City of Rialto

Legislation Details (With Text)

File #:	EDC-21-0863 **Version:** 1	**Name:**	
Type:	Agenda Item	**Status:**	Agenda Ready
File created:	11/10/2021	**In control:**	Economic Development Committee
On agenda:	11/17/2021	**Final action:**	
Title:	Request the Economic Development Committee Provide Direction to Staff Regarding a Proposed Ordinance Granting a New Franchise Agreement to CalNev Pipeline Company and SFPP.		
Sponsors:			
Indexes:			
Code sections:			
Attachments:	1. Exhibit A Kinder Morgan Franchise Agreement Ordinance 577.pdf, 2. Exhibit B CalNev Facility Map for Rialto.pdf, 3. Exhibit C SFPP Facility Map for Rialto.pdf, 4. Exhibit D SFPP_Calnev_CPUC-Letter.pdf, 5. Exhibit E Draft Franchise Agreement.pdf		

Date	Ver.	Action By	Action	Result

For Economic Development Committee [November 17, 2021]

TO: Honorable Economic Development Committee Members

FROM: Marcus Fuller, City Manager

Request the Economic Development Committee Provide Direction to Staff Regarding a Proposed Ordinance Granting a New Franchise Agreement to CalNev Pipeline Company and SFPP.

BACKGROUND:

On March 18, 1968, the City Council approved Ordinance No. 577 granting to CalNev Pipeline Company a franchise to maintain and operate pipelines within the City (**Exhibit A**). The franchise agreement expired on April 18, 2018 (50 years). Kinder Morgan owns CalNev and Santa Fe Pacific Partners (SFPP), which operate two fuel pipeline systems within the City that carry fuel products to terminals in the western United States. By letter dated June 13, 2017, Kinder Morgan Energy requested a renewal of the franchise granted by Ordinance No. 577. The parties previously met periodically to discuss the terms of the proposed renewal.

Kinder Morgan Franchise Payments (2003-2018)

Date	Pymt Yr	Basis	Amount	Yr/Yr $ Change	Yr/Yr % Change
02/03/04	2003	Broughton Act/Ord 577	$233.00		
03/14/05	2004	Broughton Act/Ord 577	$237.00	$4.00	1.72%
02/01/06	2005	Broughton Act/Ord 577	$193.00	($44.00)	-18.57%
02/20/07	2006	Broughton Act/Ord 577	$189.00	($4.00)	-2.07%
01/31/08	2007	Broughton Act/Ord 577	$227.00	$38.00	20.11%
02/04/09	2008	Broughton Act/Ord 577	$233.00	$6.00	2.64%
01/28/10	2009	Public Utility Code Section 6231.5	$8,733.84	$8,500.84	3648.43%
02/15/11	2010	Public Utility Code Section 6231.5	$8,936.28	$202.44	2.32%
06/25/12	2011	Public Utility Code Section 6231.5	$9,225.48	$289.20	3.24%
02/12/13	2012	Public Utility Code Section 6231.5	$9,427.92	$202.44	2.19%
02/04/14	2013	Public Utility Code Section 6231.5	$9,485.76	$57.84	0.61%
02/11/15	2014	Public Utility Code Section 6231.5	$9,630.36	$144.60	1.52%
06/27/16	2015	Public Utility Code Section 6231.5	$9,717.12	$86.76	0.90%
01/23/17	2016	Public Utility Code Section 6231.5	$9,890.64	$173.52	1.79%
02/01/18	2017	Public Utility Code Section 6231.5	$9,998.15	$107.51	1.09%
01/30/19	2018	Public Utility Code Section 6231.5	$10,393.73	$395.58	3.96%
		Totals	**$96,751.28**		

Table 1 shows the recent franchise fee history. Until 2009, Kinder Morgan paid nominal franchise fees based upon the formula specified in the Ordinance as authorized under the Broughton Act: 2% of the gross annual receipts … arising from the use, operation or possession of the franchise. After negotiations with the City in 2011, Kinder Morgan agreed to pay a franchise fee in accordance with Public Utilities Code Section 6231.5, which sets a standard fee per lineal footage of pipeline with adjustments for inflation.

CalNev updated its facility inventory to include new annexations to the City of Rialto. The facility map is attached hereto as **Exhibit B**. The CalNev pipeline system generally runs north from the tank farm along Linden Avenue toward the Cajon Pass. The SFPP pipeline system is located in southeastern Rialto and connects to a line paralleling the 10 Freeway.

The pipeline inventory for CalNev and SFPP is attached hereto as **Exhibit C**. The total lineal footage for the CalNev pipeline system is 28,923 feet or approximately 5.5 miles. The total lineal footage for the SFPP pipeline system is 10,438 lineal feet or approximately 2 miles.

ANALYSIS/DISCUSSION:
The City and Kinder Morgan commenced renewal negotiations in 2017 after receipt of the request from Kinder Morgan and carrying into 2018. At the City's request, Kinder Morgan provided updated facility inventories for the CalNev and SFPP facilities. CalNev and SFPP operate independently and the parties determined to prepare separate franchise agreements for the two pipeline systems.

Initially, the City contended that the franchises constituted a non-public utility, which allowed the City to negotiate the terms and fees it deemed reasonable in accordance with Section 6231.5(e) of the

Public Utilities Code. Subsequently, Kinder Morgan submitted evidence dated February 14, 2018 (satisfactory to the City Attorney and attached hereto as **Exhibit D**) that the two proposed franchises constituted a public utility within the meaning of Public Utilities Code Section 6231.5, which establishes a fixed fee schedule for public utilities governed by the California Public Utilities Commission (CPUC) based upon pipeline diameter and lineal footage. This statutory constraint significantly limits the City's ability to increase revenue from the granting of the two proposed franchise agreements. The City is limited to a reasonable one-time base-granting fee, recovery of any direct costs, and the annual payments based upon the CPUC schedule.

<u>Principal Terms of Franchise Agreements</u>
The key terms of the proposed Franchise Agreements (Drafts attached hereto as **Exhibit E**) are summarized as follows (for the purposes of this section CalNev and SFPP are the "parties"):

1. **Grant of Franchise.** The Agreement grants the parties the right to lay and use the public streets described in Exhibit A to the Agreement for the transmission and distribution of oil, water, or hydrocarbons. Parties must submit, and the City Council must approve, any routes not specifically listed.

2. **Term of Franchise**. The term of the Agreement is 20 years.

3. **Base Granting Fee**. The parties shall each pay the City a one-time base granting fee of $50,000 within 30 days after approval as reimbursement for the City's costs to prepare and process the Agreements.

4. **Annual Franchise Fee**. The parties shall pay the City an annual franchise fee based upon actual pipeline footage within the City multiplied by the fee established in accordance with Public Utilities Code Section 6231.5. The fee varies by pipe dimension. The fee shall adjust in accordance with the Consumer Price Index each calendar year.

5. **Compliance with Law**. The parties shall construct, maintain, remove, and/or abandon all pipelines and appurtenances in conformity with all applicable rules and regulations.

6. **Emergency Response Plan**. The parties shall maintain an Emergency Response Plan satisfactory to the City, providing evidence of arrangements to provide emergency clean up services.

7. **Permits Required**. Before constructing facilities, the parties shall obtain permits and pay any fees for encroachment or excavation within the public right of way. The City Engineer shall inspect all work performed to ensure conformity to approved plans. The parties shall repair the streets in accordance with City standards after excavations.

8. **Emergencies**. The proposed Franchise Agreement requires that the parties notify the State Fire Marshall and the City Fire Department and Public Works Department of any escape of liquids or vapors and immediately commence to cure. Under certain conditions, the parties may commence work without first obtaining City approval.

9. **Annual Certification**. By the first working day in January each year, the parties must file a

report with the City Engineer providing the total footage of all facilities in the City and certifying that the parties have complied with all federal, state and local regulations.

10. **Change in Use**. Upon termination of the Franchise Agreement, the parties shall apply to the City to either (a) declare the facilities as inactive and continue the franchise for that purpose only, (b) remove all facilities, or (c) abandon the facilities in place. The City may thereupon determine the ultimate destiny of such facilities.

11. **Removal of Facilities.** The parties will have 90 days to remove the facilities after the City makes a determination for removal.

12. **Insurance.** The parties shall provide insurance as follows: (1) general liability of $10 million, (2) pollution liability insurance of $25 million, and (3) worker's compensation and automobile liability insurance as required. The parties may self-insure subject to satisfaction of conditions or the provision of adequate corporate guarantees. The parties shall indemnify and hold harmless the City and its agents for any claims arising from the granting of the franchise.

FINANCIAL IMPACT:

The City proposes to request a $50,000 base granting fee from each franchisee resulting in a one-time fee of $100,000 payable in the first year of the franchise. The franchisees would then pay the public utility code authorized franchise fees initially approximating $15,000, and thereafter adjusted for inflation.

RECOMMENDATION:

Staff requests direction from the Economic Development Committee prior to Continuing and Completing Negotiations with CalNev and SFPP on a New 20 Year Franchise Agreement for each entity.