



ORDINANCE NO. 2010-16

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA GRANTING TO PACIFIC GAS AND ELECTRIC COMPANY, A CORPORATION, THE RIGHT, PRIVILEGE AND FRANCHISE TO INSTALL, MAINTAIN AND USE PIPES AND APPURTENANCES FOR TRANSMITTING AND DISTRIBUTING GAS FOR ANY AND ALL PURPOSES UNDER, ALONG, ACROSS OR UPON THE PUBLIC STREETS, WAYS, ALLEYS AND PLACES AS THE SAME NOW OR MAY HEREAFTER EXIST WITHIN SAID CITY.

THE COUNCIL OF THE CITY OF FRESNO ORDAINS AS FOLLOWS:

SECTION 1. GRANT OF FRANCHISE. The City of Fresno hereby grants to Pacific Gas and Electric Company, a California corporation, subject to the terms and conditions herein contained, a non-exclusive franchise to install, maintain and use pipes and appurtenances for transmitting and distributing gas for any and all purposes under, along, across or upon the streets of City.

SECTION 2. DEFINITIONS. Unless it shall be apparent from the context that they have a different meaning, the following words and phrases shall have the meanings stated in this section.

(a) "Grantee" shall mean Pacific Gas and Electric Company, and its lawful successors or assigns.

(b) "City" shall mean the City of Fresno, a charter city and municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

(c) "Streets" shall mean the public streets, ways, alleys and places (exclusive of parks, playgrounds, airports and other municipal property not constituting public thoroughfares) as the same now or may hereafter exist within City, including State highways, now or hereafter established within City, and freeways hereafter established within City.

Adopted 5-20-10
Approved 5-28-10
Effective 6-27-10

2010-16



(d) "Gas" shall mean natural or artificial gas or a mixture of natural and artificial gas.

(e) "Pipes and appurtenances" shall mean pipes, pipelines, mains, services, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, appliances, attachments, appurtenances and, without limitation to the foregoing, any other property located or to be located in, upon, along, across, under or over the streets of City, and used or useful in transmitting or distributing gas.

(f) "Install, maintain and use" shall mean to lay, construct, erect, install, operate, maintain, use, repair, replace, remove or abandon.

(g) "Constitutional franchise" shall mean the right acquired through acceptance by Grantee or its predecessor in estate of the offer contained in Section 19 of Article XI of the Constitution of the State of California, as said section read prior to its amendment on October 10, 1911.

(h) "Franchise property" shall mean all property constructed, installed, operated or maintained in or upon the public streets pursuant to any right or privilege granted by this franchise.

SECTION 3. DURATION OF FRANCHISE. The term of the franchise hereby granted shall be fifty (50) years. During said term, this franchise shall continue in full force until, with the consent of the Public Utilities Commission of the State of California, or other lawful authority having jurisdiction in the premises, it shall be voluntarily surrendered or abandoned by Grantee, or until City, by agreement, shall purchase, or under eminent domain, shall condemn and acquire all property actually used or useful in the exercise of such franchise and situated within the territorial limits of City, or until it shall be forfeited for noncompliance with its terms by Grantee.

SECTION 4. FORFEITURE OF FRANCHISE. If Grantee shall fail, neglect or refuse to comply with any of the provisions or conditions of this franchise and shall not within ten (10) days after written demand from City for compliance begin the work of compliance, or after such beginning shall not prosecute the same with diligence to completion, then City may declare said franchise forfeited, and may sue Grantee for



damages for such noncompliance, and may exercise any other rights or remedies provided by law.

SECTION 5. ANNUAL PAYMENTS TO CITY. Grantee agrees to pay to City, in lawful moneys of the United States, a sum annually which shall be equivalent to two percent (2%) of the gross annual receipts of Grantee arising from the use, operation or possession of this franchise; provided, however, that such payment shall in no event be less than the sum which shall be equivalent to one percent (1%) of the total gross annual receipts derived by Grantee from the sale of gas within the limits of City whether under this franchise, a Constitutional franchise, or under any other franchise which may be owned by Grantee.

In the event that the compensation formula to be paid to a city as currently set forth in Public Utilities Code section 6231(c) is modified by an act of the Legislature of the State of California, which if applied to the formula set forth in this Section 5 would result in a higher annual fee to be imposed on Grantee than set forth in this Section 5, then Grantee shall pay the City such higher annual fee as of the effective date of the such act.

SECTION 6. RECOVERY PORTION. This franchise is granted upon the express condition of, and in exchange for, the commitment by Grantee that Grantee, as consideration therefore and as compensation for use of the streets of the City, as herein authorized and permitted shall pay to the City during the term (in addition to the franchise fees specified in Section 5) an additional one per cent of the gross annual receipts of Grantee (the "Recovery Portion") from all gas utility customers served by Grantee within the boundaries of the City. The customer collection shall be applied equally to Grantee's gas utility customers based on the consumption or use of gas, including residential, commercial, industrial, government and wholesale customers. The conditions precedent to the obligation of Grantee under this Section 6 to levy, collect and deliver to City the Recovery Portion shall be the conditions set forth in Section 7 below.



SECTION 7. CALIFORNIA PUBLIC UTILITIES COMMISSION APPROVAL.

A. Prior to Grantee's payment to City of the Recovery Portion Grantee shall receive approval from the California Public Utilities Commission (CPUC) to collect the Recovery Portion (as described in Section 6 above) in accordance with CPUC Decision 89-05-063, *Guidelines for the Equitable Treatment of Revenue Producing Mechanisms Imposed by Local Government Entities on Public Utilities*, 32 CPUC2d 60, May 29, 1989 (the "CPUC Recovery Guidelines").

B. The City shall cooperate with Grantee in the preparation of any filings, data request responses and other submittals required for review for such approval.

C. In the event that the Recovery Portion required is not approved by the CPUC, (i) the term of this franchise set forth in Section 3 shall expire on December 31, 2010; (ii) the franchise fees set forth in Section 5 shall remain due and owing to the City during the period in which the franchise remains in effect; and (iii) Grantee and the City will meet and confer on the grant of a franchise for any further term.

D. In the event the Recovery Portion is approved by the CPUC, Grantee shall implement customer collections of the Recovery Portion as soon as possible following CPUC approval.

E. In the event that any modification or repeal of the Recovery Portion is issued by the CPUC, or in the event that the CPUC issues any order or decision that conflicts with Grantee's collection of the Recovery Portion, or in the event that any changes in law or ruling in accordance with law negates the imposition or collection of the Recovery Portion, then Grantee shall reduce or eliminate collection of the Recovery Portion in an amount that corresponds to the change resulting from the CPUC's orders, actions, decisions, or as a result of any ruling or change in law. Grantee shall make a corresponding reduction in the Recovery Portion paid to the City as part of franchise fee due in annual period(s) thereafter.

SECTION 8. REFUNDS. In event that the CPUC or any court of competent jurisdiction orders the return to gas utility ratepayer(s) of any amount represented by the franchise payments, which has been collected by Grantee and paid to the City, or in the event the parties agree as a result of a challenge and settlement thereof that a refunding of



such payment to the City will occur, then the City shall be solely responsible for such payment. Grantee shall assist and cooperate with City in processing any such refunds.

SECTION 9. TIME FOR PAYMENT.

A. Grantee shall file with the Controller and Director of Finance of City, within three (3) months after the expiration of the calendar year, or fractional calendar year, following the date of the granting of this franchise, and within three (3) months after the expiration of each and every calendar year thereafter, a statement showing in detail the total gross receipts of Grantee during the preceding calendar year, or such fractional calendar year, from the use, operation, possession of the franchise, and from the sale of gas within City. Grantee shall pay to City within fifteen (15) days after the time for filing such statement, in lawful moneys of the United States, the aforesaid percentage of its gross receipts specified in Section 5 for such calendar year, or such fractional calendar year, covered by such statement.

B. Grantee shall pay to City the Recovery Portion specified in Section 6 on a semi-annual basis. On June 1 of each year, Grantee shall pay to City one half of the Recovery Portion due for the previous calendar year, or such fractional calendar year, pursuant to this franchise. Concurrent with the schedule set forth above in Section 9(A), Grantee shall pay to City the Recovery Portion due for the preceding calendar year, or such fractional calendar year, minus the sum of the payment made on June 1 as provided herein.

C. Any neglect, omission or refusal by Grantee to file such statement, or to pay said percentage or the Recovery Portion at the time and in the manner specified, shall be grounds for the declaration of a forfeiture of this franchise and of all rights of Grantee hereunder.

SECTION 10. CITY'S RIGHT TO INSPECT RECORDS. City shall have the right at all reasonable times to examine all books, vouchers, records and other papers of Grantee pertinent to the exercise of the franchise granted hereunder, and such books, vouchers, records and other papers shall be made available at any reasonable time for examination by the Chief Administrative Officer, Controller and Director of Finance or other agent appointed by the City Council of City.



SECTION 11. FRANCHISE TO BE GIVEN NO VALUE IN CASE OF EMINENT DOMAIN. The franchise hereby granted shall not in any way or to any extent impair the right of City to acquire the property of Grantee, either by purchase or through the exercise of the right to eminent domain and nothing herein contained shall be construed to contract away or to modify or to abridge City's right to exercise the power of eminent domain. The franchise granted hereby shall never be given any value before any court or other public authority in any proceeding of any character, in excess of the cost to Grantee of the necessary publication, and any other sum paid by Grantee to City therefor at the time of the acquisition thereof.

SECTION 12. INDEMNIFICATION OF CITY. Grantee shall indemnify, save and hold harmless, City and all of its officers and employees thereof against and from all damages, judgments, decrees, costs and expenditures which City or such officer or employee may suffer or which may be recovered from, or obtained against City or such officer or employee, for or by reason of or growing out of or resulting from the exercising by Grantee of any or all rights or privileges granted by this franchise, or by reason of any act or acts of Grantee or its servants or agents, in exercising this franchise, or by failure of Grantee or its servants or agents to perform the obligations of this franchise; provided, however, that Grantee shall, with the consent of the insurance carrier, if any, covering City as to such liability, have the right at its option to defend any suit that may be instituted against City or any officer or employee thereof, by reason of, or growing out of, or resulting from the exercise by Grantee of any or all of the rights or privileges granted by this franchise, or by reason of any act or acts of Grantee or its servants or agents in the exercise of this franchise.

SECTION 13. ASSIGNMENT OR TRANSFER. No transfer, assignment or lease of this franchise shall have any validity unless and until:

(a) Grantee shall have duly executed a good and sufficient instrument making such transfer, assignment or lease, and a duplicate original thereof shall have been filed in the office of the City Clerk of City.

(b) An ordinance of City consenting to such transfer, assignment or lease shall have been duly adopted and become effective.



(c) The transferee, assignee, lessee or vendee shall duly execute and file in the office of the City Clerk of City a good and sufficient instrument accepting such transfer, assignment or lease, assuming all the obligations of Grantee under this franchise.

(d) The transferee, assignee, lessee or vendee shall duly execute and file in the office of the City Clerk of City a good and sufficient instrument surrendering to City all franchises, rights and privileges which the transferee, assignee, lessee or vendee would have been required to surrender under the provisions of this franchise if such transferee, assignee, lessee or vendee had been the original grantee of this franchise.

The terms of the foregoing clauses of this Section 13 shall not apply to any mortgage or deed of trust made in good faith by Grantee or by any person, firm or corporation under a transfer, assignment or lease made in full accordance with the provisions of this section; but the terms of said clauses (a), (c) and (d) shall apply and the terms of said clause (b) shall not apply to any buyer at a sale under any mortgage or deed of trust.

SECTION 14. EXISTING FRANCHISES. Grantee, by the acceptance hereof, and as a condition precedent to the enjoyment of any rights or privileges hereunder, agrees that all use by it of the streets of City during the term hereof for the purposes set forth in this ordinance shall be enjoyed in compliance therewith and that it will, for the term hereof, operate in compliance with the provisions of this ordinance and make the percentage payments herein specified, irrespective of, but without waiver or abandonment of, any rights or claim under that certain right granted to the Fresno Gas Company (predecessor of Grantee) by the Board of Supervisors of the County of Fresno on June 9, 1881, "to lay mains and pipes in the streets and alleys of Fresno" and that certain right granted to the Fresno Gas Light Company (predecessor of Grantee) by the Board of Supervisors of the County of Fresno on May 5, 1882, "to lay gas pipes and mains in the streets and alleys of the Town of Fresno."

Grantee, by its acceptance hereof, shall not be deemed to have waived or construed or in any way limited any rights which it may now have or possess under or by



virtue of Section 19 of Article XI of the Constitution of the State of California, as said section read prior to its amendment on October 10, 1911; nor shall City by adopting this ordinance be deemed to admit that the claims of Grantee with reference to such "Constitutional franchise" and such rights granted by the Board of Supervisors of the County of Fresno have any validity or force whatever in either incorporated or unincorporated areas.

This grant is made in lieu of all other franchises owned or claimed by Grantee for using the streets of City for distributing gas within the limits of City as such limits now or may hereafter exist, except said Constitutional franchise and said rights granted by the Board of Supervisors of the County of Fresno hereinabove mentioned.

SECTION 15. LAWS TO BE OBSERVED. Grantee shall install, maintain and use all pipes and appurtenances in accordance with and in conformity with all of the ordinances and rules and regulations heretofore or hereafter adopted by the City Council of City in the lawful exercise of its police powers and not in conflict with the paramount authority of the State of California, and, as to the State highways, subject to the provisions of general laws relating to the location and maintenance of such facilities. Grantee's rights and obligations under this franchise shall continue, notwithstanding that the City may, in the future, obtain service from another energy service provider or participate in a Community Choice Aggregation program. Grantee shall also observe the Municipal Public Lands Use Surcharge Act, Public Utilities Code section 6350, et seq., or any successor statute.

SECTION 16. REPAIRS TO PUBLIC PROPERTY. Grantee shall pay to City on demand the cost of all repairs to public property made necessary by any of the operations of Grantee under this franchise.

SECTION 17. INSTALLATION OF UTILITIES. The City reserves the right to itself, or under permit by itself to others, to install, maintain, repair or renew railway lines or gas, water or other utility pipes, conduits or appurtenances over, under or contiguous to franchise property without expense to Grantee and without loss or damage to such franchise property; except that Grantee shall bear the expense of all repairs to franchise property made necessary by the renewal or repair of any such utilities installed



prior to the construction of said franchise property, provided the work is done in a first-class workmanlike manner. In all cases where such utilities are placed under or contiguous to franchise property, Grantee shall furnish inspection during the course of such construction work and when completed, if the work has been done in a workmanlike manner and satisfactory to Grantee, Grantee shall furnish to City or the permittee performing such work, a certificate of acceptance of such work.

SECTION 18. STREET IMPROVEMENTS BY CITY. City may pave, change the grade of, or realign any street or portion thereof in which franchise property is located, and may install, maintain, and repair storm and sanitary sewers and culverts, bridges, subways, viaducts or other street improvements or structures under, over, or contiguous to franchise property. During the progress of any type of work specified above, the expense of any of the following items that may be necessary shall be borne by Grantee: protection of Grantee's property, competent inspectors who shall cooperate with City to the end that the work performed by or on behalf of City which may affect franchise property is constructed in accordance with good practice and in a manner that will minimize the possibility of damage to franchise property during and after construction; and labor, materials and supplies for temporary pipe supports.

SECTION 19. RELOCATION OF PIPES OR APPURTENANCES FOR STREET IMPROVEMENTS. If the Director of Public Works of City shall determine that it is reasonable and necessary that franchise property be temporarily disconnected or temporarily or permanently relocated in order that City, or the Fresno Metropolitan Flood Control District when acting within City in a governmental capacity only, may relocate, change grade, construct, use, maintain, or change any street improvement, including storm and sanitary sewers, culverts, bridges, subways or viaducts and other street structures said Director of Public Works shall give notice, in writing, to Grantee. Said notice shall state the determination of the Director of Public Works, identify the franchise property affected, and describe the work to be done to said property. Within sixty (60) days after the service thereof upon Grantee, or upon the local manager or agent of Grantee, Grantee shall begin and diligently prosecute the designated work to completion and shall bear the entire cost and expense, and, upon failure to do so, said Director of Public Works may cause the work described in said notice to be completed, and Grantee



shall immediately pay for the same upon presentation of an itemized account of the cost thereof.

The cost of any relocation of franchise property made necessary by the construction or any lawful change of grade, alignment or width of any freeway constructed by the State of California shall be divided in accordance with Section 700 et seq. of the Streets and Highway Code or any agreement between Grantee and the State of California.

SECTION 20. MISCELLANEOUS. Any right or power conferred, or duty imposed upon any officer, employee, department, or board of City, shall be subject to transfer by operation of law to any other officer, employee, department or board of City.

The granting of this franchise or any of the terms or conditions contained herein shall not be construed to prevent City from granting any identical or similar franchise to any person, firm, or corporation other than Grantee.

SECTION 21. ACCEPTANCE OF FRANCHISE. The granting of this franchise will be conditioned upon Grantee filing with the City Clerk of City not later than 12:01 p.m. of the fifth day next following the date this ordinance becomes effective, a written instrument accepting this franchise and agreeing to perform and be bound by each and all of the terms and conditions hereof.

SECTION 22. FUTURE CHANGES IN AREA OF CITY. Upon the filing of the written instrument referred to in Section 21, it shall constitute a continuing agreement of Grantee that if and when City shall thereafter annex or consolidate with additional territory any and all franchise rights and privileges owned by Grantee therein, except a Constitutional franchise and any rights received by Grantee from the Board of Supervisors of Fresno County, shall be deemed abandoned within the limits of such territory.

SECTION 23. ADVERTISING AND OTHER PRELIMINARY EXPENSE. The cost of advertising and other preliminary expenses in connection with the granting of this franchise shall be paid by Grantee prior to the effective date thereof, and such payment shall be a condition precedent to the vesting of this franchise.



SECTION 24. PERFORMANCE BOND OR LETTER OF CREDIT. The granting of this franchise will be conditioned upon Grantee filing with the City Clerk a corporate surety bond running to the City and approved by the City Council, in a penal sum of \$100,000, which sum was set forth in the resolution of intention to grant this franchise. The bond shall be conditioned that Grantee shall well and truly observe, fulfill and perform each term and condition of the franchise, and that in case of any breach of condition of the bond the amount of the penal sum therein shall be recoverable. Grantee shall file such bond not later than 12:01 p.m. of the fifth day next following the date this ordinance becomes effective. Grantee shall maintain the bond in full force and effect throughout the term of this franchise, at Grantee's sole expense. The bond shall be issued by an admitted surety insurer and comply with the requirements of the Bond and Undertaking Law, codified in the California Code of Civil Procedure, Section 995.010 et seq. Grantee may provide an irrevocable letter of credit, in a form acceptable to the City and approved to form by the City Attorney, securing all or a portion of the amount otherwise required to be secured by the performance bond.

SECTION 25. This ordinance shall be in full force and effect thirty (30) days from and after final adoption thereof.

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CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO)
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, California at a regular meeting held on the 20th day of May, 2010, by the following vote:

Ayes: Perea, Sterling, Xiong, Westerlund
Noes: Borgeas, Brand, Dages
Absent: None
Abstain: None

REBECCA E. KLISCH
City Clerk

By: *Rebecca Klisch*

~~Deputy~~

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

By *R* 4-29-10
Robert R. Coyle
Senior Deputy City Attorney

rrc:elb [53079elb/rrc] ordinance



May 20, 2010

TO: MAYOR ASHLEY SWEARENGIN
FROM: REBECCA E. KLISCH, CMC *REK*
City Clerk

RECEIVED
2010 MAY 28 PM 4:15
CITY CLERK, FRESNO CA
Council Adoption: 05/20/10
Mayor Approval:
Mayor Veto:
Override Request:

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 5/20/10, Council adopted the attached Ordinance No. 2010-16 entitled **Granting PG&E franchise for transmitting/distributing gas, etc.**, Item No. 1N, by the following vote:

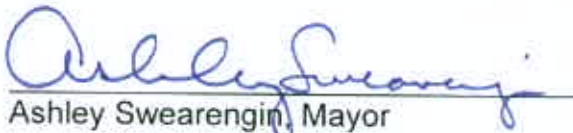
Ayes	:	Perea, Sterling, Xiong, Westerlund
Noes	:	Borgeas, Brand, Dages
Absent	:	None
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before June 1, 2010. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)


Ashley Swearengin, Mayor

Date: 5.28.10

COUNCIL OVERRIDE ACTION:

Ayes	:
Noes	:
Absent	:
Abstain	:

Date: _____