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To: [Cindy Muller](#)
Cc: [Mitchell, Lori](#)
Subject: Information on Publicly Owned Utilities
Date: Thursday, June 18, 2020 4:10:00 PM
Attachments: [Public power is less expensive.pptx](#)

Hi Cindy,

As we continue to collaborate and consider the possibility of the City owning and operating the electric system to serve the Google project, I wanted to share some information with you that I think is very pertinent to our efforts, especially given our relative inexperience in this matter. While the information is in no way intended to be a legal briefing or make future commitments on behalf of the City, I think it does provide some vision and structure in which we would operate as the electric service provider to Google.

A primary potential benefit to Google and the City is more efficient service delivery and affordable electric rates. As we've noted several times, it's typical that public electric utilities provide rates that are significantly less expensive than their investor-owned counterparts. The attachment titled "Public power is less expensive" illustrates some relative examples, which were presented to the City Council in last summer's City Council Study Session on Energy Resilience. The links below to the American Public Power Association website provide some additional and related information.

<https://www.publicpower.org/public-power/stats-and-facts>

<https://www.publicpower.org/periodical/article/public-power-affordable>

<https://www.publicpower.org/public-power-california>

With that said, and while we believe the City would be more efficient and able to provide Google with less expensive rates than PG&E, we won't know for sure until we are able to perform the service analysis, which is targeted for completion this fall. However, what we do know is that there are State laws – Propositions 218 and 26 – that govern how rates are set. Below is some key language taken from the most recent briefing by the League of California Cities on these two propositions. I've also included the link to the full briefing for your review, if interested. Proposition 26 came after and closed some loopholes in 218 related to electric utilities. Together, they essentially would require the City to establish rates that are cost-based.

On Page 18, the briefing describes that, in general, before the adoption of Proposition 26, courts upheld regulatory fees that:

- Are imposed in an amount necessary to carry out the purposes and provisions of the regulation;
- Do not exceed the reasonable cost of providing the services necessary to the activity on which the fees are based; and
- Are not levied for an unrelated revenue purpose.

Later, on Page 62, it speaks directly about electric rates:

5. Specific applications

a. Gas and electric utility rates

Gas and electricity service charges are exempt from Proposition 218 (Article XIII D, § 3(b)), but not Proposition 26. Proposition 218 prevents local government providers of water, sewer, and refuse collection services from transferring the proceeds of rates for those services to the local government's general fund without demonstrating that doing so is justified by costs borne by the general fund associated with the utility. (Howard Jarvis Taxpayers Ass'n v. City of Fresno (2005) 127 Cal.App.4th 914 [charter-authorized payment in lieu of taxes by water, sewer and trash utilities violated Prop. 218 unless cost justified]; Howard Jarvis Taxpayers Ass'n v. City of Roseville (2002) 97 Cal.App.3d 637 [same as to franchise fee charged to water, sewer and trash utilities].)

Accordingly, gas and electric service fees imposed by public utilities constitute taxes under Proposition 26 unless they:

- Are imposed pursuant to legislation which predates its adoption in 2010; or
- Comply with one of its exceptions, such as the exception of § 1(e)(2) for "[a] charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product."

Transferring funds from a gas or electric utility to a local government's general fund without a cost justification is evidence the fee exceeds the reasonable cost of providing the service and therefore constitutes a tax under Proposition 26. Accordingly, agencies that benefit from transfers from gas and electric utilities must rely on the fact that Proposition 26 is not retroactive, as discussed above, or demonstrate that those transfers are justified by costs borne by the general fund for the benefit of the utility.

<https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Proposition-26/LCC-218-26-Guide-2017-FINAL.aspx>

Lastly, I want us to remember that this isn't just about cost savings. Having an advanced microgrid with sustainable, reliable, safe and resilient energy resources within the project is beneficial to everyone. We think that collaborating on an effort to establish a City owned and operated electric system increases our chances of maximizing this vision and reducing costs, both now and in the future as new opportunities and technologies allow.

I hope this information is helpful to you. Please let me know if you have any questions.

Regards,

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Public power is less expensive

California Municipalities	Residential Rates Compared to PG&E	Non-Residential Rates Compared to PG&E
Silicon Valley Power (City of Santa Clara)	48% Lower	26%-38% Lower
Sacramento Municipal Utility District	33% Lower	31.1%-47.6% Lower
Alameda Municipal Power	14.9%-31.5% Lower	11.3%-18.9% Lower
Los Angeles Department of Water and Power	31% Lower	7-27% Lower

Sources:

[Silicon Valley Power](#), [Sacramento Municipal Utility District](#), [Alameda](#), [LADWP 1](#), [2](#)

	CA Public Power Costs vs IOUs (2017)
Residential rates	17.4% lower
Commercial rates	14.7% lower

Source: [American Public Power Association](#)