

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**Item No: 2
AGENDA ID: 18235
RESOLUTION E-5056
June 11, 2020**

R E S O L U T I O N

Resolution E-5056. Pacific Gas and Electric Company requests approval of a business tax surcharge for San Francisco customers.

PROPOSED OUTCOME:

- This Resolution adopts Pacific Gas and Electric Company's (PG&E) request in Advice Letter (AL) 4140-G/5632-E to recover a gas and electric business tax from its customers in the City and County of San Francisco through a bill surcharge.

SAFETY CONSIDERATIONS

- There is no impact on safety.

ESTIMATED COST:

- This Resolution would increase PG&E's San Francisco customer bills by 0.986 percent (0.986%).

By Advice Letter 4140-G/5632-E filed on September 12, 2019.

SUMMARY

This resolution approves, without modification, PG&E's Advice Letter 4140-G/5632-E, requesting to collect from its San Francisco customers an additional 0.986% for a business tax surcharge imposed by San Francisco's Proposition C.

BACKGROUND

In the November 2018 general election, voters in San Francisco approved Proposition C (Prop C) to fund programs for the homeless. Prop C would impose an additional 0.425% tax on PG&E's gross receipts at an estimated amount of \$10 million for 2019. PG&E is requesting to recover its Prop C tax obligation through a surcharge on its San Francisco customers' bills pursuant to Decision (D.) 89-05-

063, which established procedures for utilities to recover local taxes from customers in specific locations.

PG&E estimated that Prop C would increase its tax payment to the City of San Francisco (City) by approximately \$10 million,¹ bringing its total payment to the City to \$23 million.

NOTICE

PG&E states that a copy of the Advice Letter 4140-G/5632-E was mailed and distributed in accordance with Section 4 of General Order 96-B and to parties on the attached list.

PROTESTS

The City and County of San Francisco (San Francisco) timely filed a protest on October 2, 2019. In its protest, San Francisco asserted that the relief sought by PG&E's AL is "unjust" and "unreasonable" and "the analysis, calculations, or data in the in the advice letter contain material errors or omissions."² San Francisco raised several points, which are summarized below.

1. It is not appropriate for the Commission to consider PG&E's request for a surcharge in an AL process because the utility's proposed recovery process of a local tax surcharge is a "new approach without the presence of sufficient factual evidence and policy guidance."³
2. Prop C tax is not a franchise fee but a tax of general applicability, which is not covered under D.89-05-063.

1. This is only an estimate. PG&E's proposed surcharge would increase a San Francisco customer's bill by 0.986%. For example, an electric bill of \$21 would generate a surcharge of \$0.21.

2. Protest of the City and County of San Francisco, dated October 1, 2019, p. 2.

3. Ibid, pp. 1-2.

3. PG&E has not shown that San Francisco's taxes and fees are significantly higher than the average taxes and fees imposed by other local governments in its service areas.⁴
4. PG&E's request to impose a surcharge to recover its payment for Prop C tax is premature while the validity of Prop C is being challenged in court and San Francisco has amended its Business and Tax Regulations Code to allow taxpayers to reduce their Prop C tax liability.⁵

PG&E responded to the protest of the City and County of San Francisco on October 9, 2019, as summarized below.

1. The advice letter procedure is expressly authorized by the CPUC in D.89-05-063. The Commission has approved advice letter submittals as the appropriated procedural vehicle to consider proposed business tax surcharges.
2. D.89-05-063 treats business taxes imposed on utilities as a possible surcharge category.
3. San Francisco's gross receipts tax is the highest business tax in PG&E's service territory and far exceeds any other jurisdiction.
4. PG&E has remitted the estimated amount of the increased 2019 business taxes imposed under Prop C to San Francisco.

DISCUSSION

PG&E's request to recover its annual Prop C tax obligation through a surcharge on San Francisco customers' bills is reasonable given prior Commission guidance in D.89-05-063. We provide further explanation, given the protest of San Francisco, as discussed below.

4. Ibid, p. 2.

5. Ibid, p. 2.

Use of the Advice Letter Process to Impose a Surcharge

The City and County of San Francisco stated that PG&E's request for a surcharge through the advice letter process is a "new approach" and the Commission should require PG&E to present relevant factual and policy issues in an application.

In D.89-05-063, the Commission recognized the rights of local entities to impose taxes and fees on businesses within their jurisdictions and established procedures for utilities to recover those taxes from ratepayers. The Commission stated that it may not be reasonable to spread the high fee from one local entity across all ratepayers because tax-funded benefits are limited to ratepayers in that locality and should not be subsidized by ratepayers who do not receive those benefits. Subsequently, the Commission provided the following guidance to utilities:

The approach and procedure we adopt is to authorize a utility to file with the Commission a surcharge advice letter in those instances where a local governmental entity imposes or increases franchise, general business, and special taxes, and/or causes the utility administrative and collection costs with regard to utility users' taxes which rise to a total level significantly exceeding the average level of the total of those imposed by the other local governmental entities within the utility's service area. The utility as part of its advice letter filing will have to demonstrate such significant difference.⁶

PG&E is authorized to file an advice letter surcharge to seek recovery of Prop C tax payments under D.89-05-063. This approach is neither new nor unprecedented. PG&E currently collects a city franchise surcharge from its customers in the Cities of San Jose, Bakersfield, and Fresno. The Commission approved these surcharges through the AL process. Furthermore, PG&E's advice letter filing process does not limit its ability to present the necessary information to allow the Commission to make an informed decision.

Use of D.89-05-063 for A Tax of General Applicability

6. D.89-05-063, 32 CPUC 2d 60 (1989), Discussion.

The City and County of San Francisco asserted that Prop C Tax is “a tax of general applicability,”⁷ which is not part of D.89-05-063.

While D.89-05-063 did not specifically discuss a tax of general applicability, the Commission’s intent was to establish “an appropriate way to deal with instances where locally imposed revenue producing mechanisms become so disproportionate that it no longer can be equitable to spread the excess over the general ratepayer body,”⁸ and expressly applies to general business taxes levied by local governments.⁹ San Francisco’s Prop C Tax increases the gross receipt tax rate on businesses to provide additional revenue to fund various homeless programs in San Francisco. The increase substantially exceeds the average tax and fees imposed by other local entities. Therefore, it is reasonable for PG&E to seek recovery of its Prop C Tax payment under D.89-05-063.

Differentiation of the Level of Prop C Tax from Others

The City and County of San Francisco asserted that PG&E has not demonstrated that San Francisco’s taxes and fees in the aggregate would “significantly exceed” the taxes and fees imposed by other local entities within PG&E’s service area and that PG&E’s estimated Prop C payment of \$10 million cannot be verified without information from PG&E’s 2018 Gross Receipts Tax Return.

PG&E has paid three quarters of estimated 2019 Prop C tax obligations, totaling \$6.29 million¹⁰ while the average aggregate taxes and fees imposed by other jurisdictions within its service territory in 2018 is \$497,000.¹¹ In addition, PG&E paid \$21.5 million to the City of San Francisco in 2018 for business license taxes

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7. Protest of the City and County of San Francisco, dated October 1, 2019, p. 6
 8. D.89-05-063, 32 CPUC 2d 60 (1989), Comments on the Proposed Decision of the Administrative Law Judge.
 9. D.89-05-063, 32 CPUC 2d, 60 (1989), Discussion.
 10. PG&E’s Response to ED Data Request 001, Question 2. PG&E indicated that its quarterly 2019 Prop C payment to San Francisco is \$2,096,057. $3 \times \$2,096,057 = \6.29 million.
 11. PG&E’s Responses to ED Data Request 001, Question 1, Atch01 and ED’s Data Request on April 20, 2020. $\$1.4$ million (local taxes) + $\$145$ million (franchise fee) divided by 295 local entities = $\$497,000$

and franchise fees. Based on these facts, we find that San Francisco's Prop C Tax "significantly exceed(s) the average aggregate taxes and fees" charged by other local entities within PG&E's service territory and should be collected from San Francisco's customers as authorized under D.89-05-063.

In addition, PG&E's surcharges for local franchise fees in San Jose, Bakersfield, and Fresno range between \$0.98 million to \$3.6 million.¹² The amounts remitted to these cities are significantly less than the estimated amounts imposed by San Francisco's Prop C Tax. The CPUC has authorized PG&E to use surcharges to recover local ~~taxes and~~ fees at levels much lower than San Francisco's Prop C Tax and should do so here.

Is Recovery of Prop C Tax Amount Premature?

The City and County of San Francisco states that the validity of Prop C is being challenged in appellate court and that PG&E has been provided the opportunity to lower its tax liability by waiving its right to a refund or donating an amount equal to its Prop C tax liability to a charity.

While the validity of Prop C is being challenged in court,¹³ San Francisco continues to collect Prop C Taxes. PG&E is currently paying its Prop C Tax liability to San Francisco at an estimated quarterly amount of \$2.096 million. The utility should be allowed to recover its tax liability from ratepayers. It is unclear if Prop C's opponents will prevail in their legal challenge. If the opponents of San Francisco's Prop C prevail in court and San Francisco is required to refund collections to its taxpayers, PG&E will follow the billing procedures in Rule 17.1 to address customer refunds of surcharges.

The conditions which may reduce PG&E's Prop C tax liability call for the utility to waive its right to a refund or make a donation to a specified charity to receive a Prop C tax liability credit, if Prop C is ruled invalid. Either of these options would still require PG&E to remit an amount equal to its Prop C tax liability, which needs to be recovered from ratepayers.

12. PG&E's Response to ED Data Request 001, Question 5.

13. On August 21, 2019, the opponents of Prop C filed an appeal to the San Francisco Superior Court's July 25, 2019, ruling for the City and County of San Francisco. ~~As of February 24, 2020, t~~The parties are in the briefing process of the appeal. https://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=1&doc_id=2300880&doc_no=A158645&request_token=NiIwLSEmXkw9W1BVSSFdTETIQFQ6UVxfjiBeXz5SICAgCg%3D%3D.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review. Please note that comments are due 20 days from the mailing date of this resolution. Section 311(g)(2) provides that this 30-day review period and a 20-day comment period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day review and 20-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on March 10, 2020.¹⁴

PG&E submitted comments on March 30, 2020, supporting the adoption of the draft resolution.

The City and County of San Francisco (San Francisco) submitted comments on April 20, 2020.¹⁵ The comments are summarized below:

Use of Advice Letter Process to Impose a Surcharge for a Tax of General Applicability

The City and County of San Francisco seeks to disqualify its Prop C Tax from the application of D.89-05-063 due to its classification as a “tax of general applicability.” San Francisco also drew a distinction between franchise fees and general local taxes. According to San Francisco, while it is appropriate for the CPUC to authorize surcharges through the advice letter process for franchise fees,¹⁶ approving “a tax of general applicability” sets bad precedence by “opening the door to utilities filing advice letters each time a local government imposes a new tax or fee or increases an old one.”¹⁷ Also, San Francisco believes

14. The draft resolution was mailed to the City and County of San Francisco (San Francisco) on March 30, 2020 for comments because San Francisco was inadvertently left off the mailing list on March 10, 2020.

15. The comment due date was extended to April 20, 2020 to afford the City and County of San Francisco a 20-day comment period.

16. The surcharges approved for the Cities of Bakersfield, Fresno, and San Jose pertain to franchise fees.

17. City and County of San Francisco’s Comments on Resolution E-5056, filed on April 20, 2020, p. 3.

that the CPUC should only consider PG&E's surcharge request through a formal proceeding because "the prospect of deaveraging such costs presents issues of equity and reasonableness."¹⁸

While the City and County of San Francisco currently refers to their Prop C Tax as a "tax of general applicability," Prop C Tax has been classified as a "special tax" in the City's press release and court documents.¹⁹ D.89-05-063 applies to "franchise, general business, and *special taxes*" imposed by local entities on a utility. ~~San Francisco's Prop C Tax is a general business tax that applies to all businesses with taxable gross receipts in excess of \$50 million. Therefore, it is appropriate to treat San Francisco's Prop C Tax under the guidance of the D.89-05-063, which explicitly applies to general business taxes.~~ In addition, San Francisco's distinction between franchise fees and general local taxes is unavailing because the CPUC's decision explicitly covers franchise fees *and* general business-special taxes. Furthermore, D.89-05-063 explicitly contemplated that the advice letter procedure the CPUC adopted for considering requested surcharges to utility bills would apply to a "variety of different revenue-producing mechanisms that are evolving."²⁰ Under D.89-05-063, the advice letter process is not limited to surcharges of franchise fees but extends to other business taxes and special taxes.

The CPUC carefully considered the appropriate ratemaking treatment of revenue-producing mechanisms imposed by local governments in a rulemaking proceeding, Order Instituting Investigation 84-05-002, and determined in D.89-05-063 that it is reasonable and equitable to surcharge specific customers for

18. Ibid.

19. In a July 5, 2019, statement, San Francisco's City Attorney Dennis J. Herrera described Proposition C as "a special tax on some large businesses to fund homeless and mental health services." <https://www.sfcityattorney.org/2019/07/05/herrera-statement-on-prop-c-rulings/>. Additionally, in a judgement for the City and County of San Francisco's litigation on Proposition C Tax, the California Superior Court notes that "[t]he City does not dispute that Proposition C involves a "special tax" within the meaning of both provisions at issue here." <https://www.sfcityattorney.org/wp-content/uploads/2019/07/November-2018-Prop-C-decision.pdf>, at p. 2, Footnote #2.

20. D.89-05-063, 32 CPUC 2d, 60 (1989), Methods to Impose a Surcharge.

locally imposed fees and taxes. It is not necessary to re-visit the same issues that have been considered in the rulemaking and subsequent decision.

Lack of Complete Information on PG&E's Local Taxes and Fees

The City and County of San Francisco asserted that PG&E failed to provide a complete accounting of the local taxes and fees to allow a proper determination of whether San Francisco's Prop C Tax exceed the average total taxes and fees charged by other local entities. Specifically, PG&E did not provide information on the amount of franchise fees that it paid to other entities. The City and County of San Francisco requested that the CPUC "consider the entirety of the taxes and fees PG&E pays in other jurisdictions in its territory to those in San Francisco, and must accurately distinguish between amounts collected in surcharges to particular ratepayers and amounts recovered from all ratepayers."²¹

PG&E provided additional information, which indicates that it paid a total franchise fee of \$145 million to 295 local entities. We have revised our estimate of the average taxes and fees paid to other localities to include franchise fees and include only those amounts recovered from all ratepayers.

San Francisco Ratepayers Do Pay for Other Cities' Franchise Fees

The City of County of San Francisco pointed out that even though ratepayers in the Cities of Bakersfield, Fresno, and San Jose pay a surcharge to cover the franchise fees imposed by their cities, there is a portion of franchise fees from those three cities that are in rates. The draft resolution erred in concluding that San Francisco's customers do not pay for the franchise fees imposed by the three cities that have a franchise fee surcharge. The draft resolution was corrected to remove this language.

FINDINGS

1. San Francisco's Prop C Tax of \$6.29 million "significantly exceeds the average aggregate taxes and fees" of \$497,000 charged by other local entities within PG&E's service territory.

21. City and County of San Francisco's Comments on Resolution E-5056, filed on April 20, 2020, p. 5.

2. Finding of Fact No. 11 of D.89-05-063 stated that it is not fair to ratepayers to spread a significantly high taxes and fees from one local entity among all ratepayers. Therefore, PG&E should not spread San Francisco's Prop C Tax among all its ratepayers.
3. Ordering Paragraph 1a of D.89-05-063 authorized a public utility to file an advice letter to seek Commission approval to impose a local surcharge for "franchise, general business license, or special taxes and/or fees" that significantly exceed the average aggregate taxes and fees charged by other local entities. Therefore, it is appropriate for PG&E to request authority for a local tax surcharge through the AL process.
4. The Commission previously approved PG&E's local franchise fee surcharges for customers in the Cities of San Jose, Bakersfield, and Fresno through the AL process.²² There is no reason to deviate from past practices in consideration of San Francisco's Prop C Tax.
5. Finding of Fact No. 16 of D. 89-05-063, stated that "[i]t is reasonable and just" to add a surcharge to the bills of ratepayers within the local entity that imposes a fee, "which in the aggregate exceeded the average aggregate taxes and fees paid to other local entities within the utility's service territory."
6. Based on guidance from D.89-05-063, it is reasonable for PG&E to include a surcharge to the bills for San Francisco customers to recover its San Francisco's Prop C Tax payment.

THEREFORE IT IS ORDERED THAT:

1. PG&E's Advice Letter 4140-G/5632-E is approved without modification.
2. The protest of the City and County of San Francisco is denied.
3. PG&E shall file further advice letters to credit San Francisco customers if the Prop C surcharge in San Francisco is modified or repealed, or if there are other changes to taxes, fees, or administration and collection, related to AL 4140-G/5632-E.

22. PG&E's AL 4140-G/5632-E, p. 2.

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 June 11, 2020; the following Commissioners voting favorably thereon:

ALICE STEBBINS
Executive Director