

(O-2001-151)

ORDINANCE NUMBER O- 18956 (NEW SERIES)

ADOPTED ON JUN 19 2001

WHEREAS, in 1970, the City of San Diego [City] granted to San Diego Gas & Electric Company [SDG&E] a franchise to use the public rights of way [Franchise] for the transmission and distribution of natural gas (Ordinance No. O-10465) to the citizens of the City; and

WHEREAS, the Franchise was for a term of fifty (50) years, commencing on January 17, 1971; and

WHEREAS, in consideration of the grant of the Franchise, SDG&E agreed to pay to the City three percent (3%) of defined gross receipts as a franchise fee [Franchise Fee]; and

WHEREAS, the Franchise called for a renegotiation of the Franchise Fee percentage prior to the commencement of the final twenty (20) years of the Franchises, which date is January 17, 2001; and

WHEREAS, the Franchise also provided that the parties could agree to a six (6) month extension of the negotiating period regarding the Franchise Fee percentage, during which time the Franchise Fee would remain at three percent (3%) of defined gross receipts; and

WHEREAS, an extension of the negotiating period to July 17, 2001 was approved by Resolution No. R-294402, adopted December 12, 2000; and

WHEREAS, the City and SDG&E have been negotiating the Franchise Fee amount but have been unable to finalize an agreement to be applicable during the remaining twenty (20) years of the Franchise; and

WHEREAS, the City and SDG&E agree that an extension of the negotiating period beyond that provided in the Franchise is necessary and appropriate; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. Section 1. That Section 4(c) of the Franchise is amended to read as follows:

Section 4. CONSIDERATION

(c) Determination of the amount to be paid as set forth in Section 4(b) above shall be made by good faith negotiation between City and Grantee commencing not less than six (6) months prior to the expiration of the first thirty (30) year period. In the event that at the conclusion of the first thirty (30) year period said good faith negotiation does not result in a determination of the amount to be paid by Grantee during the last twenty (20) years (or 19 years, as the case may be) of the term of this franchise, then this question (and no other) shall be submitted to binding arbitration as hereinafter set forth; provided however that no later than fifteen (15) days prior to the end of the first thirty (30) year period the parties may mutually agree to extend the time for said good faith negotiation for an additional year if they so desire, during which time Grantee shall continue to pay a sum equal to three percent

(3%) of Grantee's gross receipts as consideration for the rights and privileges herein granted. Unless City and Grantee mutually agree in writing to a modification prior to the conclusion of the first thirty (30) year period (or at the conclusion of the additional year as provided for above) then the determination of the number of arbitrators, the time and mode of their selection, and the rules of practice and procedure to be followed shall be as set forth herein.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By

  
Deborah L. Berger  
Deputy City Attorney

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