCE, it will not record any of these costs in any Federal Energy Regulatory Commission (FERC) account which could affect test year revenue requirements in a GRC.[12]

The costs that SCE incurs for administration and collection of the surcharge assessed to City customers shall be recovered only through the surcharge. SCE shall not seek to recover these costs in its next general rate case, or any other rate case. Additionally, SCE shall not include any costs it actually incurs for administering and collecting the City surcharge, as a basis for forecasting revenue requirements to be recovered in rates from the general body of ratepayers.

The City's franchise fee significantly exceeds the average aggregate of franchise fees imposed by other governmental entities within SCE's service territory.

D.89-05-063 authorizes a utility to file an advice letter to institute a franchise surcharge when the franchise fees imposed by a local governmental entity significantly exceed the average aggregate of fees imposed by other local governmental entities within the utility's service territory.[13]

City Ordinance No. 2009-015 specifies that SCE shall pay franchise fees to the City equal to 2% percent of the gross annual receipts of SCE derived from the sale of electricity within the City. The franchise factor adopted by the Commission in SCE's 2009 GRC indicates that the average aggregate of franchise fees imposed by other local governmental entities within SCE's service territory

---

[11] See 32 CPUC 2d, p. 73.

[12] SCE's June 7, 2010 response to Energy Division's May 27, 2010 data request on AL 2377-E.

[13] See 32 CPUC 2d, p. 73, Ordering Paragraph 1a.

is approximately 0.9% of the revenues from SCE's electricity sales. The franchise fees imposed by the City, (2% of revenues from electricity sales), significantly exceed the average aggregate of franchise fees in SCE's service territory (0.9%). Thus, the condition set forth in D.89-05-063 for filing an advice letter to institute a franchise surcharge in the City has been met. Furthermore, as required by D.89-05-063, the amount of the surcharge to be remitted to the City (1%) is no greater than the amount by which the City's franchise fee exceeds the average aggregate franchise fee paid to other local governmental entities.[14]

SCE's proposal to collect the franchise surcharge from all customers in the City, and to identify the surcharge as a separate item on customers' bills complies with D.89-05-063.

D.89-05-063 requires that a franchise surcharge be applied equally and based on consumption or use of the utility's product, to the billings of all customers within the boundaries of the local jurisdiction. The decision also requires that the surcharge be included as a separate item on customers' bills and identified on bills as being derived from the local governmental entity responsible for it.[15]

The franchise surcharge proposed by SCE in AL 2377-E is 1.134% of the total electricity charges applicable to every customer in all customer classes (e.g., residential, commercial, industrial) in the City. SCE included with AL 2377-E a sample bill showing the surcharge as a separate item, and identified as the "City Franchise Surcharge." The sample bill shows the calculation of the surcharge, i.e., 1.134% multiplied by the customer's electricity charges, and the dollar amount of the surcharge based on that calculation.

SCE's proposal to collect the surcharge from all customers in the City, and its proposed bill presentation of the surcharge complies with the requirements of D.89-05-063.

The protest on SCE's AL 2377-E is denied.

---

[14] Ibid.

[15] See 32 CPUC 2d, p. 73, Ordering Paragraphs 1 and 3.

The City increased SCE's franchise fees in Ordinance No. 2009-015, which provided for the increase to be collected by means of a surcharge as authorized by D.89-05-063. Pursuant to that decision, SCE proposes to implement a franchise surcharge to collect from customers in the City, the surcharge imposed by the City including SCE's costs for administration and collection of the surcharge. SCE's proposal complies with the requirements of D.89-05-063.

While the protest of Mr. Cochran opposes the surcharge, it does not demonstrate that SCE's proposal filed in AL 2377-E contravenes the requirements of D.89-05-063, or is inconsistent with City Ordinance 2009-015. As explained in D.89-05-063, the Commission has no jurisdiction to determine the authority of a local governmental entity to impose franchise fees, taxes, or surcharges.[16] Accordingly, the protest is denied.

SCE shall implement the City franchise surcharge within 180 days of the effective date of this resolution.

SCE proposes in AL 2377-E to implement and begin charging the franchise surcharge to customers in the City within 180 days of approval by the Commission. SCE shall implement the surcharge within 180 days of the effective date of this resolution.

SCE shall file an advice letter addressing its costs for administration and collection of the City franchise surcharge.

D.89-05-063 requires that the utility review surcharges at least annually, and make further advice filings if warranted by significant changes in the cost to the utility.[17] SCE proposes in AL 2377-E that it will file an advice letter when it has recovered its costs for administration and collection of the City franchise surcharge.

SCE shall review the City surcharge at least annually pursuant to the requirements of D.89-05-063, Ordering Paragraph 5. On or before the date SCE

---

[16] See 32 CPUC 2d, pp. 69, 71, and Finding 9.

[17] See 32 CPUC 2d, p. 73, Ordering Paragraph 5.

recovers its costs for administration and collection of the surcharge, SCE shall file an advice letter addressing its costs of administration and collection of the surcharge. In the advice letter SCE shall report the total costs it incurred for administration and collection of the surcharge, and the date on which it shall have recovered its costs. By this same advice letter, SCE shall also reduce the surcharge from 1.134% to 1% of the electricity charges of City customers effective on the date that SCE begins issuing bills to City customers with the reduced surcharge. This advice letter shall be the means by which SCE shall seek Commission approval of any costs for administration and collection of the surcharge in excess of the $226,127 amount approved by this resolution.

SCE shall serve a copy of the advice letter required by this resolution on the City and Mr. Cochran, who are parties to this resolution, in addition to those persons required to be served with advice letters pursuant to G.O. 96-B.

COMMENTS

A draft resolution was mailed for public comment.

Public Utilities Code section 311(g)(1) generally requires resolutions to be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly the draft resolution was issued for public review and comment no later than 30 days prior to a vote of the Commission.

The City and SCE submitted comments in support of the draft resolution, on July 29, and August 2, 2010, respectively.

FINDINGS AND CONCLUSIONS

1. SCE pays franchise fees to cities and counties to compensate them for the privilege of using or occupying public property within the franchise area.
2. SCE's Commission-authorized revenue requirements are grossed up by a franchise factor so that SCE may recover in rates, franchise payments made to governmental entities within it service territory.
3. SCE's current franchise factor, adopted in D.09-03-025 in SCE's 2009 general rate case, is 0.906%.
4. D.89-05-063 authorized utilities to file an advice letter for approval by the Commission to institute and charge a surcharge when a local governmental entity imposes franchise fees which in the aggregate significantly exceed the

average aggregate of fees imposed by other local governmental entities within the utility's service territory.

5. D.89-05-063 allows a utility to recover costs incurred in unrecompensed administration and collection incidental in the imposition of such a surcharge.
6. The Franchise Act of 1937 (Public Utilities Code Section 6201, *et seq*) requires that SCE make franchise payments to the City of San Buenaventura (City) of not less than 1% of the gross annual receipts of SCE derived from the sale of electricity within the limits of the City.
7. On July 27, 2009 the City adopted Ordinance No. 2009-015 which requires that upon Commission approval, SCE shall pay franchise fees to the City of not less than 2% of SCE's gross annual receipts derived from the sale of electricity within the limits of the City, of which 1% of such gross annual receipts is to be surcharged to SCE's ratepayers within the City.
8. On August 26, 2009 SCE filed advice letter (AL) 2377-E proposing to implement a franchise surcharge equal to 1.134% of a customer's total electricity charges, applicable to all of its customers in the City.
9. Of the 1.134% surcharge proposed by SCE in AL 2377-E, 1% is to be remitted to the City pursuant to Ordinance No. 2009-015, and 0.134% is to compensate SCE for its costs to administer and collect the surcharge.
10. SCE provided notice of AL 2377-E to all customers in the City by a bill enclosure issued with bills during the March 2010 billing period.
11. Mr. James Cochran, a City resident and SCE customer, protested SCE's AL 2377-E.
12. The $226,127 in costs that SCE proposes to recover through the franchise surcharge proposed in AL 2377-E for administering and collecting the surcharge are allowed by D.89-05-063 and are reasonable.
13. SCE's costs of $226,127 for administering and collecting the surcharge are expected to be recovered two years after the 1.134% franchise surcharge is implemented and charged to customers in the City.
14. Recovery of SCE's costs for administering and collecting the surcharge from the general body of ratepayers through rates authorized in a GRC or any other proceeding is prohibited.
15. The franchise fees to be charged by the City to SCE pursuant to City Ordinance 2009-015 significantly exceed the average aggregate of fees imposed by other local governmental entities within SCE's service territory.
16. The amount of the surcharge to be remitted to the City (1%) is no greater than the amount by which the City's franchise fee exceeds the average aggregate franchise fee paid to other local governmental entities.

17. SCE's proposal in AL 2377-E to collect the franchise surcharge from all customers in the City complies with D.89-05-063.
18. SCE's proposal in AL 2377-E to identify the franchise surcharge as a separate item on the bills of customers in the City complies with D.89-05-063.
19. The protest on SCE's AL 2377-E should be denied, as this advice letter complies with the requirements of D.89-05-063, and the Commission has no jurisdiction to determine the authority of a local governmental entity to impose franchise fees, taxes, or surcharges.
20. SCE should implement the City franchise surcharge within 180 days of the effective date of this resolution.
21. SCE should file an advice letter addressing its costs for administration and collection of the City franchise surcharge on or before the date that SCE has fully recovered its costs.
22. SCE should reduce the City franchise surcharge from 1.134% to 1% when it has fully recovered its costs for administration and collection of the surcharge.

THEREFORE IT IS ORDERED THAT:

1. SCE's request in Advice Letter 2377-E to assess a franchise surcharge of 1.134% of a customer's total electricity charges, to all customers in the City of San Buenaventura (City) is approved.
2. SCE shall implement and begin charging the franchise surcharge authorized by this resolution to its customers in the City within 180 days of the effective date of this resolution.
3. SCE is authorized to recover through the 1.134% City franchise surcharge, $226,127 for administration and collection of the surcharge.
4. SCE shall reduce the City franchise surcharge from 1.134% to 1% when it has fully recovered its costs for administration and collection of the surcharge.
5. SCE shall recover its costs for administration and collection of the City franchise surcharge only through the surcharge, and not from the general body of ratepayers through rates authorized in a GRC or any other proceeding.
6. On or before the date that SCE has fully recovered its costs for administration and collection of the surcharge, SCE shall file an advice letter addressing its costs for administration and collection. SCE shall serve this advice letter on parties to this resolution, in addition to those persons SCE is required to serve pursuant to General Order 96-B. SCE shall include in the advice letter:

a. The date when the surcharge was implemented and first charged to customers in the City;
b. The date when SCE shall have fully recovered its costs for administration and collection of the surcharge;
c. SCE's total costs for administration and collection of the surcharge, and a description of the activities covered by those costs;
d. The advice letter shall reduce the City franchise surcharge from 1.134% of customers' total electricity charges, to 1% of customers' total electricity charges.
e. The advice letter shall be a Tier 1 advice letter and the surcharge reduction shall be effective on the date that SCE begins issuing bills to City customers with the reduced City franchise surcharge (1% of customers' total electricity charges).
f. The advice letter shall be the means by which SCE shall seek Commission approval of all costs in excess of $226,127 that SCE incurs for administration and collection of the surcharge.

7. The protest on SCE's AL 2377-E is denied.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on August 12, 2010; the following Commissioners voting favorably thereon:

/s/Paul Clanon
Paul Clanon
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners