City Manager's Office

AGENDA REPORT

DATE:	May 2, 2023
TO:	Mayor Martinez and Members of the City Council
FROM:	Shasa Curl, City Manager Dave Aleshire, City Attorney Samantha Carr, Environmental Manager
Subject:	Settlement Agreement with Pacific Gas and Electric (PG&E) and Amending Ordinances
FINANCIAL IMPACT:	This action will increase the City's revenue by $800,000 disbursed over four years ($200,000 per year) starting Fiscal Year (FY) 2022-23, approximately $500,000 in FY 2023-24, and approximately $3.3 million in FY 2024-25.
PREVIOUS COUNCIL ACTION:	None.
STATEMENT OF THE ISSUE:	In 1958, the City entered into franchise agreements (Franchise Agreements) with PG&E for electricity and natural gas which permits a review of franchise terms every 20-years. In compliance with the Agreements' terms, the City submitted a formal request to PG&E to adjust the franchise fee. The parties could not come to an agreement and subsequently entered into arbitration in an attempt to settle the matter. Arbitration was split into two phases and the arbitrator ruled in the City's favor in the first phase. Subsequent negotiations were conducted and have resulted in a settlement agreement to settle outside of arbitration making changes to the Franchise Agreements.

RECOMMENDED ACTION:	HOLD a public hearing to APPROVE and APPROPRIATE $200,000 in revenue for Fiscal Year 2023-24 per the Settlement Agreement with Pacific Gas and Electric (PG&E); INTRODUCE an ordinance (first reading) amending Ordinance 1579 which granted a franchise for the transmission and distribution of electricity within the City to PG&E to revise the franchise fee and add a franchise fee surcharge; and INTRODUCE an ordinance (first reading) amending Ordinance 1580 which granted a franchise for the transmission and distribution of gas within the City to PG&E to add a franchise fee surcharge - City Manager's Office/City Attorney's Office (Shasa Curl 510-620-6512/Samantha Carr 510-620-5407/Dave Aleshire 510-620-6509).

DISCUSSION:

Background

In 1958, the City entered into franchise agreements (Franchise Agreements) with Pacific Gas & Electric (PG&E) for electricity and natural gas which permits a review of franchise terms every 20-years (Attachment 1). Currently PG&E pays the City franchise fees of 0.5 percent of its electric revenues and 1 percent of its gas revenues from City customers. While 1 percent is a fairly common franchise fee for general law and charter cities in California, some charter cities, including within PG&E territory, receive franchise fees at a range of up to 2 percent or higher, including the Charter City of San Jose.

The City's 1958 Franchise Agreements allows the City to request higher franchise fees during the 20-year review period if it satisfies one or more of the three "reopener conditions":

1. "A substantial change in economic conditions affecting franchise payments hereunder."
2. "A method of distribution of electricity/gas other than that used at the time of the grant of this franchise, which changed method of distribution substantially increases or decreases the burden on the streets of City or substantially increases or decreases costs and expenses to City."
3. "A revised method of franchise payment in a substantial number of other cities served by grantee."

In an ongoing process since 2018, the City requested that the parties reopen fee discussions as to both the electric and gas franchises, claiming all three conditions existed. PG&E refused the City's request, arguing that none of the three conditions existed as to either franchise. The parties agreed to arbitrate the dispute, as the franchises require, and entered into arbitration. The City contracted with Colantuono, Highsmith, & Whatley, PC ("Colantuono") to provide specialized legal services and to represent the City in pre- and post-arbitration related to the PG&E electricity and natural gas utility Franchise Agreements and related franchise fees.

The parties agreed to split the arbitration into two phases:

- Phase 1) whether one or more of the reopener conditions is satisfied and
- Phase 2) if so, the “measure or amount and timing of implementation” of new franchise fees

The City argued that all three conditions were met and in particular, impacts to human health and local infrastructure caused by climate change and sea level rise leading to a substantial change in economic conditions. These financial impacts are also caused in part by the sale and transmission of electric and gas services provided under the Franchise Agreements.

The Judge arbitrating the case issued their Phase 1 decision in favor of the City noting:

- The reopener conditions should be read broadly because the franchises are “indeterminate” and have no expiration date, because the City may reopen compensation discussions only once every 20 years, and because the conditions were intended to apply perpetually, are stated in general terms, and lack specifics.
- The City showed a substantial change in economic conditions affecting both electric and gas franchise payments and thus satisfied the first reopener condition for both franchises. The Judge cited the effects of the pandemic, the City’s falling tax revenues, and the growing impacts and costs of climate change as evidence for this conclusion. The Judge also mentioned the City’s unreimbursed costs associated with PG&E’s undergrounding work to support this conclusion.

After the passage of some time with the parties contemplating the Phase 2 process, PG&E requested to meet with the City in an attempt to settle the franchise compensation terms before the Phase 2 commenced. The City Attorney elected to undertake a direct discussion without the City’s outside legal counsel.

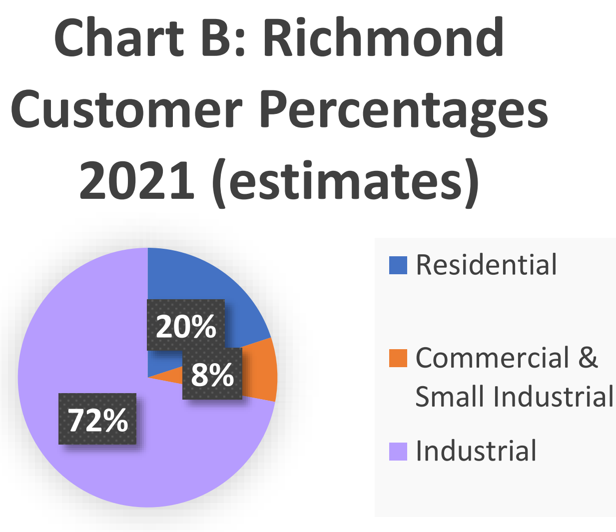
Data Analysis

PG&E provided estimated data to the City on the 2021 customer make-up in Richmond. A majority of Richmond electric and gas customer accounts are commercial and industrial (Chart B). Of residential customers, approximately 40 percent are enrolled in PG&E’s CARE program and less than .1 percent of businesses are enrolled.

The PG&E CARE program, also known as the California Alternate Rates for Energy Program, provides a monthly discount of 20 percent or more on gas and electricity to eligible customers. Participants qualify based on household income **OR** if one person in the household is enrolled in certain public assistance programs such as CalFresh/Snap, WIC, SSI, Medi-Cal for Families, etc. The program household income limits are based on the total gross household income (Chart A). For example, a home with four people could qualify if the total gross household income is $55,500 or less.

Chart A - PG&E CARE program

Number of People in Household	CARE
1-2	$36,620 or less
3	$46,060 or less
4	$55,500 or less
5	$64,940 or less
6	$74,380 or less
7	$83,820 or less
8	$93,260 or less
9	$102,140 or less
10	$112,140 or less
Each additional person, add	$9,440



Proposed Settlement Agreement

City of Richmond and PG&E staff members have been working diligently to settle the matter outside of arbitration. City staff are seeking the City Council's approval of the settlement agreement outlined below in Chart C and provided as Attachment 2. This settlement agreement would require the update and amendment to Ordinance 1579 (Attachment 3) and Ordinance 1580 (Attachment 4).

The increased revenue received would cover costs to address impacts to human health and local infrastructure caused by climate change and sea level rise as well as road impacts from encroachment on City right-of-way PG&E service vehicles.

The City did not get everything it was seeking in the negotiation; for example, the City sought to make the franchise review periods more frequent than 20 years, but PG&E would not agree and stated that some of the things the City sought were not a part of the arbitration process. However, it is unlikely that the City could have received a better result in the arbitration as there are not a substantial number of cities with more favorable arrangements.

Chart C: Settlement Implementation

	Settlement Task	Phase 1: Settlement Agreement Approval and Ordinance Amendment	Phase 2: CPUC Approval
1	**Electric Franchise Agreement Update** .05% to 2.3%	Increase Electrical Franchise Fee by .5% to a new total of 1%	Increase Electrical Franchise Fee by 1.3% to a new total of 2.3% Customers to receive 1.3% surcharge equivalent to approximately $7.33 ($0.61 per month)* CARE customers are exempt
2	**Gas Franchise Agreement Update** 1.0% to 2.3%	No change	Increase Electrical Franchise Fee by 1.3% to a new total of 2.3% Customers to receive 1.3% surcharge equivalent to approximately $10.14 per year ($0.85 per month)* CARE customers are exempt
3	**PG&E cover their labor costs to update system and take to CPUC for approval**	PG&E cover their labor costs to update system and take surcharge request to CPUC for approval	PG&E cover their labor costs to update system to implement CPUC direction
4	**One-Time Payment of $800,000 for Community Benefits over four years**	Execute Settlement Agreement for City to receive first payment of $200,000 Remaining 3 payments will be distributed to the City April 2024, 2025, and 2026	N/A

**Estimates provided by PG&E staff based on 2021 data*

NEXT STEPS:

If the settlement agreement and ordinance amendments are approved by the City Council, PG&E has agreed to file an Advice Letter with the California Public Utilities Commission (CPUC) seeking approval of the new 2.3 percent rate. Any rate above 1 percent is required to be approved by the CPUC. This approval process takes about 1-3 months, and the City will send a letter in support of the change. PG&E expressed high confidence that CPUC would approve the project. Additionally, the City and PG&E will work collaboratively to send the City the first $200,000 one-time payment.

The franchise amendments are ordinances and are being noticed for adoption.

DOCUMENTS ATTACHED:

Attachment 1 – Ordinance 1579 and Ordinance 1580
Attachment 2 – Proposed PG&E Settlement Agreement
Attachment 3 – Proposed Amended Ordinance 1579 (revisions only)
Attachment 4 – Proposed Amended Ordinance 1580 (revisions only)