S224779

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Citizens for Fair REU Rates, et al.
Plaintiffs and Appellants,
vs.
City of Redding, et al.,
Defendants and Respondents.

CONSOLIDATED ANSWER BRIEF TO THE AMICUS CURIAE BRIEF OF THE LEAGUE OF CALIFORNIA CITIES AND THE CALIFORNIA STATE ASSOCIATION OF COUNTIES, AND TO THE AMICUS CURIAE BRIEF OF THE CALFORNIA MUNICIPAL UTILITIES ASSOCIATION

Review Of a Published Decision of the
Third Appellate District, Case No. C071906

Reversing a Judgment of the Superior Court of
the State of California for the County of Shasta,
Case No. 171377 (Consolidated with Case No. 172960)
Honorable William D. Gallagher, Judge Presiding

Walter P. McNeill, Cal. Bar No. 95865
wmcneill@mcnlaw.com

MCNEILL LAW OFFICES
280 Hemsted Drive, Suite E
Redding, CA 96002
Tel: 530-222-8992

Attorneys for Plaintiffs Citizens for Fair REU Rates, et al. and Plaintiffs Fee Fighter LLC, et al.

S224779

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Citizens for Fair REU Rates, et al.
Plaintiffs and Appellants,
vs.
City of Redding, et al.,
Defendants and Respondents.

CONSOLIDATED ANSWER BRIEF TO THE AMICUS CURIAE BRIEF OF THE LEAGUE OF CALIFORNIA CITIES AND THE CALIFORNIA STATE ASSOCIATION OF COUNTIES, AND TO THE AMICUS CURIAE BRIEF OF THE CALFORNIA MUNICIPAL UTILITIES ASSOCIATION

Review Of a Published Decision of the
Third Appellate District, Case No. C071906

Reversing a Judgment of the Superior Court of
the State of California for the County of Shasta,
Case No. 171377 (Consolidated with Case No. 172960)
Honorable William D. Gallagher, Judge Presiding

Walter P. McNeill, Cal. Bar No. 95865
wmcneill@mcnlaw.com

MCNEILL LAW OFFICES
280 Hemsted Drive, Suite E
Redding, CA 96002
Tel: 530-222-8992

Attorneys for Plaintiffs Citizens for Fair REU Rates, et al. and Plaintiffs Fee Fighter LLC, et al.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. INTRODUCTION

The *amicus* briefs filed the League of California Cities and California State Association of Counties (hereinafter "League" or "the League") and by the California Municipal Utilities Association (hereinafter "CMUA") do not support the main argument made by the City of Redding from the outset, so much as shift to different arguments, perhaps recognizing the lack of legal viability for the City's central theme in its defense. Whereas the City has consistently predicated its defense on the idea that budgetary approvals made prior to Proposition 26 showing the PILOT amount as an inter-fund transfer constitute independent legislative approval of the PILOT as a pre-existing fee, (1) the League argues instead (*inter alia*) that the electric rates enacted after Proposition 26 incorporating the PILOT amount for future transfer to the General Fund are not excessive because the PILOT amount is more than offset by profits from the City's sale of wholesale power on the open power market, and (2) CMUA decries the alleged "economic dislocation" that would occur in many cities that inflate their rates so as to send excess revenue to the general funds of those cities, while also suggesting that it is patently "reasonable" for municipal utilities to charge municipal customers for imaginary costs that aren't connected to municipal electric service but are costs commonly (and actually) incurred by private investor-owned utilities.

Both *amici* argue that the City's pre-existing electric rates should be "grandfathered" under Proposition 26, but they neglect to mention that the relief requested by Plaintiffs is to invalidate only the amount of the post-Proposition 26 approved rates which are

added on to collect sufficient funding for a later PILOT transfer to the City's general fund, which amount is between 6% and 7% of the rates and less than half of the City's overall increase in the rates. Ironically, invalidating the PILOT amount of the rates as requested by Plaintiffs would leave the City with higher rates than simply turning back the clock to the rates that existed before the December 10, 2010 rate increase of over 15%.

The arguments of these *amici* have no legal foundation and do little if anything to support the City's position. They are – perhaps understandable – scattershot attempts to salvage a widespread practice of revenue extraction from unsuspecting municipal ratepayers that has always been legally and ethically questionable, but that following the passage of Proposition 26 is clearly unconstitutional.

II. ANSWER TO ARGUMENTS MADE BY THE LEAGUE *AMICUS* BRIEF.

A. THE CORRECT FOCUS IS ON THE ELECTRIC RATES AND NOT BUDGETARY ENACTMENTS OR INTER-FUND TRANSFERS.

The centerpiece of the City's defense in this matter has been the notion that years of budgetary approvals which show a PILOT amount as an inter-fund transfer (in a couple of line items from budgets that are over 200 pages in length) somehow gave the "PILOT" genuine independent legal existence as a fee or charge, and therefore the PILOT should be "grandfathered" under Prop. 26; whereas Plaintiffs argued from the outset that the PILOT line item in budgets is only a sort of "measuring stick" that the City uses later to inflate new increases in electric rates to provide funds in the

corresponding amount. This action challenges the City's post Proposition 26 approval of Resolution 2010-179 increasing electric rates, insofar as those rates have embedded in them an amount to be collected which corresponds to a calculation of the PILOT amount so that the excess revenues can later be transferred to the City's General Fund. Plaintiffs filed a second suit on August 29, 2011 for only two reasons: (1) claims for refunds from 384 rate payers assigned to Plaintiff Fee Fighter LLC had been submitted to the City, denied, and therefore ripened as claims to sue for collection; and (2) as a protective measure it was necessary to challenge the City's approval of Resolution 2011-111, which ostensibly was supposed to be just a budget resolution but in fact was an aberration that on its face contains a summary legal brief defending the City's past and future practice of collecting the PILOT amount in electric rates (see 2 CT 530-531).

It was the City which has extensively and laboriously brought forward the past budget approvals of the City as a defense on the novel theory that budgetary action is also a legislative fee approval as to inter-fund transfers in the approved budget. (Never mind that this theory would convert budgetary approval into a binding legislative commitment on thousands of collections/expenditures ripe for litigation and enforcement if the City were to stray from the line items as delineated in the budget.) The trial court, however, was convinced by this argument and ruled accordingly. The Court of Appeal reversed, and in doing so spent substantial effort addressing the argument. (*Citizens For Fair REU Rates v. City of Redding* [hereinafter "Opinion"] (January 20, 2015, C071906) (formerly published at 233 Cal.App. 4th 402)). Nonetheless, the Court below clearly ruled as to the invalidity of the electric rates in question (Opinion, at p. 19), even if stated inartfully:

> The December 7, 2010 increase of the PILOT does require cost justification under Proposition 26. Rather than being the continuation of a grandfathered in rate, the December 2010 increase of the PILOT constitutes a tax under Proposition 26 unless Redding proves the amount collected represents its reasonable costs to provide electric service. Thus, Redding must cost justify the PILOT collected under the 2009 two-year Redding budget to the extent that additional funds were collected based on the December 7, 2010 rate increase.

Ironically, Plaintiffs agree with the League that inter-fund transfers projected in a budget are largely irrelevant, or at least are not the operative act that engages Proposition 26. An inter-fund transfer, in and of itself, is not a "levy, charge, or exaction" under Article XIIIC §1(e). Proposition 26 was designed to protect consumers, and the "bite" of unlawful disguised taxes occurs when the ratepayer is required to pay excessive rates. The amount shown for the PILOT as the projected interfund transfer in Redding's budget is useful secondarily only in that it indicates the likely target amount that the City hopes to collect in excess electric rate revenue.

A City budget is an important discretionary document that serves as a planning tool for financial administration of City services, but it does not breathe life into revenues, expenditures, and inter-fund transfers it describes as legally actionable fees and charges. As stated in the City's own budget document for FY 2010 & 2011 (p.vii) at IX AR 1991, Tab 190 :

> The City's budget is an important policy document. It serves as a financial plan, identifying the spending priorities for the organization. The budget is used to balance available resources with community needs, as determined by the City Council. It also serves as a tool for communication of the City's financial strategies and for ensuring accountability.

Based on the "separation of powers doctrine" and the nature of a budget as a discretionary document for the internal guidance of city administration, the courts normally will not even allow outside parties or the public to sue a city based on its budget. *Board of Supervisors v. Superior Court* (1995) 33 Cal.App.4th 1724, 1739-1740; *County of Butte v. Superior Court* (1985) 176 Cal.App.3d 693, 698. There is no legal authority or precedent for the notion advanced by the City that it's budgetary process "created" the PILOT as a fee or charge. As the League now argues, the fee or charge in question here is the electric rate set by the City Council approval of a rate increase on December 7, 2010.

With the proper shift in focus on rates rather than past budgets, several issues become transparent: (•) there can be no grandfathering of the PILOT amount in the rates based on past budgets; (•) there can be no grandfathering of the PILOT amount in the newly increased rates that are roughly 15% higher than the previous pre-Proposition 26 rates, of which the PILOT amount is roughly 7%; the PILOT amount is embedded in the increased electric rates because it is required by Resolution No. 2010-178 approved by the City Council in December 2010 and stating that one purpose of the approved rates is to "obtain funds necessary to maintain such intra-City transfers as authorized by law"; and (•) even with the voluminous historical "record" which the trial court generously allowed the City to file, there is no cost-justification for the PILOT amount embedded in the electric rates – it is purely money collected with no relation to electric services, and therefore a "tax" that fits no exceptions under XIIIC §1 of the California constitution.

B. THE PILOT AMOUNT OF THE RATES IS IS NOT "COVERED" BY THE PROFITS FROM WHOLESALE SALES OF POWER.

After *amicus* League concedes that the rates are the appropriate focus of inquiry, it attempts to justify collection of the PILOT amount in the rates imposed on ratepayers and the transfer of those monies to the City general fund by the argument that electric utility profits from the sales of wholesale power are theoretically more than sufficient to "cover" the PILOT amount. The Court of Appeal rejected this reasoning, finding (Opinion, at page 14):

> That the Utility has other sources of income is not dispositive. The gravamen of the problem is that, regardless of what else Redding might collect from certain customers, it has imposed a PILOT-- which it may do only with voter approval or if able to show it reflects Redding's reasonable costs of providing electric service.

The view taken by the League is that profits generated from wholesale sales of power should be freely allowed to be diverted straight to the General Fund in their entirety, and therefore any amount of such diverted funds could pay or substitute for the PILOT amount. This is an alarming perspective given that the City projected profits from sales of wholesale power to be $15.8M, $31M, and $21M in FYs beginning 2011, 2012, 2013 respectively. (See League brief at p.12; and see XIII AR Tab 205, 2975, also cited in the League brief). To the extent those profits subsidize the retail customers that is all to the good, and in fact legally required as the funds are part of the operational balance sheet of the utility and ultimately reflected in the retail rates by design. But again, *amicus* misses the point. If the retail electric rates challenged in this action are $7 million higher than they would be otherwise due to a transfer

of the PILOT amount, then – regardless of subsidy from other sources or their size – rates imposed to collect that extra $7 million are an unlawful tax at least in that amount.

Plaintiffs have no quarrel with the fact that in recent years the City's sales of wholesale power through the complex exchange that allows transfers of power throughout a large geographic area beyond the confines of California have generated "profits." Those wholesale transactions are not challenged and are not at issue in this matter; they are not in any way the subject of Res. 2010-179 challenged by Plaintiffs; they are, for what its worth here, a completely different species of transaction in a highly competitive market environment where buyers in remote locations have many options to choose from; Plaintiffs are doubtful that Proposition 26 would apply to such transactions in the first place, because there is no de-facto monopoly on wholesale power sources in the western United States, and it would be difficult to argue that buyers in these transactions have the price of wholesale power "imposed" on them. Nonetheless *amicus* League argues (at p. 15 of their brief) that the Court of Appeal decision suggests that it is improper for the City to make a profit from wholesale sales of power and must sell its wholesale power "at cost". The corollary suggested by *amicus* is that avoiding such a calamitous interpretation of Proposition 26 requires that the law also allow "profit" to pay for the PILOT (even if it necessarily comes at the cost to ordinary retail rate payers in rates higher that they would be otherwise).

This argument by *amicus* League is grasping at straws, and even more remotely at issues (wholesale power prices and their validity) that are not in the litigation and that have no actual relevance. This should not be factor in this Court's ultimate determination on the relevant Proposition 26 issues at hand.

C. GIVEN THAT THE CITY HAS NEVER TAKEN ANY LEGISLATIVE ACTION TO EXPLICITLY APPROVE THE PILOT AMOUNT AS A RATE SETTING MECHANISM, THERE WAS NOTHING TO GRANDFATHER WHEN PROPOSITION 26 BECAME EFFECTIVE.

The City of Redding increases its electric rates from time to time simply by raising the ¢/kilowatt hour paid by customers, with minor variances for different classes of rates or with some new charges, none of which are relevant here. What is important to note is that the City never legislatively approved a transparent rate setting "formula" that would explain to the public how the rates are established, much less a formula that explicitly includes the PILOT amount along with the other criteria to determine the amounts of the electric rates. In the thousands of pages of "record" submitted by the City you will not find one page with a "rate formula." In essence, the "experts" at the utility would determine what the rates ought to be, and then the proposed rates would be presented to the City Council and the public with a generalized explanation that rising costs or infrastructure needs, etc., necessitate a rate increase in the amount requested. After a *pro forma* presentation by the utility director to the City Council at a public meeting, the Council approved the rates requested. In the voluminous record covering over 25 years you will not find evidence of any occasions where the City Council rejected a rate increase. In every case the rate increases are merely upwards adjustments of the rates paid by the ordinary residential ratepayers. Thus, even if "grandfathering" were a valid consideration in this case, the only thing prior to Proposition 26 that could be considered

would be the pre-existing rates stated as the payment amounts required of the electric customers.

While *amicus* League and the CMUA argue that there should at least be grandfathering of the rates extant prior to Proposition 26, they seem not to understand that the relief requested by Plaintiff (which is not premised on grandfathering) would leave higher rates intact than the pre-Proposition. 26 rates. Simply put, Plaintiffs seek only to invalidate the portion of the rates that function as an illegal hidden tax, i.e., the amount embedded to pay over the projected PILOT amount to the General fund. The roughly 15% rate increase approved in December 2010 includes about 7% of this embedded amount for the PILOT. If the offensive 7% is taken out of the rates, roughly 8% of the increase remains; Plaintiffs do not contest that the City faces increased costs for power and so does not contest that portion of the rate increase legitimately needed to offset those rising costs. If you simply go back to the rates that existed prior to the increase, then the entire 15% of increased rate funding is gone. *Amici* seem not to understand the counterproductive nature of their grandfathering argument.

Further, when there is a proposed increase in rates as occurred here, the legislative body has a constitutional duty under XIIIC §1 to examine the proposed rates under the facts that exist at that time to determine if the proposed rates do or do not exceed the reasonable cost of providing electric services to customers. There is no other way to know whether the rates as proposed can be legitimately approved as charges falling under the exception provided by XIIIC §1(e)(2) or otherwise should be put to a vote as a "tax." There may also be cases where charging the rates in the same amount could be problematic because costs have decreased (such as, for example, the falling cost of natural gas due to the new "fracking" technologies).

The duty to provide current cost-justification for rates is engaged only because it is the City that has chosen to engage in discretionary legislative review and adjustment of rates. (See *Barratt American, Inc. v. City of Rancho Cucamonga* (2005) 37 Cal. 4th 685.) There is no grandfathering of preexisting rates that prevents the City from following its Constitutional duties.

III. ANSWER TO ARGUMENTS MADE IN THE CMUA BRIEF.

A. A DIFFERENT PERSPECTIVE ON COLLECTION OF PILOT TRANSFER PAYMENTS AND WHO ACTUALLY SUFFERS FINANCIAL STRESS OR ECONOMIC DISLOCATION.

The CMUA brief relies primarily on a policy argument that PILOT transfer payments are common in the municipal power industry, that the amounts of money involved are quite large (in 2012 the transfers from 210 public power utilities nationwide provided their municipal governments with over $1 billion [CMUA brief, p. 3]), that these funds have become thoroughly integrated in the operations of municipal power agencies, and that eliminating the PILOT transfer could have the "paradoxical impact" (*ibid.*, p. 6) of forcing municipalities dependent on these funds to look for other sources of revenue or even reduce their expenditures for public services. With crocodile tears[1] flowing, the CMUA warns that both Moody's and Fitch Rating Service predict that the loss of PILOT transfers could lead to "rating sensitivity" for cities issuing public debt, negatively impacting "credit ratings and finances," and

[1] The crocodile is reputed to weep when consuming its victims – an

ultimately causing "economic dislocation" for the municipalities that have relied on these unconstitutional exactions (*ibid.*, p.6).

Almost needless to say, this policy argument is speculative at best in its financial predictions; and even if the worst predictions come true, the over-dependency of some municipalities on unconstitutional exactions cannot serve as justification for ignoring the constitutional mandate of Proposition 26 to put an end to unlawful hidden taxes like these.

There is, however, a real case to be made about "economic dislocation" from the opposite perspective of the ratepayers, who must try to cope with artificially inflated electric rates calculated to generate the extra revenue necessary for the PILOT transfer. Redding has an extraordinarily aggressive policy of late payments on short notice (10 days) and rapidly moving through warning notices to the end result of disconnection of electric service in a span of 48 days from the missed payment to disconnection. Though Redding's electric utility only has about 43,000 accounts, the utility in FY 2011, for example, shut off power to 2,518 customers; of those, 1,696 were able to come up with money for delinquent payments, penalties and deposit, to have their power restored, but leaving 822 permanently disconnected. Redding's electric director indicated that the utility sees roughly 1,000 disconnections per year.[2] It is no coincidence that Redding's population – *i.e.*, the utility's customers – has a persistent disproportionately high percentage of low-income residents, with an overall average household income of $44,236 (over $15,000 below the State average), an average per capita income of $23,443, and over 18% of the population living below the poverty

[2] See Redding Record Searchlight newspaper, article "Missed connection; some residents still unplugged despite policy changes," Nov. 26, 2011.

level.[3] These are the ratepayers, real people, who struggle to pay for electric service to begin with, who are sensitive to even a minor increase in rates, who too often fall behind in their payments and in the most difficult cases have their power disconnected altogether. That is genuine "economic dislocation."

For the poor, the politically powerless, the unheard, it would be fatuous to suggest they go out and hire a lawyer if they believe their rates are unlawfully excessive. This case, though, if brought to the conclusion the Constitution now demands after Proposition 26, may strike one small blow to at least end the abuse of excessive electric rates that plague those least capable of absorbing the increased charges.

B. THERE CAN BE NO GRANDFATHERING OF A PILOT TRANSFER THAT HAS NO GROUNDING IN ANY LEGISLATIVE ENACTMENT OR OTHER NONDISCRETIONARY AUTHORITY.

CMUA makes the simple but flawed argument that because the City had been making PILOT transfers in the past, the practice must be grandfathered despite the voter's approval of Proposition 26 on November 4, 2010. The Court of Appeal addressed this argument as follows (Opinion, at page 19):

> The PILOT's regular appearance in Redding's budgetary process does not mean it was a permanent or continuing transfer compelled by ordinance or other nondiscretionary authority. As a recurring discretionary part of the Redding biennial budget, the PILOT cannot be said to precede or be grandfathered in under Proposition 26.

[3] U.S. Census Bureau 2009-2013 community survey 5-year estimates.

The voluminous record filed in the trial court has thousands of pages of budgetary documents, but there is not one document in the record that is evidence of an ordinance or other nondiscretionary authority which would establish the PILOT as a "fee or charge" subject to grandfathering under Proposition 26. Plaintiffs have never argued that Proposition 26 is retroactive, nor has there been any need to even consider that question. A fee or charge does not independently exist and can't be grandfathered if it is merely a past discretionary practice, without ever having followed the formal procedures (as for adoption of an ordinance or resolution) that subjects the charge to public scrutiny in the adoption process, that triggers the statute of limitations for those who would make a judicial challenge, and that subjects the charge to the test of Proposition 26 for determination of whether it is truly a fee or a "tax."

CMUA's citation to *Brooktrails Township CSD v. Board of Supervisors of Mendocino County* (2013) 218 Cal.App.4th 195 is inapposite, because in that case the court held that a local initiative approved in the same election as Proposition 26 preexisted Proposition 26, which became effective the day after the election, and therefore Proposition 26 was inapplicable. A voter-approved initiative is clearly a formal adoption of a fee or charge, just as binding in effect as an ordinance or resolution. If the PILOT transfer had ever been put before the voters of Redding, as Plaintiffs have suggested to the Redding City Council on more than one occasion, the analysis would be different.

Instead we have the insidious type of charge that is blended into the electric rates, but never formally created as a fee or charge, nor has it ever been given direct public scrutiny in a hearing where the City Council would have to formally approve it and take

political responsibility for it in the future. It is precisely the type of "hidden tax" that Proposition 26 was enacted to remedy.

C. A PILOT TRANSFER AND CONJOINED INCREASE IN RATES THAT PURPORTEDLY MIMICS THE PROPERTY TAX ASSESSED AGAINST PRIVATE UTILITIES IS NOT "REASONABLE" MERELY BECAUSE IT SIMULATES PRIVATE POWER CHARGES.

1. The Metric Literally Prescribed By Proposition 26 Is The "Reasonable Costs To The Local Government." No Other Metric Can Be Used In Its Place.

Article XIIIC §1(e)(2) provides the applicable metric for determining whether the City's electric rates are "reasonable" as an exception to the general rule that increased fees and charges are "taxes" that must be approved by the electorate. That constitutional provision literally states that the City must show that its charges do not exceed **"the reasonable costs to the local government of providing the service or product."** This is not a market-oriented metric tied to what others may charge for the same service. Nor is it an index. It explicitly runs to the "reasonable costs to the local government."

As a metric, this language carries results that can sometimes be good for municipal ratepayers in comparison to private market prices for services or products, but there is also the inherent possibility it can disadvantage municipal consumers. Where municipal power is concerned, the City of Redding is capable of providing electricity for its customers generally at costs to the City that are below those incurred by its private utility counterparts; this

is not unusual for municipal power, which on average charges at least 10% less than private utilities. However, the specific circumstances of the City's power costs could conceivably change (for example, it is expected that the coal fired generation plant in Arizona that Redding has invested in through a JPA will be decommissioned, leaving the City with stranded costs and a need to fill that gap in in its power production portfolio), theoretically leading to overall costs well above market – but still real costs that the City has to pay, that are reasonable under the circumstances, and which can only be recouped by raising rates. Under that hypothetical scenario the City falls under the exception provided by XIIIC §1(e)(2) even though its electric rates might wind up higher than those charged by private utilities.

The touchstone of this metric is that one need only look at the costs incurred by the City and determine if they are "reasonable." The costs incurred by other utilities, whether private or pubic, are irrelevant.

Thus it is completely irrelevant whether private utilities pay taxes on their assets or not. The only relevant question is whether the City of Redding pays taxes on its assets – and we know that the answer is that it does not pay those taxes. If taxes are not a "cost" to the City then they have no place in the rate calculations. Insofar as there is an amount of the rates imposed to pay for the City's interfund transfers of a PILOT amount of electric rate revenues, the PILOT is simply fictional because the City pays no such taxes on its assets. It is a patent violation of the Constitutional strictures of Proposition 26 when the City charges its ratepayers amounts commensurate with a fictional cost rather than a real cost incurred by the utility.

2. Redding's Concoction Of A PILOT Is Not Even An Approximation Of The Tax Paid By Private Utilities.

Even though the charge is impermissible to begin with, Redding doesn't even approximate the charge that would be paid for property taxes. Refer to the City's spreadsheet for the computation of the PILOT found at XI AR 2469. Plaintiffs did not become aware of the City's method for calculating the PILOT until after the complaint was filed, but the discrepancy between the PILOT as charged by the City and a PILOT which would actually mimic property tax assessments only means that the City charges much more than a theoretical tax assessment on its electric utility assets, making its violation of Proposition 26 more egregious, not less.

One finds on the City's spreadsheet that (a) at lines 6, 7, and 8 the City counts as tax-assessable assets its ownership interests in the intangible property interests of the JPAs to which it belongs, accounting for $125,481,433 of the approximately $568,142,918 base property value for its PILOT calculation; a private utility would not be assessed for those intangible interests, therefore this theoretical exercise by Redding falsely inflates the PILOT calculation it uses by at least 27% on that basis alone.

In addition, the City's calculation at line 11 automatically increases asset values by 2% each year without any particular reason, when standard accounting principles would either amortize asset values or hold them static if there is an aggressive maintenance program.

Given that there is no legitimate basis for calculating and using a PILOT amount to be collected in the rates to begin with, it seems an irrelevant waste of effort to find the flaws in the PILOT

calculation, and the effort itself risks giving that calculation a veneer of legitimacy it doesn't deserve. The City could use any random measurement device it chooses to determine how much unlawful excess revenue it intends to take out of the electric rates and the amount would be no more or less valid.

Finally, it should be borne in mind that the City never performed a cost of service analysis for its electric rates, nor was there any examination of the cost of service incurred by the City for the PILOT amount embedded in the rates. The spreadsheet calculation at XI AR 2469 is a badly constructed hypothetical tax assessment calculation, and since the City pays no such taxes it doesn't reflect in any way costs of service incurred by the City. Similarly, argument made by amicus CMUA that the PILOT amount somehow reflects costs of services provided to the utility by other departments of the City is completely ungrounded. There is no calculation of such costs anywhere in the record. Moreover, the City's budget already adjusts services provided between departments with interdepartmental charges that would cover whatever contribution the utility enjoys from other departments. The PILOT amount is unrelated to that process, as it is merely a revenue-generating device for the General Fund.

IV. CONCLUSION

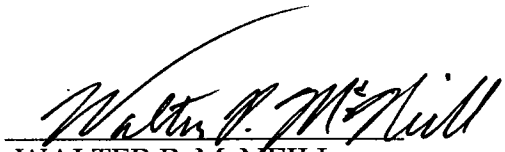
The briefs of *amici* by implication only reinforce the position of Plaintiffs in seeking the invalidation of this unconstitutional tax embedded in the City electric rates, and the application of the necessary remedies which attend to that: refunds for the claimants as represented by Fee Fighter, LLC; application of the remedy of Government Code §53728 for the balance of the unlawfully exacted tax; an award of fees and costs to Plaintiffs who have pursued this

matter as one of vital public interest and necessarily on a contingent fee basis; and any additional relief as directed by the final disposition of this matter.

Respectfully submitted,

MCNEILL LAW OFFICES

Dated: September 28, 2015



WALTER P. McNEILL
Attorneys for Citizens for Fair
REU Rates, et al.

CERTIFICATE OF WORD COUNT

(California Rules of Court, Rule 8.504(d)(1))

The text of this brief, exclusive of cover page, tables and attachments, consists of 4,938 words, as counted by the word processing program that was used to generate this brief.

Respectfully submitted,

MCNEILL LAW OFFICES

Dated: September 28, 2015

Walter P. McNeill
Attorneys for Citizens for Fair
REU Rates, et al.

PROOF OF SERVICE

I am employed in Shasta County; I am over the age of 18 years and am not a party to the within action; my business address is MCNEILL LAW OFFICES, 280 Hemsted Drive, Suite E, Redding, California 96002; on this date I served:

CONSOLIDATED ANSWER BRIEF TO THE AMICUS CURIAE BRIEF OF THE LEAGUE OF CALIFORNIA CITIES AND THE CALIFORNIA STATE ASSOCIATION OF COUNTIES, AND TO THE AMICUS CURIAE BRIEF OF THE CALFORNIA MUNICIPAL UTILITIES ASSOCIATION

X **BY FIRST CLASS MAIL:** The envelope was mailed with postage thereon fully prepaid in a sealed envelope and addressed as follows:

SEE ATTACHED LIST

X I hereby certify that the document(s) listed above was/were produced on paper purchased as recycled.
X I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 28, 2015 at Redding, California.

Jennifer Dugan

SERVICE LIST

Citizens for Fair REU Rates v. City of Redding
California Supreme Court Case No. S224779
Third District Court of Appeal Case No. C071906

Barry DeWalt
Office of the City Attorney,
City of Redding
777 Cypress Avenue, 3rd Floor
Redding, CA 96001

Michael G. Colantuono
Colantuono & Levin, PC
11364 Pleasant Valley Rd
Penn Valley, CA 95946-9000

Arthur Jarvis Cohen
Harry Zavos
Attorneys at Law
2 Venture, Suite 120
Irvine, CA 92618
Attorneys for Glendale Coalition for Better Government, Amicus curiae

Rick W. Jarvis
Jarvis Fay Doporto & Gibson
492 9th Street, Suite 310
Oakland, CA 94607
Attorneys for League of California Cities and California State Association Of Counties, Amici Curiae

Daniel E. Griffiths
Braun Blaising McLaughlin & Smith, PC
915 L Street, Suite 1270
Sacramento, CA 95814
Attorneys for California Municipal Utilities Association, Amicus curiae

Kurt Ryan Oneto
Nielsen Merksamer Parinnello Gross & Leoni, LLP
1415 L Street, Suite 1200
Sacramento, CA 95814
Attorneys for California Taxpayers Association, Amicus curiae

James R. Cogdill
Howard Jarvis Taxpayers Assn.
921 11th Street, #1201
Sacramento, CA 95814
Attorneys for Howard Jarvis Taxpayers Assn., Amicus curiae

Ralph William Kasarda, Jr.
Meriem Lee Hubbard
Pacific Legal Foundation
930 G Street
Sacramento, CA 95814
Attorneys for Pacific Legal Foundation, Amicus curiae

Clerk of the Court
Shasta County Superior Court
1500 Court Street, Rm 319
Redding, CA 96001

Clerk of the Court
Court of Appeal
Third Appellate District
914 Capitol Mall
Sacramento, CA 95814