

Decision 07-10-024 October 18, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern
California Gas Company (U 904 G) Regarding
City of San Buenaventura Franchise Fees.

Application 07-04-027
(Filed April 27, 2007)

**OPINION APPROVING SOUTHERN CALIFORNIA GAS COMPANY
SURCHARGE IN THE CITY OF BUENAVENTURA**

Summary

This opinion approves Southern California Gas Company's (SoCalGas) application for a surcharge on the bills of residents in the City of Buenaventura (Ventura). The surcharge is a reasonable way to cover increased franchise fees imposed by Ventura without unduly burdening other SoCalGas ratepayers.

No responses to the application have been received.

Background

In 1937, California enacted "The Franchise Act of 1937" (the Franchise Act) which, among other subjects, established a formula whereby a utility would pay a fee to a municipality for use of city streets and right-of-way. The amount paid counties under franchise agreements is based on the Broughton Act formula (Pub. Util. Code §§ 6001-6017). The amount paid general law cities is based on the greater of two computations; one determined under the Broughton Act formula, and the other determined under the Franchise Act. (Pub. Util. Code §§ 6231-6235). But the amount paid charter cities can differ. Charter cities are

permitted to negotiate franchise fees or taxes in excess of the above statutory formulas.¹

The Franchise Act sets out that for gas franchises, municipalities² will be compensated through a formula whereby they will receive two percent (2%) of annual receipts derived from the use, operation or possession of the franchise, or a minimum of one percent (1%) of gross annual receipts from the sale, transmission, or distribution of gas within the limits of the municipality (the 2%/1% formula).³ SoCalGas states that of the 234 cities and counties with which it has franchise agreements, 172 are currently paid under the 2%/1% formula.

During the 50-year term of the previous franchise agreement, SoCalGas payments to Ventura followed the Broughton Act formula. However, at the conclusion of this franchise agreement, Ventura officials proposed that as a charter city Ventura should get an increase to a 2%/2% formula. This 1% increase in the franchise fee would be effective for the 25-year term of the proposed franchise agreement.

Rather than spreading the additional franchise fee among all SoCalGas ratepayers, SoCalGas and Ventura agreed that as part of the new franchise agreement, SoCalGas will surcharge its Ventura ratepayers living within Ventura's city limits.⁴ SoCalGas states that the additional surcharge of 1% will be applied to monthly billings for all Ventura customers. Furthermore, SoCalGas

¹ See, Decision (D.) 89-05-063 (I.84-05-002), 32 CPUC 2d , 60, 64.

² Municipalities are general law cities or counties.

³ Exhibit C, p. EM-2.

⁴ Exhibit A, Section 9 (A)(2)(b).

proposes to indicate the surcharge as a separate line item on bills rendered to Ventura customers, and to notify customers prior to the first bill being rendered.⁵ SoCalGas estimates that the additional franchise surcharge will total in approximately \$246,000 annually, and that customer bills will increase by an average of \$0.58 per month across all customer classes.⁶

SoCalGas states that the additional surcharge amounts will go into Ventura's general fund, and that Ventura has represented it will use the additional funds on projects such as paving and street repair. This would better protect SoCalGas' pipeline and other infrastructure. The proposed franchise agreement was unanimously adopted by the Ventura City Council.

On April 27, 2007, SoCalGas filed Application (A.) 07-04-027 (Application) requesting Commission approval for SoCalGas' acceptance to the terms of the franchise ordinance that would apply a surcharge to the bills of SoCalGas customers in Ventura.⁷ Accompanying the application is the Testimony of Emma Hernandez⁸ and the Testimony of Eugene "Mitch" Mitchell.⁹

SoCalGas states it has provided notice of its Application to those persons listed in Attachment E, cities and counties affected by this filing, notice in

⁵ Exhibit B, p. EH-2.

⁶ *Id.*, Exhibit B, p. EH-2.

⁷ Attached to the Application is Ordinance No. 2007-005 adopted by the Council of Ventura on March 13, 2007. Ordinance No. 2007-005 is identified and received as Exhibit A.

⁸ The Testimony of Emma Hernandez is identified and received as Exhibit B.

⁹ The Testimony of Eugene "Mitch" Mitchell is identified and received as Exhibit C.

newspapers of general circulation to those areas, and notices to customers affected by the proposed surcharge as required by Rule 1.9.¹⁰

No responses to the Application have been received by the Commission.

Discussion

In Resolution E-3788 (p. 6), the Commission stated it should not judge the lawfulness of the procedures that a city takes to enact an ordinance or amend an agreement. Although we do not address Ventura's decision to increase its franchise fees, we will address the ratemaking treatment of such increased fees.

In D.89-05-063,¹¹ the Commission addressed costs imposed on public utilities by local government revenue producing mechanisms and the appropriate ratemaking treatment of such costs. The Commission stated:

To continue to incorporate significantly differing levels of new and escalating local entity taxes and fees in basic rates applicable equally to all ratepayers in a utility's service territory, increasingly means that some of these ratepayers would be subsidizing others but are not themselves benefiting from such increased taxes or fees. It is not reasonable that the significantly higher levels derived from some entities only should be buried in basic rates applicable to all ratepayers of the utility. Averaging such costs among all ratepayers creates inequities between classes of ratepayers. It is appropriate and reasonable that these significantly higher costs should be identified and borne only by the ratepayers in the local governmental area that originated them. In the past we have used surcharges to accomplish this.

¹⁰ All references to Rules are to the Commission's Rules of Practice and Procedure.

¹¹ Investigation 84-05-002, Guidelines For the Equitable Treatment of Revenue-Producing Mechanisms Imposed by Local Government Entities on Public Utilities. (32 CPUC 2d, 60, 69-70.).

SoCalGas points out that although the benefits of the increased Ventura franchise fees are generally localized, SoCalGas ratepayers also benefit as the burden of the surcharge will be paid only by Ventura customers and not other customers throughout SoCalGas' service territory. Thus, the raising of revenue by one jurisdiction such as Ventura to benefit its citizens will be paid by those citizens who are also ratepayers. This is consistent with our policy as discussed above regarding increased costs imposed by local governmental areas.

Conclusion

For all of the foregoing reasons, we grant SoCalGas' authorization to surcharge the bills of residents in Ventura.

Categorization and Need for Hearings

In Resolution ALJ 176-3191, dated May 3, 2007, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given this status public hearing is not necessary and we confirm the preliminary determinations made in Resolution ALJ 176-3191. Furthermore, pursuant to Rule 7.3(b) as this is an uncontested matter, and no hearing is necessary, no scoping memo was issued.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Bruce DeBerry is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Franchise Act and the Broughton Act establish formulas for payment of fees to municipalities.
2. Charter cities are permitted to negotiate franchise fees in excess of the formulas under the Franchise Act or The Broughton Act.
3. Ventura is a charter city.
4. During negotiations for a new franchise agreement Ventura proposed a franchise fee increase.
5. The new franchise agreement would increase franchise fees by an additional 1% of gross revenues
6. The new franchise agreement will surcharge Ventura ratepayers located within Ventura's city limits an additional 1% applied to monthly billings.
7. The additional franchise surcharge will total in approximately \$246,000 annually.
8. The additional franchise surcharge will raise average residential monthly bills by \$0.44, and raise average monthly bills for all customer classes by \$0.58.

Conclusions of Law

1. As a charter city, Ventura is permitted to negotiate franchise fees or taxes in excess of the Franchise Act and Broughton Act formulas.
2. It is appropriate and reasonable that those significantly higher franchise fees should be borne only by the ratepayers in the local governmental area that originated them.

3. There are no disputed issues of fact and therefore hearings are not required.

4. Since no one objected to the Application and this decision grants the relief requested, public review and comment are waived pursuant to Pub. Util. Code § 311(g)(2).

5. In order that the benefits from the new franchise agreement are realized as soon as possible, this decision should be effective today.

6. A.07-04-027 should be closed.

O R D E R

IT IS ORDERED that:

1. Southern California Gas Company (SoCalGas) is authorized to surcharge the bills of customers in the City of San Buenaventura as requested in SoCalGas' application.

2. This order is a final determination that a hearing is not needed in this proceeding.

3. Application 07-04-027 is closed.

This order is effective today.

Dated October 18, 2007, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners