S225589

IN THE SUPREME COURT
OF THE
STATE OF CALIFORNIA

ROLLAND JACKS and ROVE ENTERPRISES, INC.,

Plaintiffs and Appellants,

v.

CITY OF SANTA BARBARA,

Defendant and Respondent.

On Review from the Court of Appeal
for the Second Appellate District, Division Six, Case No.
B253474

After an Appeal from the Superior Court of California,
County of Santa Barbara, Case Number 1383959,
Hon. Thomas P. Anderle

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT CITY OF SANTA BARBARA; AMICUS CURIAE BRIEF

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

There are no entities or persons that must be listed in this certificate under California Rules of Court, rule 8.208.

DATED: October 21, 2015 HANSON BRIDGETT LLP

By: _____

ADAM W. HOFMANN
Attorneys for Amicus Curiae
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CITIES

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INTRODUCTION

Pursuant to rule 8.520(f) of the California Rules of Court, the League of California Cities (the "League") respectfully requests permission to file an amicus curiae brief in support of Respondent City of Santa Barbara. This application is timely made within 30 days after the filing date of the City's reply brief on the merits.

No party or counsel for a party in this proceeding authored the proposed amicus brief in any part, and no such party or counsel, nor any other person or entity other than the amicus curiae, made any monetary contribution intended to fund the proposed brief's preparation or submission. (See Cal. Rules of Court, rule 8.520(f)(4).)

IDENTITY OF AMICUS CURIAE AND STATEMENT OF INTEREST

The League is an association of 474 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance, and the League's members have a substantial interest in its resolution.

First, this case challenges the ability of local governments to negotiate fees for the valuable use of their property by private, for-profit utilities. Most, if not all, local governments in California derive a significant portion of their revenues from such "franchise fees," and use resulting revenues to fund essential services for their residents, businesses, and property owners.

In fact, according to data gathered by the State Controller, California cities derived a significant portion of their revenues from franchise fees in fiscal year ("FY") 2013-14, the last year for which data is available. (Motion for Judicial Notice in Support of Amicus Curiae Brief ("MJN") Exh. A.) The median city received 6% of its general revenues from franchise fees in FY 2013-14. (MJN Exh. A, at p. 1.) But many cities relied much more heavily on franchise fees, including:

- Needles - 31% (of general revenues)
- Lodi – 26.0%
- Arvin – 24%
- Adelanto – 23%
- Imperial Beach – 22%
- San Jacinto – 21%
- Colusa – 20%
- Azusa – 20%

(MJN Ex. A, at pp. 1, 2, 5, 6.) 87 additional cities in California relied on franchise fees to make up 10%-20% of their annual revenues during the same period. (MJN Ex. A.) The League's members, thus, have a strong interest in any decision that

implicates their ongoing ability to negotiate and collect franchise fees.

Second, local governments are bound by the provisions of Article XIII C, of the California Constitution.[1] The Opinion below applies Article XIII C to franchise fees for the first time. The Opinion places strict limitations on the ability of local governments to adopt franchise fees, imperils funding for vital government services, and places many local governments at risk for crippling, class-action refund claims.

The League believes it can aid this Court's review by providing a broader legal framework for this issue. The League's amicus counsel have examined those briefs and are familiar with the issues and the scope of the presentations. The League respectfully submits that additional briefing would be helpful to clarify that franchise fees have never been considered taxes, and the franchise fee at issue here was not converted to a tax by the procedures used to implement it.

Therefore, the League respectfully requests leave to file the brief combined with this application.

DATED: October 21, 2015 HANSON BRIDGETT LLP

By: _____

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LEAGUE OF CALIFORNIA CITIES

[1] All subsequent references to articles and sections of articles are to the California Constitution.

BRIEF OF AMICUS CURIAE LEAGUE OF CALIFORNIA CITIES

INTRODUCTION

The parties, the trial court, and the Court of Appeal all agree on one thing: franchise fees are not taxes. They are the negotiated cost private utilities pay for the right to use public property in their for-profit businesses. As a result, this case turns on whether there is something about the City of Santa Barbara's franchise agreement with Southern California Edison ("SCE") that converts half of the negotiated franchise fee into a tax. There is not.

Reaching a contrary conclusion, the Court of Appeal focused on the ways in which it believed a portion of the franchise fee resembled the City's utility users tax. The similarities drawn by the court, however, fall apart on close examination.

First, the Court of Appeal found that the City had been willing to grant franchise rights for a 1% fee, and the conditional provision that increased the fee 2% served only to increase revenue without any consideration paid in exchange. Not so. The City granted only a temporary and—in franchise terms—brief extension of SCE's prior franchise rights for a 1% fee. But the heart of the consideration the parties agreed to exchange was a 2% fee for a 30-year franchise. As a result, the whole fee fits the traditional definition of a franchise fee, and no part of that fee was for the generation of revenue without bargained-for consideration as with a utility users tax.

Second, the court found that half the franchise fee was akin to a utility users tax because SCE collects it directly from City residents as a surcharge, rather than recovering it as part of its electricity rates. But this feature of the franchise agreement was a term demanded by SCE in order to comply with the directives of the California Public Utilities Commission ("CPUC"). It is not a requirement of the City. To the contrary, the City has no interest in or authority to direct the manner in which SCE recovers the cost of its services. As a result, the surcharge was not imposed by the City, as is a utility users tax. The fact that SCE recovers a portion of its franchise cost in the form of a surcharge does not convert that portion of the City's franchise fee into a tax.

Third, the Court of Appeal considered the size of the franchise fee to be an indication that some portion of it must be a tax, holding that Proposition 218 governs the portion of the fee that exceeds prevailing rates in SCE's geographic territory. There is no basis in the text of the Constitution or related ballot materials to support the court's conclusion that Proposition 218 limits franchise fees. To the contrary, the court's construction of Proposition 218 would lead to the implied repeal of constitutional and statutory provisions that secure the City's right—as a charter city—to set franchise fees in excess of prevailing rates in SCE's service area. Implied repeal must be avoided if possible. As a result, the size of the franchise fee cannot be evidence that it is a tax.

Fourth, in drawing its comparisons, the Court of Appeal completely overlooked the ways in which the City's franchise fee and utility users tax differ. For example, on its face, the franchise fee is SCE's legal obligation, paid in exchange for franchise rights, while the utility users tax is a debt owed by City residents. It is true that, in practical terms, City residents pay both. But the distinction between the legal and economic incidence of the two levies is no mere technicality. Unlike the franchise fee, the City retains the authority to collect its utility users tax directly from City residents, and to impose penalties on those residents (not SCE) for non-payment. If, on the other hand, any part of the franchise fee goes unpaid, SCE loses its franchise; the City has no right to seek payment from City residents. Thus, the City's franchise fee bears the indicia of a traditional franchise fee and few material similarities with a utility users tax.

FACTUAL AND PROCEDURAL BACKGROUND

The League adopts the Statement of Facts and Procedural History as set forth in the City's Opening Brief. (OB 12-21.)

ARGUMENT

I. FRANCHISE FEES ARE NOT TAXES.

Franchise fees are well established in California jurisprudence. "A franchise is a grant of a possessory interest in public real property, similar to an easement." (*Santa Barbara County Taxpayer Assn. v. Board of Supervisors* (1989) 209 Cal.App.3d 940, 949 (*Santa Barbara Taxpayers*).) It is "a

negotiated contract between a private enterprise and a governmental entity for the long-term possession of land." (*Ibid.*)

In turn, as the Court of Appeal acknowledged, "the definition of 'franchise fee' has been constant for nearly a century." (Slip Op., p. 6.) It is "a 'charge which the holder of the franchise undertakes to pay as part of the consideration for the privilege of using the avenues and highways occupied by the public utility.'" (*Ibid.*, citing *Tulare County v. City of Dinuba* (1922) 188 Cal. 664, 670 (*Tulare County*); *City of Santa Cruz v. Pacific Gas & Electric Co.* (2000) 82 Cal.App.4th 1167, 1171.)

Equally well settled is the proposition that "franchise fees collected for grants of rights of way" are not taxes. (Slip Op., p. 1, citing *Santa Barbara Taxpayers*, *supra*, 209 Cal.App.3d 940.) They are "compensation for the privilege of using the streets and other public property within the territory covered by the franchise." (*Pacific Tel. & Tel. Co. v. Los Angeles* (1955) 44 Cal.2d 272, 283; accord *City of Los Angeles v. Tesoro Refining & Marketing Co.* (2010) 188 Cal.App.4th 840, 847; see also *Santa Barbara Taxpayers*, *supra*, 209 Cal.App.3d at p. 950, citing *City & County of San Francisco v. Market St. Ry. Co.* (1937) 9 Cal.2d 743, 748-749 [holding that franchises are a form of property that may be taxed, but the franchise fees are not taxes].) Even the Court of Appeal below confirmed that its Opinion is not meant to foreclose "legitimate franchise fees." (Slip Op., p. 11, emphasis omitted.)

Rightly so. Nothing in the history of anti-tax amendments to the California Constitution—Propositions 13, 218, and 26—

sought to change that established principle. Proposition 218, enacted by voters in 1996, added Articles XIII C and XIII D to the California Constitution. Neither Article includes any mention of or limitation to franchise fees. And the related ballot materials—which focused on assessments and property-related fees—make no mention of franchise fees. (See MJN Ex. B, pp. 72-77; see also *Legislature v. Eu* (1991) 54 Cal.3d 492, 504 [holding voter pamphlets evidence voter intent, relevant to construe ambiguous terms in voter-enacted laws].)

The amendments to Articles XIII A and XIII C, which voters enacted in 2010 by "Proposition 26," confirm that fees for use of government property, like franchise fees, are not taxes. Proposition 26 enacted the first affirmative definition of the term "tax," with the express goal of reinforcing Proposition 218 and further narrowing the ability of government agencies to impose revenue measures without voter approval. (See MJN Ex. C, p. 114.) Even with this goal in mind, however, Proposition 26 expressly excluded from its limitations any "charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property." (Art. XIII C, § 1, subd. (e)(4).) Although Proposition 26 does not control here, (Slip Op., pp. 4-5), it is illuminating that a 2010 measure meant to limit future revenue measures *reaffirmed* that franchise fees are not taxes.

II. THE CITY-SCE FRANCHISE AGREEMENT ESTABLISHED A 2% FRANCHISE FEE. NOTHING IN THE AGREEMENT CONVERTED THAT FEE INTO A TAX.

Despite universal agreement that franchise fees are not taxes, the Court of Appeal overturned a portion of the City's 2% franchise fee, finding that half of that fee was a tax enacted without voter approval in violation of Article XIII C. That decision rests on three determinations by the Court of Appeal: (1) SCE's franchise rights do not depend on the challenged portion of the fee; (2) SCE is required to collect the challenged portion of the fee directly from customers within the City; and (3) the City's 2% franchise fee exceeds the prevailing rate of franchise fees charged by other local agencies in SCE's service area. (Slip Op., p. 10.) As a result, the court found half the City's franchise fee resembles a utility users tax rather than a franchise fee. (*Id.*, at pp. 7-10.) This analysis was error.

A. The City negotiated a 2% fee for a 30-year franchise. No part of that fee constituted gratuitous revenue without valuable consideration.

As the Court of Appeal explained, the "primary purpose" of a government levy, not its label, determines whether it is a tax. (Slip Op., pp. 6-7, citing *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 874, *Weisblat v. City of San Diego* (2009) 176 Cal.App.4th 1022, 1038.) Applying this principle, the Court of Appeal determined that half of the City's franchise fee was a tax because its primary purpose was to

generate revenue. The court reasoned that the City granted SCE a franchise during the initial phase of the new franchise agreement in exchange for a 1% fee. This, according to the court, demonstrated that the true value of the franchise was 1% of SCE's gross revenue. SCE's conditional agreement to pay an additional 1%, funded by a CPUC-approved surcharge, was just added revenue and thus akin to a utility users tax. (Slip Op., pp. 7-9.) This factual conclusion ignores the central exchange of consideration in the franchise agreement: a *30-year* franchise for a *2%* fee.

After years of receiving a 1% franchise fee from SCE, the City sought to increase that fee to 2% beginning with a new franchise in 1999. (2 JA 345 ¶ 8.) SCE eventually agreed, and the City adopted the terms of their agreement by Ordinance No. 5135. (2 JA 346 ¶ 12, 403-413.) Under that agreement, the City granted SCE a 30-year franchise "in exchange for" SCE's agreement to pay 2% of its gross annual receipts—as defined—"as a consideration . . . and as compensation for use of the streets in the City. . . ." (2 JA 406 § 5.)

For reasons discussed in Section II.B, *infra*, the agreement conditioned SCE's obligation to pay half of the new franchise fee on approval by the CPUC. (2 JA 406 § 6; see also Section II.B, *infra*.) But if the CPUC refused approval within three years, SCE's 30-year franchise became immediately terminable. (2 JA 405 § 3(A), (B) & (E), 407 § 6(E).) Thus, SCE was permitted to continue using its franchise for a fee of 1%, but only for three

years. (*Ibid.*) The full value of the 30-year franchise it negotiated was dependent on payment of a 2% fee. (2 JA 406 § 5.)

The exercise of a franchise often requires a substantial investment by service providers. That is why utilities negotiate for long-term franchise agreements that ensure they will have the time to recoup their costs. (See *Santa Barbara Taxpayers, supra*, 209 Cal.App.3d at p. 949 ["In sum, franchise fees are paid for the governmental grant of a relatively long possessory right to use land, similar to an easement or a leasehold, to provide essential services to the general public."].)

SCE's right to continue utilizing its franchise in the City for three years for a fee of 1% was an accommodation to ensure ongoing delivery of electricity while SCE obtained CPUC approval for the franchise-fee increase. But the City's actions demonstrate that—contrary to the Court of Appeal's finding—it was *not* willing to grant anything more than a brief, temporary franchise for a 1% fee. The real exchange of consideration, as reflected in Section 5 of the agreement, was a 2% fee for a 30-year franchise. Thus, the whole negotiated fee is consistent with the traditional definition of a franchise fee, and none of it was imposed to generate revenue without bargained-for consideration.

Nor is it relevant that revenues from the increased portion of the franchise fee are deposited in the City's general fund. (Slip Op., p. 9.) All the City's franchise revenues are deposited in its general fund—as with most if not all other cities and counties. And no law appears to limit the ways in which local governments

spend franchise revenues. The City's franchise fee remains consideration for the valuable use of public property, no matter how revenues are spent.

B. The method SCE uses to recover the cost of its franchise is controlled by the CPUC. It is not imposed by the City as a tax.

The Court of Appeal also concluded that half the City's franchise fee was a tax, rather than a franchise fee, because SCE passes it through as a surcharge to customers in the City. (Slip Op., pp. 10-11.) But the mechanism SCE uses to recover the increased cost of its franchise is determined by SCE and the CPUC. It was not imposed by the City, and it does not render the fee a tax.

The fundamental touchstone of any "tax" is that it is "imposed" upon payers without offsetting consideration. (Art. XIII C, § 2 [limiting taxes "imposed" by local government]; see also Gov. Code, § 53721 [defining "taxes" as those "imposed" for general or specific purposes].) Thus, no part of the franchise fee can be considered a City tax unless it is established by the City's unilateral authority. (See *Ponderosa Homes, Inc. v. City of San Ramon* (1994) 23 Cal.App.4th 1761, 1770 (*Ponderosa Homes*) [defining "impose," as used in the Mitigation Fee Act, as "to establish or apply by authority or force. . . ."].)

The City did not establish the mechanism SCE uses to recover the increased cost of its franchise from its customers. As the Court of Appeal acknowledged, when the City began negotiating with SCE for a new franchise agreement, the City

sought to increase the franchise fee from the 1% paid in prior years, to 2% for the period 1999-2029. (Slip Op., p. 2.) In response, *SCE* proposed that it be permitted to recover the additional 1% as a surcharge, passed directly through to its customers in the City. (Slip Op., pp. 2-3.)

SCE's proposal, in turn, was designed to comply with a 1989 CPUC decision that governs the ways in which private utilities recover the costs of some franchise fees. (Slip Op., p. 3.) Under that decision, the CPUC permits investor-owned utilities to recover only some costs in the basis for their general service rates. As relevant here, electric utilities may include in their general rate case local franchise fees only up to the 1% limit state statutes impose on counties and general law cities. (2 JA 425 fn. 8.) When charter cities like Santa Barbara charge franchise fees in excess of the statutory limit, those costs must be segregated and passed through as a surcharge to customers within the charter city. (2 JA 438, 445 ¶¶ 1, 1(a).)

The City acquiesced to SCE's surcharge proposal as an accommodation to SCE and to allow it to comply with the CPUC mandate. (Slip Op., p. 3; 2 JA 406 § 5.) But the surcharge was not a requirement of the City. The City has no interest in the manner SCE recovers the cost of paying a 2% fee. Nor does it have any legal authority to establish such a surcharge. Only the CPUC may determine how investor-owned utilities recover their operational costs, whether through base rates or otherwise. (See Art. XII, § 6; *Anchor Lighting v. Southern California Edison Co.* (2006) 142 Cal.App.4th 541, 548.) Thus, the City did not

"impose" the surcharge on city residents; nor could it. SCE's decision to recover a portion of its franchise cost as a CPUC-approved surcharge cannot convert the franchise fee into a City tax.

Pushing a contrary result, plaintiffs and appellants Rolland Jacks and Rove Enterprises, Inc. suggest that the City did impose the surcharge because that charge is reflected in a City ordinance. (AB 24-25.) This argument is misplaced; ordinances are simply the mechanism cities use to adopt franchise agreements. (*County of Alameda v. Pacific Gas. & Electric Co.* (1997) 51 Cal.App.4th 1691, 1696, fns. 3, 4 (*County of Alameda*) [holding that "the acceptance of a franchise is a matter of contract" but recognizing that franchises are granted by ordinance].)

Like other cities in California, all Santa Barbara franchises are granted by ordinance to ensure voters may exercise their referendum power over franchises. (See 2 JA 362 § 512, 383 § 1401.) The franchise agreement remains "a matter of contract" between the City and SCE, notwithstanding the fact that it is memorialized in an ordinance. (*County of Alameda, supra*, 51 Cal.App.4th at p. 1696, fns. 3, 4.)

C. The size of the City's franchise fee does not make part of it a tax.

The Court of Appeal also concluded that half the City's franchise fee was a utility users tax because, at 2%, it exceeds the prevailing rate for franchise fees in SCE's service area. (Slip Op., p. 10.) The court suggested that Proposition 218 must control the

portion of a franchise fee that exceeds regional norms. (Slip Op., pp. 10-11.) Otherwise, market forces and voter frustration will prove inadequate to constrain the size of franchise fees. (*Ibid.*) This analysis is unsupported by any legal authority. Moreover, because of state laws limiting franchise fees in general law cities and counties, the Opinion effectively reads Proposition 218 as an implied repeal of constitutional and statutory provisions which grant charter cities broad discretion to set franchise fees without reference to the statutory cap imposed on other local governments.

1. The California Constitution places no limit on the size of a franchise fee.

Most importantly, there is no legal basis for the Court of Appeal's conclusion below that a franchise fee becomes a utility users tax when it exceeds a certain threshold. As this Court has noted, franchises were historically awarded to "the highest bidder." (*Tulare County, supra,* (1922) 188 Cal. at p. 670.) And, as discussed above, nothing in the text of Proposition 218 or related ballot materials indicates any intention to change that background rule. (See MJN Ex. B, pp. 72-77.)

To the contrary, even Proposition 26—which adds restrictions to Proposition 218—continues to permit franchise fees with no cost limitation. (Compare Art. XIII C, § 1, subd. (e)(1) [permitting charges "imposed for a specific benefit" that are limited to "the reasonable costs to the local government of conferring the benefit . . . ."], with Art. XIII C, § 1, subd. (e)(4) [permitting charges "imposed for entrance to or use of local

government property, or the purchase, rental, or lease of local government property."] Under the circumstances, there is no textual basis for the prevailing-rate cap the Court of Appeal would establish for charter cities.

2. Proposition 218 should not be read to implicitly repeal charter cities' constitutional and statutory authority to set franchise fees in excess of 1%.

"The implied repeal of a statute by a later constitutional provision is not favored; in fact the presumption is against such repeal, especially where the prior statute has been generally understood and acted upon." (*Metropolitan Water Dist. v. Dorff* (1979) 98 Cal.App.3d 109, 114 (*Metropolitan Water Dist.*) [holding that Proposition 13 did not invalidate water district's statutory authority to impose property taxes on newly annexed lands]; see also *Barratt American, Inc. v. City of San Diego* (2004) 117 Cal.App.4th 809, 816-817 [applying the doctrine against implied repeal to Proposition 218].)

State laws, the Broughton Act and Franchise Act of 1937, limit the amount counties and general law cities can charge for their franchises. (See Pub. Util. Code, §§ 6001, *et seq.*, 6201, *et seq.*) Charter cities, however, are not so limited and may charge whatever fee the market will bear. (See Pub. Util. Code, § 6205; see also Art. XI, § 5 [establishing that charter cities are not subject to general laws]; Art. XI, § 9, subd. (b) [permitting cities to prescribe terms and conditions for the operation of utilities]; Art. XII, § 8 [maintaining local control over the terms and conditions of local franchises].)

If Proposition 218 placed a prevailing-rate cap on franchise fees as the Court of Appeal suggests, it would have the effect of impliedly repealing these authorities. Because the Broughton Act and Franchise Act of 1937 cap the franchise fees charged by California's 58 counties and general law cities—comprising 2/3 of California cities (http://www.cacities.org/Resources/Learn-About-Cities)—the prevailing rate of franchise fees in any utility's service area that is not limited to a charter city will almost certainly be dictated by those statutes. As a result, a construction of Proposition 218 that limits franchise fees to prevailing rates effectively subjects charter cities to the Broughton Act and Franchise Act of 1937, and impliedly repeals the provisions of those statutes that expressly exempts charter cities. (Pub. Util. Code, § 6205.)

As discussed above, neither Proposition 218's text nor its legislative history expresses an intention to repeal charter city authority to set franchise fees without statutory limitation. And this Court should avoid a construction of Proposition 218 that repeals that authority by implication. (*Metropolitan Water Dist.*, *supra*, 98 Cal.App.3d at p. 114 [construing Prop. 13]; *Citizens Association of Sunset Beach v. Orange County Local Agency Formation Commission* (2012) 209 Cal.App.4th 1182, 1192 [applying the same rule to Prop. 218].)

D. This franchise fee bears the indicia of a traditional franchise fee, not of a utility users tax.

To rule against the City, the Court of Appeal focused on the ways the City's increased franchise fee resembled a utility users tax. As discussed above, those apparent similarities fall apart upon close examination. Moreover, the Court completely failed to consider the ways in which the increased fee resembles traditional franchise fees. (Slip Op., p. 9.)

For example, the franchise agreement provides that SCE "shall pay to the City" the full 2% franchise fee. (2 JA 406 § 5.) That should be compared with the City's utility users tax, which is "imposed . . . upon every person in the City using electrical energy in the City." (MJN Ex. D, § 4.24.030.) And, unlike the franchise fee, the obligation to pay the utility users tax is "a debt owed by the service user to the City." (MJN Ex. D, § 4.24.120.)

This distinction the City identifies between the legal and economic incidence of the two charges is no mere technicality. (See OB 37-40.) While the franchise agreement provides for the collection of both the 1% increase to the franchise fee and the utility users tax directly from City customers, the City retains authority to collect only the utility users tax itself. (MJN Ex. D, §§ 4.24.120-130.) It has no authority to collect any part of the franchise fee directly from City residents.

Consistently, and significantly, if a utility customer fails to pay the City's utility users tax, the City may impose penalties, bring a debt-collection action, and utilize administrative remedies, all against electricity users in the City. (See MJN Ex.

D, §§ 4.24.110-140.) By contrast, if there is a failure to pay any part of the franchise fee, SCE loses its franchise, and no remedy is available to the City against SCE customers. (2 JA 410-411 § 14.)

Moreover, SCE's authority to collect the franchise fee—whether through a special surcharge or through standard rates—is determined by SCE and the CPUC, with no input from the City. By contrast, the City sets its utility users tax independently, and simply imposes upon SCE the obligation to collect it from customers. (MJN Ex. D, § 4.24.090.) The CPUC has no authority over the amount of the utility users tax or the manner of its collection, just as the City had no authority to require direct collection of the increased franchise fee from City residents. (See 2 JA 442-443 ¶¶ 9-10 [recognizing that the CPUC has no jurisdiction to determine the authority or treatment of local utility users taxes]; see also Section II.B, *supra*.) Nor does SCE bear any responsibility for payment of a utility users tax. (Pub. Util. Code, § 799.)

When reviewed in this light, it is clear that the franchise fee bears indicia of traditional franchise fees and little similarity to a utility users tax. It should be construed accordingly.

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CONCLUSION

The City's franchise fee is just what it claims to be: a negotiated price for the valuable use of its property rights by a private, for-profit utility. It is, accordingly, not a tax and is not limited by Proposition 218. The Court of Appeal's Opinion should be reversed and the trial court's judgment affirmed.

DATED: October 21, 2015 HANSON BRIDGETT LLP

By: _____

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WORD CERTIFICATION

I, Adam W. Hofmann, counsel for amicus curiae League of California Cities, hereby certify, in reliance on a word count by Microsoft Word, the program used to prepare the foregoing "Application of the League of California Cities to File Amicus Curiae Brief in Support of Respondent City of Santa Barbara; Amicus Curiae Brief," that it contains 4,745 words, including footnotes (and excluding caption, certificate of interested entities or persons, tables, signature block, and this certification).

Dated: October 21, 2015

By: _____
Adam W. Hofmann