No. S224779

Exempt from Filing Fees
Government Code § 6103

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Citizens for Fair REU Rates, et al.
Plaintiffs and Appellant

vs.

City of Redding, et al.
Defendants and Respondents

SUPREME COURT
FILED

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OPENING BRIEF

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

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ISSUES PRESENTED FOR REVIEW

1. Is a payment in lieu of taxes (PILOT) transferred from the city utility to the city general fund a "tax" under Proposition 26 (Cal. Const., art. XIII C, § 1, subd. (1)(e))?
2. Does the exception for "reasonable costs to the local government of providing the service or product" apply to the PILOT (Cal. Const., art. XIII C, § 1, subd. (1)(e)(2))?
3. Does the PILOT predate Proposition 26?

INTRODUCTION

This case asks the Court to determine whether a budget transfer from the City of Redding's electric utility to its general fund re-legislated every two years without change since 2005 is a tax under Proposition 26.

Like most municipal electric providers in California, the City established its payment in lieu of taxes (PILOT) from its electric utility to its general fund in 1988 to approximate the 1 percent property tax its electric utility assets would bear if held by an investor-owned utility such as Pacific Gas & Electric.

Citizens for Fair REU Rates (Citizens)[1] argue Proposition 26, article XIII C, section 1, subd. (e) of the California Constitution now requires voter approval of the long-standing PILOT because its existence means the City's electricity rates necessarily exceed the cost-of-service limitation of Proposition 26's exception to its definition of "tax" for fees for government services. (Cal. Const., art. XIII C, § 1, subd. (e)(2).)[2] However, unlike Proposition 218, which it amends, Proposition 26 is not retroactive as to local government and does not displace earlier legislation that raises the cost of government services to achieve other social goals. As the City's PILOT from its electric utility to its general fund predates Proposition 26, it is not disturbed by that measure, but grandfathered by it.

Even were that not so, the trial court found as a matter of fact — and the record demonstrates — that the PILOT is not funded by rates on City electricity customers, but from the proceeds of wholesale transactions. The City's wholesale prices are not "imposed" on the sophisticated market participants who choose to

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[1] "Citizens" refers collectively to Citizens for Fair REU Rates, Fee Fighter, LLC and the individual plaintiffs and appellants in the two cases consolidated here.

[2] All further references to articles and sections of articles in this Brief are to the California Constitution.

buy power from Redding and those prices therefore are not subject to Proposition 26.

Even if Proposition 26 did apply here, the PILOT compensates the City's general fund for vital benefits and services the City provides to the electric utility — such as police and fire protection of utility assets and employees and use of City rights of away — so the general fund is not impoverished by the decision to municipalize electric service.

Finally, were the PILOT subject to Proposition 26, the City has not "imposed, extended or increased" it since the 2010 effective date of that measure and voter approval is therefore not yet required by article XIII C, section 2, subdivision (b).

For all these reasons, this Court should affirm the trial court's judgment.

STATEMENT OF THE CASE

I. TRIAL COURT PROCEEDINGS

Citizens for Fair REU Rates filed a petition for writ of mandate and complaint for declaratory and injunctive relief (Case No. 171377, "Rate Case"), alleging an increase in electric rates the City Council adopted December 7, 2010 constituted a tax requiring voter approval due to the continuing existence of the PILOT. (1 CT 2.) The City demurred, arguing the PILOT predated Proposition 26 and was therefore not subject to it. (1 CT 29.) The trial court denied the

demurrer. (2 CT 474.) The City then answered, denying all claims and contentions. (2 CT 486.) The City certified and lodged its 12-volume Administrative Record ("AR") of the information considered by the City Council when it adopted the PILOT and the challenged electric rates. (2 CT 496.)

Feefighter, LLC — a for-profit entity owned by counsel for Citizens — then filed a second lawsuit (Case No. 172960, "Budget Case") seeking declaratory and injunctive relief and damages, alleging the City's budget for Fiscal Years 2011–2012 and 2012–2013 illegally included revenues from the PILOT. (2 CT 498.) The City answered by general denial and certified and lodged two additional volumes as an addendum to the Administrative Record to include materials pertinent to the budget adoption. (2 CT 557 [Answer]; 3 CT 732 [Notice of Lodgment].)

The trial court ruled for the City on the Rate Case after bench trial. (3 CT 709.) The court concluded the December 2010 electric rate increase neither created nor altered the PILOT and Proposition 26 does not apply retroactively to the PILOT and therefore did not invalidate the December 2010 rate increase. (3 CT 711.)

The court then consolidated the two cases for all purposes. (3 CT 719.) As the parties agreed, they did not file additional briefs for the Budget Case, which was tried on the briefing in the Rate Case, although the court heard additional argument. (3 CT 720 [¶¶ 4–5].)

The court then issued judgment for the City in both cases on July 13, 2012. (3 CT 750.) In a second detailed and considered Memorandum of Decision, the trial court concluded that Proposition 26 does not apply retroactively to the PILOT, which the City Council first adopted in 1988. (3 CT 736, 739 [last ¶].) The trial court also concluded the PILOT is a cost of service for the City's electric utility not displaced by Proposition 26 and that was not funded from the challenged electric rates. (3 CT 737 [lines 2–3]; 741–742.) Citizens timely appealed on August 20, 2012. (3 CT 760.)

II. APPELLATE COURT PROCEEDINGS

After the parties fully briefed the case in the Third District Court of Appeals, that court invited simultaneous supplemental briefs on five questions. The parties filed the requested supplemental briefs and the Court heard oral argument.

After argument, the City filed an Application for Leave to File Supplemental Brief and Proposed Supplemental Brief to address issues raised at argument not previously briefed. The court granted this request and the parties submitted supplemental briefing addressing whether the City Council's adoption in June 2011 of a two-year budget that maintained the pre-existing PILOT constituted new legislation subject to Proposition 26 or the continuation of earlier legislation grandfathered by it.

On January 20, 2015, the Court of Appeal issued its published decision, holding the PILOT to be a tax subject to Proposition 26 and remanding for determination whether it was cost-justified. (*Citizens for Fair REU Rates v. City of Redding* (2015) 182 Cal.Rptr.3d 722.) Justice Duarte dissented. (*Id.* at p. 738.) The City sought rehearing to clarify the opinion and to correct factual errors. The Court of Appeal denied rehearing in an order incorporating minor changes.

This Court granted the City's Petition for Review.

STATEMENT OF FACTS

From 1971 to 1988, the City implemented an operating transfer from its electric utility to its general fund — i.e., a transfer in an amount established by the City budget, as distinguished from a PILOT, which is calculated like a property tax as a percentage of the value of utility assets. (II AR Tab 37, p. 358 ("In-lieu Tax Analysis"); II AR Tab 42, pp. 379–380 ("In-Lieu Analysis"); III AR Tab 111, p. 640 (1st ¶).) The transfer was intended to compensate the City's general fund for benefits and services the City provides the utility, and for which a private utility would pay property taxes and a franchise fee (a fee in the nature of rent for use of public rights-of-way), in addition to services that would not ordinarily be provided to a private utility, such as billing and finance. (II AR Tab 37, p. 358 ("In-lieu Tax Analysis"); I AR Tab 5, p.133; III AR Tab 119, p. 663 (2d whole ¶).) Its effect was to leave the City's general fund on the

footing it would have if the community had not elected to municipalize electric service.

In 1987, the City's Finance Department determined that operating transfers undervalued City benefits to the electric utility. (I AR Tab 4, pp. 119–124 (Finance Director's memo).) Finance Department staff examined similar programs in 34 cities that operated municipal utilities (i.e., essentially all municipal utilities in California) and requested a legal opinion of respected outside counsel. (I AR Tab 4, p. 119 (Finance Director's memo); I AR Tab 5, p. 135 [staff notes of other cities' practices].) Martin McDonough of McDonough, Holland & Allen opined that PILOTs were lawful, and that City power rates including a PILOT would almost certainly be considered reasonable because those rates were (and are) lower than comparable private utility rates. (I AR Tab 5, p. 133.) Redding's electric rates continue to be among the lowest in California. (IV AR Tab 166, pp. 1074, 1080–1085.)

The City Council adopted PILOTs benefitting its general fund from water, sewer, solid waste, and electric utilities in the Fiscal Year 1988–1989 budget.[3] (II AR Tab 28, p. 319 (last ¶) [City Manager's budget report]; III AR Tab 111, p. 640 (1st ¶) [City Attorney's

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[3] The City's fiscal year, like that of most local governments, is July 1 to June 30. Unspecified "years" referenced in this brief and in the record are fiscal years.

memo].) Initially, the PILOT was calculated by assessing the value of the electric utility's property and equipment, subtracting estimated depreciation, and multiplying the result by the 1 percent property tax rate permitted by Proposition 13. (II AR Tab 42, p. 380 (2d ¶).) Upon adoption of the 1991–1992 budget, the City Council amended the PILOT to include the value of construction in progress. (II AR Tab 70, pp. 446–447 ("Assumption 3"); II AR Tab 72, p. 450 (last ¶).)

Following adoption of Proposition 218 in November 1996, the City retained an independent rate-making consultant to compare the PILOT to the cost of the services for which it was charged. (III AR Tab 119, pp. 663–665 (R.W. Beck memo).) That study concluded the PILOT fairly compensated the City for services to the utility — such as billing and finance and for use of public rights-of-way. (III AR Tab 119, p. 663 (8th & 10th bullets).) It noted the PILOT represented approximately 5 percent of electric utility revenues, "well within the range of similar transfers in California." (III AR Tab 119, p. 663 (10th bullet).) The study noted the State Board of Equalization assessed multi-county utility property for property taxation using original, rather than the depreciated, asset values; but the City's PILOT then did not. (III AR Tab 119, p. 664 (1st ¶).) Upon adoption of the 2001–2003 budget, the City Council adjusted the PILOT to adopt that methodology, including a 2 percent cap on annual growth in assessed valuation (the ceiling imposed by Proposition 13,

art. XIII A, § 2, subd. (b)). (III AR Tab 126, pp. 693–694 (carry-over ¶); III AR Tab 134, p. 738 (1st ¶, last sentence).)

The City last amended the PILOT in 2005 to include the electric utility's share of assets held by joint powers agencies ("JPAs").[4] (2 CT 530 (last ¶); see also City's Apr. 18, 2014 Motion for Judicial Notice in support of Respondent's Brief to the District Court of Appeal, Exh. D (PILOT Calculation for FYs ending 2006 and 2007).)[5]

City staff calculates the PILOT with each budget according to the formula adopted by the City Council. (E.g., III AR Tab 126, pp. 693–694 [2001–2003 budget summary] (carry-over ¶); XIII AR Tab 205, p. 2896 [2011–2013 budget].) Because the formula relies on estimates, the PILOT is "trued up" upon the adoption of budgets in odd-numbered years to correct estimates for the previous biennium. (E.g., XIII AR Tab 205, p. 2971 (last ¶).)

The City increased electric rates in 2008 to compensate for change in the Western Hydroelectric contract, fluctuations in the natural gas market and a dry year for hydroelectric power, which produces the cheapest power available to the electric utility. (III AR

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[4] Such agencies are formed pursuant to Government Code sections 6500 et seq.

[5] The Court of Appeal denied all the parties' motions for judicial notice in a footnote in its opinion. (233 Cal.Rptr.3d at p. 725, fn. 3.)

Tab 140, pp. 797–798 (carry-over ¶ & 1st whole ¶ on p. 798); IV AR Tab 142, p. 816 (2d & 3d ¶s); IV AR Tab 166, pp. 1067–1068.) At the time, the City was concerned that it not raise rates too quickly (which can cause significant economic dislocations that academics refer to as "rate shock"[6]), and decided to raise rates to recover the full cost of service incrementally over several years, using cash reserves in the interim.[7] (III AR Tab 140, pp. 797–800 (staff report recommending rate increases over time); IV AR Tab 159, p. 1031 (2010 staff report to same effect).) Although several "wet" years might have allowed an eventual rate decrease, it did not rain — as we now know all too well. (See IV AR Tab 142, p. 816 (2d ¶).) Instead, the utility's cash reserves declined and staff warned the City Council in December 2010 that a failure to raise raises would harm the utility's credit rating and increase its borrowing costs. (IV AR Tab 165, p. 1060 ("Public Hearing"); IV AR Tab 166, p. 1077–1078.) Staff also recommended rate increases to reflect both escalating costs to purchase power and the City's covenants with bondholders

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[6] E.g., Edison Electric Institute, Rate Shock Mitigation (June 2007) available (as of May 25, 2015) at: <http://www.eei.org/whatwedo/PublicPolicyAdvocacy/StateRegulation/Documents/rate_shock_mitigation.pdf>.

[7] It is for this reason that rate-stabilization reserves are a common feature of utility cost-of-service analyses.

obligating it to maintain rates and cash reserves sufficient to ensure repayment of debt. (IV AR Tab 158, p. 1028 ("Public Hearing"); IV AR Tab 159, pp. 1031–1033 (staff report recommending rate increases).)

Accordingly, the City Council adopted Resolution No. 2010-179 in December 2010 to increase electric rates by 7.84 percent effective January 2011 and by another 7.84 percent effective December 2011. (IV AR Tab 163, pp. 1041–1042.)

Those increases did not change the PILOT or affect it in any way. (IV AR Tab 163, p. 1041.) Nor were those rate increases necessary to fund the PILOT, which was included — as had been the City's consistent practice since first adopting it in 1988 — in the 2009–2011 budget. The December 2010 electric rate increases were instead driven by the other costs noted above. Furthermore, the City's electric utility receives revenue from wholesale customers (and other non-rate sources) in three to four times the amount of the PILOT. (IV AR Tab 145, p. 831 (wholesale revenues and PILOT amounts);[8] IV AR Tab 149, p. 873 (PILOT amount).)

In June 2011, the City Council adopted Resolution No. 2011-111 to approve a budget for Fiscal Years 2012 and 2013

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[8] Duplication of the AR obscured much of page 831. A legible copy is attached to this Brief as Attachment 1 pursuant to California Rules of Court rules 8.520(b) & (h), and 8.204(d).

which reflected revenues from the PILOT. (XI AR Tab 203, p. 2466 (6th"whereas" clause).[9]

STANDARD OF REVIEW

An appellate court considers legal issues:

> de novo to the extent that the [lower] court decided questions of law concerning the construction of constitutional provisions and not turning on any disputed facts. [An appellate court] review[s] the [trial] court's factual findings under the substantial evidence standard.

(*Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310, 1316 (*Schmeer*) [construing Proposition 26]; internal citations omitted.) Here, the record is not in dispute; the parties do, however, dispute the inferences to be drawn from it. While the City asserts some deference to the trial court's reading of the record is appropriate, even if this Court reviews the administrative record de novo, the trial court's well-reasoned conclusions survive review.

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[9] This Resolution is attached as Attachment 2 for the Court's convenience pursuant to California Rules of Court, rules 8.520(b) & (h), 8.204, subdivision (d).

> In reviewing the trial court's ruling on a writ of mandate (Code Civ. Proc., § 1085), the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. However, the appellate court may make its own determination when the case involves resolution of questions of law where the facts are undisputed.

(*Saathoff v. City of San Diego* (1995) 35 Cal.App.4th 697, 700 [internal citations omitted].)

"'[T]he court's decision to grant or deny [declaratory] relief will not be disturbed on appeal unless it be clearly shown ... that the discretion was abused.'" (*Pellegrini v. Weiss* (2008) 165 Cal.App.4th 515, 529; *Osseous Technologies of America, Inc. v. DiscoveryOrtho Partners LLC* (2010) 191 Cal.App.4th 357, 364.)

The trial court determined Proposition 26 did not apply to the PILOT, and therefore did not reach burdens of proof under that measure. (3 CT 739 (last sentence).) Similarly, the Court of Appeal noted only in passing that — under the final unnumbered paragraph of article XIII C, section 1, subdivision (e) — the local government bears the burden to prove by a preponderance of the evidence that a charge is not a tax. (182 Cal.Rptr.3d at p. 729.) This, duty, however, arises only when the plaintiff establishes a prima facie case that the revenue measure in question falls outside one of Proposition 26's

exemptions. (*California Building Industry Association v. State Water Resources Control Board* (2015) 235 Cal.App.4th 1430, 186 Cal.Rptr.3d 212, 227 [construing Prop. 26 as applied to State] (*CBIA v. SWRCB*).)

To the extent Citizens would assign the City the burden to produce an administrative record containing evidence to sustain its legislative acts to adopt the December 2010 power rates and its 2011–2013 budget, the City accepts the burden. The City denies that Citizens have established a prima facie case that the PILOT is a tax under Proposition 26 and therefore, asserts that the burden of persuasion remains on Citizens. (*CBIA v. SWRCB, supra.*) However, even if the City did bear the burden to prove any disputed facts by a preponderance of the record evidence, it can do so on this record.

To the extent Citizens would assign the City some burden as to questions of law, the City demurs. Proposition 26 states as to burdens of proof under that measure:

> The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.

(Art. XIII C, § 1, subd. (e) [final unnumbered ¶].)

What can it mean to bear the burden to prove that a charge is not a tax? A burden of proof is assigned with respect to disputed facts and assists a court in deciding issues as to which the evidence is in equipoise. (Evid. Code § 110 [defining "burden of producing evidence"]; Evid. Code § 115 [defining "burden of proof"].) The Court, however, needs no tie-breaking device for questions of law; it determines those independently. (See generally, *Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 888 [Mosk, J., discussing appellate standards of review of questions of fact, law, and mixed questions of fact and law].) Accordingly, Citizens and the City are on equal footing in this Court as to the meaning of Proposition 26 and other legal issues.

In any event, the City bore its burden to produce a record to support its December 2010 power rates and its 2011–2013 budget; Citizens failed to bear its burden to establish a prima facie case that the PILOT is a tax but, even if it had, the preponderance of the evidence in this record supports the City's legislative acts and demonstrates the trial court correctly applied the law.

LEGAL DISCUSSION

I. THE PILOT PREDATES PROPOSITION 26

A. The PILOT Is Preexisting Legislation

The trial court found that the PILOT had been a component of Redding Electric Utility's budget for over 20 years when Proposition 26 was adopted in November 2010. (3 CT 736, 739). The trial court also found the December 2010 rate increase did not affect the PILOT, which was funded by earlier rates. (3 CT 736–737.) The record supports these findings, as demonstrated above. The City Council adopted the PILOT in 1988, refined it in 1992, 2002 and 2005, and has implemented it without change since. (2 CT 530.)

The City Council's 1988 adoption of the PILOT by a budget resolution was a legislative act. Accordingly, Redding Electric Utility's duty to make the PILOT transfer is a lawful cost of its service, just as is its compliance with 2006's AB 32 — the State's landmark greenhouse gas law. As the Court of Appeal explained:

> [T]here is a limited role for the judiciary to play in determining whether a legislative enactment, including a budgetary enactment, is within the authority of the legislative body and whether it violates any constitutional provisions.

(*Scott v. Common Council* (1996) 44 Cal.App.4th 684, 698 [mandating council fund city attorney positions required by city charter].) Thus,

it is plain that the Redding City Council's budgetary actions to establish and amend the PILOT are legislative. Rate-making is legislative, too. (*Pacific Telephone & Telegraph Co. v. Public Utilities Com.* (1965) 62 Cal.3d 634, 655.)

The trial court concluded the PILOT is a legislatively established cost which the electric utility must bear that predates Proposition 26 and therefore survives it. (3 CT 737.) Citizens denigrate the PILOT as a "bad habit" rather than legislation (RT 137, lines 10–11), and fail to accord the City's power to legislate via budget resolution appropriate respect. Nonetheless, the PILOT was enacted by budget resolution 25 years ago and has continued in existence with only minor adjustments, most recently in 2005. (2 CT 530; 3 CT 736–737 [Memorandum of Decision].)

Because the City's legislation authorized the PILOT before voters approved Proposition 26 in November 2010, and that local legislation has not been amended since then, Proposition 26 does not invalidate the PILOT. (*Brooktrails Township Community Services District v. Board of Supervisors of Mendocino County* (218 Cal.App.4th 195 [Prop. 26 has no retroactive application to local government].) Nor does Proposition 26 invalidate rates that Citizens claim fund the PILOT.

B. Redding Did Not Reenact the Pilot

Legislation is understood to have been intended to be permanent absent contrary language in the legislation itself. Like all questions of statutory construction, this turns on legislative intent. Inclusion of unamended sections of laws in legislation amending other sections is held to continue, rather than reenact the earlier, unamended provisions. That conclusion is consistent with Government Code section 9605, which provides in relevant part that:

> Where a section or part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form. The portions which are not altered are to be considered as having been the law from the time when they were enacted.

The City Council's adoption of the 2011–2013 budget by Resolution No. 2011-111 reflected general fund income from the PILOT. (XI AR Tab 203, p. 2466 (6th "whereas" clause).) However, that budget adoption did not create the PILOT anew. Neither the 2010 rate resolution nor the 2011 budget resolution "reenacted" the PILOT.

State budgets expressly limit most appropriations to a single year. (See, e.g., 25 Stats. 2014 (SB 852) § 1.80, subd. (a) ("Budget Act of 2014") [funds are "appropriated for the use and support of the State of California for the 2014–15 fiscal year beginning July 1, 2014,

and ending June 30, 2015."].) However, not all appropriations expire with the budget. (See, e.g., 25 Stats. 2014 (SB 852) § 1.80, subd. (b) [capital outlays may be encumbered until June 30, 2017].) Budget trailer bills need not expire within a year and frequently do not. (See, e.g., 22 Stats. 2013 (AB 75) §§ 21 [operative until July 1, 2018], 106 [operative indefinitely], 111 [indicating bill is a "trailer bill" to Budget Act of 2013].)

Furthermore, continuing appropriations are both common and lawful. "A continuous [or continuing] appropriation runs from year to year **without the need for further authorization in the budget act**. [Citations.]" (*White v. Davis* (2003) 30 Cal.4th 528, 538 bracketed text by this Court, emphasis added.) The Legislature has expressly approved continuing state appropriations. (E.g., Gov. Code, § 16304 ["Appropriations for the following purposes are exempt from limitations as to period of availability in any appropriation, and shall remain available from year to year until expended: ..."].) Continuing appropriations have been authorized for such things as:

- disability income payments (Unempl. Ins. Code, § 3012);
- income tax refunds (Rev. & Tax. Code, § 19611);
- the Local Revenue Fund (Welf. & Inst. Code, § 17600);
- the Local Public Safety Account (Gov. Code, § 30052, subd. (a));

- contributions to the Teachers Retirement Fund (Ed. Code, § 22955);
- retirement and disability payments (Ed. Code, § 22307);
- operations of the California Highway and Infrastructure Finance Agency (Health & Saf. Code, §§ 51000, 50154);
- the Local Agency Investment Fund (Gov. Code, § 16429.1); and
- bond payments (Gov. Code, §§ 8879.10, 15814.16, 15848; Pen. Code, § 7428; Pub. Util. Code, § 99693).

(See *White, supra,* 30 Cal.4th at p. 539, fn. 5.)

Of course, an interfund transfer such as the PILOT is not an appropriation. (See 64 Ops. Cal. Atty. Gen. 809 (1981) [interfund transfers are not appropriations within the meaning of Gov. Code, § 13340].) However, continuing appropriations demonstrate that legislation adopted in conjunction with a budget need not expire with that budget.

General law cities[10] such as Redding have no duty to adopt a budget at all — much less to do so in any particular form — and one resolution may legislate both appropriations limited to a fiscal year

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[10] General law cities are those governed by statutes, as opposed to those governed by voter approved charters pursuant to article XI, section 5. (See generally *Irwin v. City of Manhattan Beach* (1966) 65 Cal.2d 13, 20.)

and permanent fiscal policies. (Gov. Code, § 53901 [alternate reporting in absence of budget].) Thus, interpreting Redding's fiscal legislation is an ordinary question of statutory construction which begins with the language of the measure and seeks to accomplish legislative intent. (*People v. Allegheny Casualty Co.* (2007) 41 Cal.4th 704, 708–709.)

The principles of construction applicable to statutes apply alike to the interpretation of municipal charters and ordinances. (*City of San Diego v. Shapiro* (2014) 228 Cal.App.4th 756, 789 [interpreting charter and Props. 13 and 218]; *C-Y Development Co. v. City of Redlands* (1982) 137 Cal.App.3d 926, 929 [ordinances]; *City and County of San Francisco v. Cooper* (1975) 13 Cal.3d 898, 911 [municipal ordinances and resolutions "are clearly legislative in nature"].) Thus, the form of legislation is not significant to the interpretive task.

The central task is to ascertain the intent of the City Council to effectuate the purpose of its legislation. (*Schmeer, supra,* 213 Cal.App.4th at p. 1316.) Legislative intent is evidenced first and foremost by the text of the legislation, here the City's resolutions legislating the PILOT. (*Ibid.; Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 754 ["The first step is to examine the statute's words because they are generally the most reliable indicator of legislative intent."] (internal quotation and citation omitted).)

If legislative language is vague or ambiguous, a court may consider extrinsic evidence of the City Council's intent. (*Schmeer,*

supra, 213 Cal.App.4th at p. 1317.) In addition, subsequent legislation can demonstrate legislative intent. (*Southern California Edison Co. v. P.U.C.* (2014) 227 Cal.App.4th 172, 191 (*SCE v. PUC*) [legislative authority for PUC's public goods charge evidenced by subsequent, related legislation which did not displace it].) The question, therefore, is what the City Council intended when it created the PILOT in 1988 and amended it most recently in 2005 — a temporary fiscal policy, or a continuing transfer?

Redding's PILOT has always been understood to exist beyond the 1988 budget which first adopted it. When first adopted; it replaced an earlier, ongoing operating transfer. (See I AR 119–124 [Jan. 7, 1987 Finance Director Memorandum]; II AR 358, 379–380 [characterizing City's longstanding policy of transferring funds from electric fund to general fund as "In Lieu Taxes."]; III AR 640 [Jan. 18, 1999 City Attorney Memorandum re: In Lieu Taxes].) As the City implemented the PILOT in every year from 1988 to those litigated here, it periodically acknowledged the PILOT's ongoing effect.

For example, in a January 8, 1992 memorandum, the Finance Director discussed the new PILOT formula, assuming its application in future years:

> For budget purposes, you should use 1% in-lieu tax rate calculated on the in-lieu book value as defined in this

> communication. However, the rate and or calculation procedure could be subject to change **at a future date.**

(II AR 446, emphasis added.)

> [D]epreciation on the equipment and furnishing will start August 1991 and will be on a straight line basis **over 7 years.** ... Depreciation on the remaining asset groups will be on a straight line basis **over 30 years** and will start when the assets are placed in service.

(II AR 447, emphasis added.) These record references demonstrate the City's understanding that the PILOT was intended to be — and was — permanent and continuing beyond any two-year budget.

What is more, the City Council's recognition of the PILOT in every budget since 1988 shows the City's intent to maintain the PILOT as an ongoing policy. (Cf. *SCE v. PUC, supra,* 227 Cal.App.4th at p. 191 [subsequent legislation can evidence intent of earlier law].) When the Council wished to change the PILOT, it consistently did so expressly, most recently in 2005. (2 CT 530; cf. Gov. Code § 9605 [when legislation is amended, portions not altered are considered as having been the law from first enactment and not as newly enacted].)

Proposition 26 was adopted in November 2010. The Redding budget in effect at that time was that for fiscal years 2009–2010 and 2010–2011 adopted on June 11, 2009 by Resolution 2009-61.

(VII AR Tab 183, p. 1598.) The minutes of that meeting reflect the City's oral response to a letter of that same date presented by counsel for Citizens here which questioned the PILOT. (VII AR Tab 182, pp. 1590–1597 [minutes]; *id.* at pp. 1599–1610 [letter].) That response confirms the City Council's understanding the PILOT was not temporary legislation that expires with each budget, but permanent:

> In response to a letter from McNeill Law Offices representing Shasta County Taxpayers' Association that maintained that the 'in-lieu property tax' paid by Redding Electric Utility (REU) is not legal, [then-City Manager] Mr. Starman related that the in-lieu tax is not unusual, is legal, and noted that the fee has been assessed for approximately 20 years. Although the City ceased charging its other utilities an in-lieu fee due to Proposition 218 in 2005, electric and natural gas utilities are exempt [from Proposition 218].

(VII AR Tab 182, p. 1590 [last ¶]; see art. XIII D, § 3, subd. (b) ["For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership"].)

The City adopted its budget for Fiscal Years 2011–2012 and 2012–2013 on June 22, 2011 via Resolution No. 2011-111.

(XI AR Tab 203, pp. 2466–2469.) This budget is the subject of the second of the two mandate actions on appeal here. Resolution No. 2011-111 reconfirmed:

> previously approved legislative direction of the present and former City Councils to employ cost accounting formulas and methodologies carried forward from budget to budget including ... a payment-in-lieu of property tax (PILOT) from the Redding Electric Utility (REU) to the General Fund ... .

(*Id.*, p. 2466 (6th "whereas" clause).)

Moreover, the Council made express its intent to continue the PILOT as it has existed for over 20 years:

> [I]n light of the adoption of Proposition 26 on November 2, 2010, which precludes certain new fees, levies or charges but is not retroactive as to local governments, the City Council desires to maintain the existing PILOT utilizing the current accounting formula and methodology as last modified in 2005.

(*Id.*, p. 2467 (1st whole "whereas" clause).)

Accordingly, in Resolution No. 2011-111, the City Council expressly stated it was **not** legislating the PILOT anew. The City Council's intent to maintain the pre-Proposition 26 status quo is express and unmistakable. Thus when Proposition 26 was enacted,

the PILOT had been permanent legislation for over 22 years and it has not since been newly adopted or increased so as to trigger Proposition 26. (Cf. *AB Cellular LA, LLC v. City of Los Angeles* (2007) 150 Cal.App.4th 747, 760–761, 768 [extension of tax to call-detail portion of cell phone bill was "increase" requiring voter approval under Prop. 218].)

A contrary conclusion — that the PILOT was to be transitory policy — cannot have been the City Council's intent. Why would the utility's contribution to the City's general fund be a passing City Council preference while the services it is intended to repay continue? To conclude the City Council intended the PILOT to be temporary is to disserve its words and deeds to the contrary of more than 20 years.

Further, such a conclusion effectively makes Proposition 26 retroactive despite its language and express promises to voters in ballot arguments concerning it that preexisting legislation would survive its adoption.[11] This conclusion makes the viability of a PILOT post-Proposition 26 turn on the happenstance of the form of legislation by which it was enacted, rather than the intent of the lawmaker. This would be tantamount to establishing a post hoc requirement as to the form of a PILOT, drawing an indefensible

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[11] The ballot arguments for and against Proposition 26 appear at 1 CT 279–280. The trial court took notice of them. (3 CT 738–741.)

distinction between cities that established a PILOT by budget resolution and those that did so by ordinance or charter provision. The application of Proposition 26 cannot turn on accidents of legislative form, as legislative meaning does not.

Finally, the trial court understood that Proposition 26 would not apply to reenactments of existing legislation:

> Proposition 26 was not intended to require an election every time a local government adopts a budget that includes pre-existing components so long as that budget does not impose new or increased fees or charges or change the manner in which those fees are calculated. ... The adoption of Resolution 2011-111 adopting the City of Redding's budget, that included the budget of REU and the PILOT, does not impose, extend, or increase a tax, and Proposition 26 does not apply.

(3 CT 739 [last ¶]; cf. *McBrearty v. City of Brawley* (59 Cal.App.4th 1441, 1450 [continued collection of tax did not trigger voter approval requirement of Prop. 62], disapproved on other grounds by *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 814.)

In summary, the legislative history of the two budget enactments at issue here, Resolution 2009-61 and Resolution 2011-111, shows that the City Council never intended the PILOT as temporary legislation that expires with each budget. Accordingly,

the PILOT has not been reenacted since the enactment of Proposition 26 and pre-dates Proposition 26.

II. THE PILOT IS A FEE FOR SERVICE EXCLUDED FROM PROPOSITION 26'S DEFINITION OF "TAX"

A. Proposition 26 Defines "Tax" to Excludes Fees Limited to Cost of Service

1. The Tools of Constitutional Construction

The tools for interpreting initiative amendments to our Constitution are familiar:

> We construe provisions added to the state Constitution by a voter initiative by applying the same principles governing the construction of a statute. (*Professional Engineers [in California Government v. Kempton (2007)], supra,* 40 Cal.4th [1024] at p. 1037, 56 Cal.Rptr.3d 814, 155 P.3d 226.) Our task is to ascertain the intent of the electorate so as to effectuate the purpose of the law. (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 901, 135 Cal.Rptr.2d 30, 69 P.3d 951.) We first examine the language of the initiative as the best indicator of the voters' intent. (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 321, 120 Cal.Rptr.3d 741, 246 P.3d 877.) We

give the words of the initiative their ordinary and usual meaning and construe them in the context of the entire scheme of law of which the initiative is a part, so that the whole may be harmonized and given effect. (*Professional Engineers, supra,* at p. 1037, 56 Cal.Rptr.3d 814, 155 P.3d 226; *State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1043, 12 Cal.Rptr.3d 343, 88 P.3d 71.)

If the language is unambiguous and a literal construction would not result in absurd consequences, we presume that the voters intended the meaning on the face of the initiative and the plain meaning governs. (*Professional Engineers, supra,* 40 Cal.4th at p. 1037, 56 Cal.Rptr.3d 814, 155 P.3d 226; *Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737, 21 Cal.Rptr.3d 676, 101 P.3d 563.) If the language is ambiguous, we may consider the analyses and arguments contained in the official ballot pamphlet as extrinsic evidence of the voters' intent and understanding of the initiative. (*Professional Engineers, supra,* at p. 1037, 56 Cal.Rptr.3d 814, 155 P.3d 226.)

(*Schmeer, supra,* 213 Cal.App.4th at pp. 1316–1317.)

Thus, we construe Proposition 26 according to its plain terms — including slight differences between otherwise identical text for

State and local revenues. We construe it in context with Proposition 218, which it amends and, if ambiguity arises, may look to its apparent intent and its ballot arguments and analysis.

2. Proposition 26 Adopts California's First Legislative Definition of Tax in Slightly Different Terms for State and Local Governments

Unlike Propositions 13 (Article XIII A), 62 (Gov. Code §§ 53720 et seq.), and 218 (articles XIII C and XIII D) on which it builds, Proposition 26 does not rely on common-law definitions of "tax." Instead it provides a legislative definition of that term, relying on the earlier measures to implement its definition. (Cal. Const., art. XIII C, § 1, subd. (e) [defining "tax"]; see also art. XIII A, § 4 [requiring 2/3 voter approval of special taxes] and art. XIII C, § 2, subds. (d) [same] and (b) [requiring majority voter approval of general taxes].)

Proposition 26 adopted definitions of "tax" for State and local governments, providing five exceptions to that definition for State revenue measures and seven for local revenue measures. (Compare Cal. Const., art. XIII A, § 3, subds. (b) – (d) with art. XIII C, § 1, subd. (e).) The State and local provisions are substantively alike but for two additional exceptions for local government. (Compare Cal. Const., art. XIII A, § 3, subds. (b)(1) – (5) with art. XIII C, § 1, subd. (e)(1) – (5).) However, there are minor differences in the

drafting of the common exceptions, including a meaningful difference in the second exception for service fees.

As *Schmeer, supra,* 213 Cal.App.4th at pp. 1328–1329 found, there is another, implied exception to Proposition 26 — it does not apply to measures which do not provide revenue to government:

> Accordingly, we conclude that the language "any levy, charge, or exaction of any kind imposed by a local government" in the first paragraph of article XIII C, section 1, subdivision (e) is limited to charges payable to, or for the benefit of, a local government.

3. Proposition 26's Exceptions for Service Fees Requires More of the State than of Local Government

As pertinent here, Proposition 26 states:

> As used in this article, "tax" means any levy, charge, or exaction of any kind imposed by a local government, except the following:
>
> ....
>
> (2) 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.

(Cal. Const., art. XIII C, § 1, subd. (e).)

The version of this exemption adopted for State revenue measures ends with these additional words: "to the payor." Thus, while local governments must prove their "reasonable costs ... of providing the service or product," the State must further prove its "reasonable costs ... of providing the service or product **to the payor.**" (Compare art. XIII C, § 1, subd. (e)(2) with art. XIII A, § 3, subd. (b)(2), emphasis added.)

One might argue that this difference in language does not import different meaning, citing the language of the final unnumbered paragraph of article XIII C, section 1, subdivision (e) that requires:

> The local government [to] bear[] the burden of proving by a preponderance of the evidence that ... the manner in which those [reasonable] costs [of the governmental activity] are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.

(Cal. Const., art. XIII C, § 1, subd. (e).)

This language, however, cannot be read to import into each of the seven stated exceptions to Proposition 26's definition of local government "taxes" a duty to prove cost allocation. This is so because not all of those seven exceptions require a cost justification.

The first three exceptions — for fees for government benefits, services, and regulation — do, but the fourth and fifth — for fees for use of government property and for fines and penalties — do not. This is sensible. What "costs" does a fine recover? None, of course. A fine is imposed not to recover cost, but to deter and punish undesirable behavior. (E.g., *California Taxpayers Ass'n v. Franchise Tax Bd.* (2010) 190 Cal.App.4th 1139 [penalty for late payment of corporate taxes was not a tax subject to art. XIII A, § 3 as it read prior to adoption of Prop. 26].)

Thus, the better reading of Proposition 26's final, unnumbered paragraph for local government taxes — and of the parallel language of article XIII A, section 3, subdivision (d) — is that it assigns the burden to government to prove the elements of the previously stated exceptions to its definition of "tax." It is not best read to augment the elements of those exceptions.

In short, Redding need not prove here that the PILOT or its electric rates "bear a fair or reasonable relationship to the payor's burdens on, or benefits received from" its electric service. It need only establish that those charges do not exceed its reasonable service costs in toto.

Even if the Court were to read a customer-by-customer justification into Proposition 26, as it found in Proposition 13 under *Sinclair Paint Co. v. State Board of Equalization* (1997) 15 Cal.4th 866, the City can meet that test.

4. Redding Bears its Burden on this Record to Prove the PILOT and its Electric Rates are Service Fees Rather than Taxes

In light of its language, this second exception protects a revenue measure that is:

1. A charge imposed
2. for a specific government service or product
3. provided directly to the payor
4. that is not provided to those not charged, and
5. which does not exceed the reasonable costs to the local government of providing the service.

(Cal. Const., art. XIII C, § 1, subd. (e)(2).)

There is no argument here on the second, third and fourth elements. Citizens do not argue that Redding's electric charges are other than for a charge for specific service provided directly to payors or that electric service is not provided to those not charged. Thus, only the first and fifth elements are in issue — Redding denies it "imposes" the PILOT and Citizens argue the very fact of the PILOT means the City's electric rates exceed the cost of service.

B. The PILOT Is Not Funded From Retail Rates and Is Therefore Not a Tax

The City's electric utility has multiple sources of income, including:

- "Retail Electric Sales" — i.e., the retail rates Citizens challenge in the Rate Case;
- "Wholesale Electric Sales" — the proceeds of wholesale transactions the prices of which Citizens do not challenge and which are not limited to cost of service;
- "Miscellaneous Income," including interest on investments, grants and donations.

(IV AR Tab 145, p. 831 [FYs 10 & 11 budget] (second table on page);[12] XIII AR Tab 205, p. 2975 [FYs 12 & 13 budget].)

The City was not required to use these revenues to subsidize retail electric rates. (E.g., *American Microsystems, Inc. v. City of Santa Clara* (1982) 137 Cal.App.3d 1037, 1042 [city not required to pass on to ratepayers refund or reduced costs from alternative sources of electricity].)Thus, the PILOT can be funded twice over from unrestricted revenues without drawing upon the proceeds of retail rates. (IV AR Tab 145, p. 831; IV AR Tab 149, p. 873; XIII AR Tab 205, p. 2975.)

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[12] See footnote 9 above.

Moreover, it is undisputed that Redding Electric Utility's non-rate sources of revenue greatly exceed the PILOT. (*Ibid.* [second table on each page showing revenue from "wholesale electric sales" greater than "In-Lieu Payment to City" in "Other Revenues & Expenses"].) Therefore, as the trial court found, "there is no evidence that the PILOT is paid out of customers' rates." (3 CT 741.)

Citizens cite no record evidence to demonstrate the City's electric rates exceed its cost to provide that service to all customers. Rather they argue from the existence of the PILOT alone. (3 CT 741 (final ¶) [trial court characterization of Citizens' arguments].) This does not make a prima facie case; Citizens were obliged to identify record evidence demonstrating the City's cost to serve electricity and to demonstrate that the PILOT proves that the challenged retail rates necessarily produce more revenue than needed to do so.

CBIA v. SWRCB, supra, 186 Cal.Rptr.3d at p. 227, applying this Court's Proposition 13 precedent to construe Proposition 26, put it this way:

> Whether the Board's imposition is a tax or a fee is a question of law decided upon an independent review of the record. ([*California*] *Farm Bureau [Federation v. State Water Resources Control Bd. (2011)], supra,* 51 Cal.4th [421] at p. 436, 121 Cal.Rptr.3d 37, 247 P.3d 112.) "The plaintiff challenging a fee bears the burden of proof to establish a prima facie case showing that the fee is

> invalid. [Citations.] In other words, the plaintiff bears the burden of proof 'with respect to all facts essential to its claim for relief.' [Citations.] The plaintiff 'must present evidence sufficient to establish in the mind of the trier of fact or the court a requisite degree of belief (commonly proof by a preponderance of the evidence).'" (*Ibid.*, fn. omitted.)

Even had they done so, however, Citizen's claim would still fail. The City's administrative record includes unchallenged budget documents indicating that non-rate revenues to Redding Electric Utility exceed the amount of the PILOT. Such evidence is sufficient. (*CBIA v. SWRCB, supra,* 235 Cal.App.4th at pp. 228–229 [budget projections sufficient to cost-justify fees under Prop. 26].)No other evidence on this issue appears in this record.

The evidence shows Redding Electric Utility's non-retail revenue is more than three times the PILOT. In 2011 for example, the utility's total non-rate revenue was budgeted at $24.4 million, while the PILOT was budgeted at about $6.1 million that year. (XIII AR Tab 205, p. 2975 [second table on page].) That non-rate revenue represents the sum of "wholesale electric sales" ($18.7 million) and "miscellaneous income" ($5.7 million), but excludes "retail electric sales" ($102.1 million). $18.7 million plus $5.7 million is $24.4 million. Therefore, the PILOT can be accounted for entirely by

non-rate revenue. Thus, even were the law as Citizens wish, their arguments fail.

The trial court found that "there is no evidence that the PILOT is paid out of customers' rates" because wholesale revenues exceed the amount of the PILOT. (3 CT 741.) This finding is supported by the City's record. (IV AR, Tab 145, p. 831 [Fiscal Year 2010-2011 budget];[13] *ibid.* at pp. 873 [2010 audit showing PILOT of $6,055,950]; XIII AR Tab 205, p. 2975 [Fiscal Year 2012-2013 budget].) Although this Court is equally able to review the administrative record as the trial court, the lower court's conclusion is entitled to at least some deference. (*Saathoff, supra,* 35 Cal.App.4th at pp. 700–701.)

Citizens have never disputed this factual point, and offered no evidence to the contrary. Instead, they asserted below only that the mere existence of the PILOT necessarily means that electric rates exceed the cost of service. (See, e.g. AOB, p. 9 [rate increase a tax "insofar as this increase included the PILOT charge"]; Reply Brief, pp. 8–9; App. Answer to Amicus, p. 9.) However, Citizens have never identified any record evidence by which they might persuade this Court to reverse the trial court's conclusion the proceeds of the December 2010 electric rates do not fund the PILOT.

Furthermore, the record is the only admissible evidence here. (*Western States Petroleum Assn. v. Superior Court,* 9 Cal.4th 559, 574

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[13] See footnote 9.

["It is well settled that extra-record evidence is generally not admissible in ... traditional mandamus actions challenging quasi-legislative administrative decisions"].)

Thus, mention of the PILOT in the resolutions setting the December 2010 electric rates and adopting the FY 2012–2013 budget does not make the City's electric rates a tax because this record demonstrates the PILOT is not funded from those rates.

C. The PILOT Is a Reasonable Cost of Service as a Matter of Law

1. The PILOT is a lawful cost of service because it is compelled by legislation predating Proposition 26

Proposition 26's non-retroactivity as to local government means, of course, that it does not invalidate fees in effect when it was adopted, as it does for certain State revenues. (Cal. Const., art. XIII A, § 3, subd. (c) [voiding state revenues legislated after January 1, 2010 unless reenacted in compliance with Prop. 26].) It means further that existing fee legislation at the local level has continued force — in contrast to Proposition 218. (Compare Cal. Const., art. XIII D, § 6, subd. (d) ["Beginning July 1, 1997, all fees or charges shall comply with this section"] with art. XIII C, § 1, subd. (e) [no comparable language].) Thus, Proposition 26 preserves earlier legislation and allows its application post-Proposition 26.

Therefore, the PILOT is a lawful cost of service. Paying the PILOT is a cost of operation Redding Electric Utility might recover from its rates, just as it recovers the cost of complying with the greenhouse gas mandate of 2000's A.B. 32, the safety requirements of the federal Occupational Safety and Health Administration, and the Redding City Council policy requiring preferential rates for low-income and senior households. (1 CT 216 [discussing Lifeline and CARES low-income rates].) Complying with applicable law — federal, state, or local — is necessarily "a reasonable cost to the local government of providing the service." (Cal. Const., art. XIII C, § 1, subd. (e)(2).) There is no duty to operate the Redding Electric Utility unlawfully in violation of law in the pursuit of cost savings.

The PILOT is also good public policy. As the trial court found, the PILOT is intended to defray costs to the City for the use of rights-of-way, street maintenance, administration, and the other benefits the City provides its electric utility and to hold its general fund harmless from the community's decision to municipalize electric service. (See 3 CT 736 [trial court ruling]; II AR Tab 37, p. 358 [1989 Finance Director Memo].) Such transfers were — and are — common among municipal utilities and both legal and appropriate when the Redding City Council first adopted the PILOT in 1988. (See I AR Tab 4, pp. 119–124 [1987 Finance Director memo]; I AR Tab 5, pp. 133–135 [opinion of Martin McDonough].)

2. The City's electric rates do not fund the PILOT and Citizens therefore fail to provide they exceed the City's reasonable cost to provide electric service

Further, as the trial court found, the 2010 rate increase was not related to the PILOT, and had no effect on it. (3 CT 736–737, 741–742.) The rate increase was not necessary to fund the PILOT, but to pay other costs. The December 2010 rate increase was necessitated by the loss of a significant hydropower contract, relatively dry weather, low retail sales, dwindling reserves and debt service coverage ratios. (IV AR Tab 159, pp. 1030–1034 [Nov. 19, 2010 staff report]; IV AR Tab 166, pp. 1065–1098.) Citizens make no prima facie case otherwise.

3. The PILOT is a reasonable cost as a matter of law

It is appropriate to construe Proposition 26 in light of the law on which it consciously builds. (E.g., *Citizens Ass'n of Sunset Beach v. Orange County Local Agency Formation Com'n* (2013) 290 Cal.App.4th 1182, 1195 (*Sunset Beach*) [construing article XIII C "by examination of the history behind Proposition 218"]; *Schmeer, supra*, 213 Cal.App.4th at pp. 1317–1322 ["Historical Foundations of Proposition 26"].)

Courts have long recognized that ratemaking is discretionary legislation:

> A rate lawfully established is assumed to be reasonable in the absence of a showing to the contrary, or a showing of mismanagement, fraud or bad faith, or that the rate is capricious, arbitrary or unreasonable. Each case must be decided on its own facts.

(*American Microsystems v. City of Santa Clara* (1982) 137 Cal.App.3d 1037, 1042, quoting 12 McQuillin, Municipal Corporations (3d ed. 1970, rev.) § 35.37a, pp. 483–484, emphasis added.)

This relatively deferential review reflects the separation of powers, and protects courts from being drawn into standardless determinations of what is abstractly "fair" or "reasonable," given that ratemaking is necessarily an exercise in line-drawing within a range of reason, rather than finding a single, "right" answer. (See *Hansen v. City of San Buenaventura* (1986) 42 Cal.3d 1172, 1187–1188 [70% higher water rates for extra-jurisdictional customers were reasonable] (*Hansen*).) While this Court must give meaning to "reasonable" as used in Proposition 26, this long-standing law provides an authoritative basis to do so.

Under the common law which predates Propositions 13, 62, 218 and 26, rates must be "reasonable, fair and lawful." (*Elliott v. City of Pacific Grove* (1975) 54 Cal.App.3d 53, 59–60 (*Elliott*)

[unreasonable to charge extra-territorial sewer customers four times in-city rate]; *Durant v. City of Beverly Hills* (1940) 39 Cal.App.2d 133, 138; cf. *Scott, supra,* 44 Cal.App.4th at 690 [mandate review of budget legislation allows relief only when supported by clear, positive law].) Under this law, courts invalidate rates only upon proof "rates are excessive and the action of the rate-fixing officers illegal and arbitrary." (*American Microsystems, supra,* 137 Cal.App.3d at p. 1041.) They neither make rates in the first instance nor substitute their views for those of elected officials. (*Durant, supra,* 39 Cal.App.2d at pp. 139–140.)

Prior to 1996's Proposition 218, utility rates were not limited to cost recovery and our Constitution did not:

> inhibit an entity of local government from collecting fees for services it performs and using the net proceeds of enterprises such as municipal utility systems for the benefit of its own general fund.

(*Hansen, supra,* 42 Cal.3d at pp. 1182–83, internal citation omitted.) PILOTs and operating transfers were therefore reasonable as a matter of law.

PILOTs withstood review under Proposition 13, but not Proposition 218, as to service fees within its scope. (Compare *Oneto v. City of Fresno* (1982) 136 Cal.App.3d 460, 468 [upholding water PILOT under Prop. 13] with *Howard Jarvis Taxpayers Ass'n v.*

City of Fresno (2005) 127 Cal.App.4th 914, 927 [invalidating same PILOT under Prop. 218 as to water, sewer, and solid waste fees].) However, Proposition 218 expressly excludes electric rates from its sweep to protect preexisting charges, such as subsidies for low-income and senior lifeline rates. (Cal. const., art. XIII D, § 3, subd. (b); 1 CT 216 [discussing City's Lifeline and CARES Programs].) Its proponents' rebuttal argument to voters stated: "'Lifeline' rates for elderly and disabled for telephone, gas, and electric services are NOT affected." (1 CT 280.) Therefore — except for water, sewer and trash rates governed by Proposition 218 — PILOTs were a lawful cost of service for electric utilities when Proposition 26 was adopted.

Proposition 26 can disturb Redding's PILOT, which has not been amended since 2010, only if the measure is retroactive. Of course, *Brooktrails Township Community Services District v. Board of Supervisors of Mendocino County* (2013) 218 Cal.App.4th 195, 205, concludes it is not.

Brooktrails is not the sole authority for this conclusion. *Metropolitan Water District v. Dorff* (1979) 98 Cal.App.3d 109, 115–116 held Proposition 13 did not require voter approval of annexations that apply existing taxes to annexed territory. *Sunset Beach* further held Proposition 218 evidenced no intent to change that rule. (*Sunset Beach, supra,* 209 Cal.App.4th at p. 1198.) The same result should apply here: absent evidence Proposition 26 was intended to vitiate

Hansen's rule allowing transfer of "net revenues" to a City's general fund, it ought not to be read to do so. Given the holding in *Brooktrails* that there is no apparent intent to displace PILOTs retroactively, and that the ballot materials assured voters Proposition 26 would preserve consumer and environmental protection laws (1 CT 279 ["yes" argument], 280 [rebuttal to "no" argument]), this Court can confidently conclude it was not intended to displace *Hansen* or Redding's PILOT.

Further, "reasonable" as used in Proposition 26 without definition must be understood to continue earlier judicial definitions of the term. (E.g., *People v. Hallner* (1954) 43 Cal.2d 715, 720 ["Where a statute has been construed by judicial decision, and that construction is not altered by subsequent legislation, it must be presumed that the Legislature is aware of the judicial construction and approves of it"]; (*Schmeer, supra,* 213 Cal.App.4th at p. 1316 [Constitution construed as statutes are].)

Case law has long made clear that "reasonable" rates may include a modest profit. (*Hansen, supra,* 42 Cal.3d at p. 1182 [city entitled to reasonable rate of return on water service provided to non-city residents].) Moreover, in the absence of a showing to the contrary, rates are presumed to be reasonable and fair. (See *Durant, supra,* 39 Cal.App.2d at p. 139 [upholding higher rates for non-city residents]; see also *Elliott, supra,* 54 Cal.App.3d at p. 57 [cause of action stated to challenge sewer service charge for non-city users

four times higher than city residents].) PILOTs survived the adoption of Proposition 218 and Government Code section 50076, defining as "special taxes" requiring voter approval fees that "exceed the reasonable cost of providing the service."

As the record shows, Redding's electric rates are among the lowest in California, and lower than Pacific Gas & Electric charges in areas adjacent to the City. (IV AR, Tab 166, pp. 1074, 1080–1085.) PILOTS are common among public utilities, which generally set rates lower than investor-owned utilities, the rates of which are governed by the PUC and must be "just and reasonable." (*Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 792.) Thus REU's rates are reasonable as a matter of law even if this record showed they fund the PILOT because those rates are lower than Pacific Gas & Electric rates approved by the PUC.

Moreover, a PILOT is a reasonable cost of service because it approximates taxes a private utility would pay. As Justice Duarte explained in her dissent below, "a PILOT, by definition, is designed to equate to the property taxes the utility **would** pay, were it not a municipal utility," noting also that the trial court correctly found Redding's PILOT equaled a private utility's taxes. (182 Cal. Rptr. 3d at p. 738 [original emphasis].) She further noted that a private utility in California would:

> claim necessary taxes — including local property taxes assessed within the limits of Proposition 13 and

> implementing laws — as valid costs of service in its PUC rate-setting applications.

(*Id.* at p. 739.)

PILOTS allow a municipality to operate a utility for the benefit of its residents, businesses and property owners, without forgoing the revenue to support general city services that property taxes on a private utility would provide. A holding that a PILOT is not a reasonable cost of service would discourage the public utilities long authorized by article XI, section 9, and ratepayers would ultimately suffer. Moreover, laws often raise the cost of economic activity, and if a law is sufficiently rational to be enforceable, costs to comply with it are "reasonable." To conclude otherwise would allow cost accountants to displace legislators.

Therefore, as Justice Duarte explained, the issue is whether:

> Redding, exercising its legislative direction, may determine part of the reasonable costs of its utility to include an amount equal to what Redding would collect in taxes from an equivalent private utility, and consider this amount as 'costs' when it considers the many factors that go into setting utility rates.

She answers this question "yes." (182 Cal.Rptr.3d at p. 740.) This Court should as well.

In summary, the PILOT is a reasonable cost of service as a matter of fact and of law. Therefore, even if Proposition 26 applies, the PILOT is a reasonable cost to the City of providing electric service and it survives review under the measure.

III. REDDING HAS NOT "IMPOSED," "EXTENDED," OR "INCREASED" THE PILOT SO AS TO TRIGGER APPLICATION OF PROPOSITION 26

The PILOT is lawful for one further reason — the City has not taken any of the acts necessary to trigger Proposition 26 since the 2010 effective date of that measure.

Proposition 26 defines "tax" (art. XIII C, § 1, subd. (e)), but relies on Proposition 218 to implement that definition. Under Proposition 218, a "tax" cannot be "impose[d], extend[ed] or increase[d]" without voter approval. (Cal. Const., art. XIII C, § 2, subds. (b) & (d).) Because Resolution No. 2010-179 adopting the 2010 electric rates and Resolution No. 2011-111 adopting the FY 2011–2012 and 2012–2013 budget do not "impose, extend or increase" the PILOT, they did not require voter approval. Therefore, even if the PILOT were derived from rate revenue, it can continue to be recovered through electric rates without voter approval until it is amended, extended or increased.

Accordingly, provided the City maintains the PILOT in precisely its current form, it may continue it indefinitely, just as

non-voter-approved special taxes predating Proposition 13 continue to this day — nearly 40 years after the approval of that measure. (*E.g., Carmen v. Alvord* (1982) 31 Cal.3d 318 [special property tax to fund pension payments was preexisting "debt" exempt from voter approval]; *Howard Jarvis Taxpayers Ass'n v. County of Orange* (2003) 110 Cal.App.4th 1375 [pre-Prop. 13 pension tax could be maintained in 1976 form, but voter approval required for increase].)

A. The PILOT Has Not Been "Imposed" Since 2010

Article XIII C, section 2, subdivisions (b) and (d) require voter approval when a "tax" is "imposed."

The PILOT has not been "imposed" since 2010 for two reasons. First, as demonstrated above, the PILOT has not been proved to be funded from electric rates, but from the proceeds of wholesale transactions and other miscellaneous income to the City's electric utility.

The prices applied to wholesale transactions are not "fees or charges" governed by either Proposition 218 (art. XIII D, § 6) or Proposition 26 (art. XIII C, § 1, subd. (e)) because they are not "imposed"; rather they are freely negotiated between voluntary market participants of comparable market power. (Cf. *Ponderosa Homes, Inc. v. City of San Ramon* (1994) 23 Cal.App.4th 1761, 1770 [defining "impose" as used in Mitigation Fee Act as "to establish or apply by authority or force, as in 'to impose a tax'"].) Sophisticated

participants in West Coast wholesale power markets, like the former Enron Corporation, have many sources of electricity and they need deal with Redding only if they wish. Thus, wholesale power rates that fund the PILOT are not "imposed," because no force or authority compels their payment.

Second, a tax is "imposed" under article XIII C, section 2 only upon its initial legislative adoption. (*Sunset Beach, supra,* 209 Cal.App.4th at pp. 1194–1195 [Proposition 218 did not require tax election on annexation to City because taxes had been "imposed" years earlier in compliance with then-applicable law].) As the Court of Appeal explained in a challenge to a utility tax under Propositions 62 (Gov. Code §§ 53720 *et seq.*) and 218 (art. XIII C, § 2), interpreting continued collection of a preexisting tax an "imposition" requiring voter approval would:

> require a local government to annually resubmit taxes previously approved by the voters, even in the absence of any change in the amount or duration of those taxes. Such an absurd result was clearly not intended by the voters.

(*McBrearty v. City of Brawley* (1997) 59 Cal.App.4th 1441, 1450, disapproved on another ground in *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 816.)

Methods for calculating taxes are "grandfathered" by article XIII C. (*AB Cellular LA, LLC, supra,* 150 Cal.App.4th at p. 763 [distinguishing voter-approved and grandfathered taxing methodologies under Gov. Code, § 53750, subd. (h)'s definition of "increase"].) A tax enacted before the effective date of Proposition 26 may continue without voter approval provided it is not extended or increased. Therefore, for the purposes of article XIII C, a tax is not "imposed" simply because it is collected.

Here, the PILOT was adopted in 1988, and has existed in its present form since 2005. (3 CT 530.) Its continuing implementation is not an "imposition" for purposes of article XIII C; were it otherwise, we would have election season without end. (Cf. 3 CT 739 [trial court's similar conclusion rejecting Citizens' argument from the "re-enactment" rule].) Thus, the electric rate and budget resolutions the City Council adopted in December 2010 and June 2011 did not "impose" the PILOT within the meaning of article XIII C.

B. Redding Has Not "Extended" or "Increased" the PILOT Since 2005

It is also clear the PILOT was neither "extended" nor "increased" as article XIII C uses those terms. The Proposition 218 Omnibus Implementation Act of 1997, Government Code section 53750 et seq. (the "Omnibus Act") defines "extended" "[f]or

purposes of Article XIII C and Article XIII D of the California Constitution" as follows:

> "Extended," when applied to an existing tax or fee or charge, means a decision by an agency to extend the stated effective period for the tax or fee or charge, including, but not limited to, amendment or removal of a sunset provision or expiration date.

(Gov. Code, § 53750, subd. (e).) The PILOT has no expiration date and has been applied for 25 years. It therefore has not been "extended" by the City. (See *Sunset Beach, supra*, 209 Cal.App.4th at p. 1195 [for purposes of article XIII C, "extend" means a "chronological prolongation"].) Of course, this Court has held the Proposition 218 Omnibus Implementation Act (Omnibus Act) to be helpful authority to construe Articles XIII C and XIII D:

> In cases of ambiguity we also may consult any contemporaneous constructions of the constitutional provision made by the Legislature or by administrative agencies. Our past cases establish that the presumption of constitutionality accorded to legislative acts is particularly appropriate when the Legislature has enacted a statute with the relevant constitutional prescriptions clearly in mind. In such a case, the statute represents a considered legislative judgment as to the

> appropriate reach of the constitutional provision. Although the ultimate constitutional interpretation must rest, of course, with the judiciary, **a focused legislative judgment on the question enjoys significant weight and deference by the courts.**

(*Greene v. Marin County Flood Control & Water Conservation Dist.* (2010) 49 Cal.4th 277, 290–291 [applying Omnibus Act to construe article XIII D, § 6].)

Under these same authorities, there has been no "increase" in the PILOT, because there has been no change in the methodology for its calculation since 2005 — before the effective date of Proposition 26. The Omnibus Act defines the "increase" in a tax that triggers article XIII C, section 2's election requirements as follows:

> "Increased," when applied to a tax, assessment, or property-related fee or charge, means a decision by an agency that does either of the following:
>
> (A) Increases any applicable rate used to calculate the tax, assessment, fee or charge.
>
> (B) Revises the methodology by which the tax, assessment, fee or charge is calculated, if that revision results in an increased amount being levied on any person or parcel.

(Gov. Code, § 53750, subd. (h)(1).) If the December 2010 rate increase had any relation to the PILOT (and the trial court found it did not), it would not be an "increase" because the methodology used to calculate it has not changed since 2005. Nor does the Omnibus Act's definition of "impose" encompass the City's accounting for the proceeds of the PILOT in its 2011–2013 budget.

The balance of the Omnibus Act's definition of "increase," further narrows the term and confirms this point:

> A tax, fee, or charge is not deemed to be "increased" by an agency action that does either or both of the following:
>
> (A) Adjusts the amount of a tax or fee or charge in accordance with a schedule of adjustments, including a clearly defined formula for inflation adjustment that was adopted by the agency prior to November 6, 1996.
>
> (B) **Implements or collects a previously approved tax, or fee or charge**, so long as the rate is not increased beyond the level previously approved by the agency, and the methodology previously approved by the agency is not revised so as to result in an increase in the amount being levied on any person or parcel.

(Gov. Code, § 53750, subd. (h)(2), emphasis added.) Thus, article XIII C, as contemporaneously interpreted by the Legislature,

allows continued implementation of a tax or fee without voter approval, provided "the rate is not increased beyond the level previously approved by the agency" and "the methodology previously approved by the agency is not revised." (See *AB Cellular LA, LLC, supra,* 150 Cal.App.4th at p. 760 [voter approval required to revise cellphone tax methodology to reach call charges as well as fixed monthly charges].)

This means that "[a] taxing methodology must be frozen in time until the electorate approves higher taxes" (*AB Cellular LA, LLC, supra,* 150 Cal.App.4th at pp. 761–762) — and so long as a methodology is "frozen in time," the tax has not been increased and need not be submitted to voters. Since the methodology used to calculate the PILOT has not been changed since 2005, it has not been "increased." As Proposition 218 exempts electric charges (art. XIII D, § 3, subd. (b)) and Proposition 26 is not retroactive, Redding may continue to implement the PILOT as last amended in 2005.

In summary, even if viewed as a tax, voter approval of Redding's PILOT is not required until the City increases its rate or changes the methodology for calculating the PILOT in a way that increases revenues to the general fund. Thus, the PILOT — and all other laws predating Proposition 26 that impose costs on Redding's electric utility — are "grandfathered" by that measure until they are extended, or increased.

CONCLUSION

Redding's PILOT was adopted in 1988 and last amended in 2005. It was plainly intended as continuing legislation and therefore predates the 2010 adoption of Proposition 26 and is grandfathered as to that measure.

Even if the PILOT had been reflected in the electric rate increases approved in December 2010 or the budget adopted in June 2011 had amended or readopted it — and Proposition 26 therefore applied — it is a reasonable cost of the City's electric service both as a matter of law and as a matter of fact appropriately found by the trial court with record support. It therefore is not a tax requiring voter approval, but a lawful service fee under article XIII C, section 1, subdivision (e)(2).

Still further, even if the PILOT were a tax within the meaning of Proposition 26, it may continue without voter approval until it is amended or increased.

Accordingly, the City respectfully urges this Court to affirm the trial court's judgments for the City.

DATED: May 29, 2015

COLANTUONO, HIGHSMITH &
WHATLEY, PC

MICHAEL G. COLANTUONO
AMY C. SPARROW
MEGAN S. KNIZE
Attorneys for Respondent
CITY OF REDDING

CERTIFICATE OF COMPLIANCE WITH CAL. R. CT. 8.520(B) & 8.204(C)(1)

Pursuant to California Rules of Court, rules 8.520(b) and 8.204(c)(1), the foregoing Opening Brief on the Merits by Defendant / Respondent the City of Redding and City Council of Redding contains 11,927 words (including footnotes, but excluding the tables, "Issues Presented for Review" section and this Certificate) and is within the 14,000 word limit set by California Rules of Court, rules 8.520(b) and 8.204(c)(1). In preparing this certificate, I relied on the word count generated by Word version 14, included in Microsoft Office Professional Plus 2010.

DATED: May 29, 2015

COLANTUONO, HIGHSMITH & WHATLEY, PC

MICHAEL G. COLANTUONO
Attorneys for Respondent
CITY OF REDDING

ATTACHMENT NO. 1

Public Benefits Program Description	Estimated FY 2008-09	Adopted FY 2009-10	Adopted FY 2010-11
Energy Efficiency			
Project Expenses (including labor)	$ 1,570,000	$ 1,500,000	$ 1,500,000
Low Income Assistance			
Project Expenses (including labor)	$ 480,000	$ 600,000	$ 600,000
Research, Development & Demonstration			
Project Expenses (including labor)	$ 148,000	$ 150,000	$ 150,000
Renewable Resources			
Project Expenses (including labor)	$ 86,000	$ 50,000	$ 50,000
TOTAL PBP Charges	$ 2,284,000	$ 2,300,000	$ 2,300,000

Five-Year Financial Plan

The Electric Utility's financial plan for the current year and subsequent five years is summarized in the table below.

FIVE-YEAR FINANCIAL PLAN	Fiscal Years Ending June 30					
	2009	2010	2011	2012	2013	2014
Electric Utility Fund Beginning Balance	**40.7**	**32.2**	**25.7**	**18.9**	**15.0**	**14.7**
Rate Adjustments	**7.84%**	**7.84%**	**9.10%**	**9.10%**	**9.10%**	**9.10%**
Revenues ($ Mil)						
Retail Electric Sales	86.3	93.4	102.1	110.1	121.6	134.6
Wholesale Electric Sales	26.6	22.7	18.7	12.2	11.7	10.5
Miscellaneous Income	6.1	5.4	5.7	5.9	6.0	6.2
Total	119.0	121.5	126.5	128.2	139.3	151.3
Operating Expenses ($ Mil)						
Power Supply	85.0	81.4	82.3	80.4	79.8	81.1
O & M	26.0	27.5	28.5	29.4	30.3	31.2
Total	111.0	108.9	110.8	109.8	110.1	112.3
Net Operating Revenue	**8.0**	**12.6**	**15.7**	**18.4**	**29.2**	**39.0**
Total Net Debt Service	5.2	10.0	13.9	13.9	13.9	14.0
Revenue Remaining after Debt Service	**2.8**	**2.6**	**1.8**	**4.5**	**15.3**	**25.0**
Other Revenues & Expenses						
Other Revenues	2.1	1.6	1.2	0.9	0.7	0.7
Reimbursements from Bond Proceeds	6.0	2.0	2.0	4.0	0.0	0.0
General Fund Payback for Land Purchase	0.2	0.2	0.2	0.2	0.2	0.2
Revenue-Funded Capital Projects	-6.5	-5.8	-5.2	-6.0	-6.2	-6.3
In-Lieu Payment to City	-5.2	-6.1	-6.0	-6.1	-6.3	-6.5
Rolling Stock, Major Plant Maintenance	-7.9	-1.0	-0.8	-1.4	-4.0	-5.5
Total	-11.3	-9.1	-8.6	-8.4	-15.6	-17.4
Increase (Decrease) in Funds ($ Mil)	**-8.5**	**-6.5**	**-6.8**	**-3.9**	**-0.3**	**7.6**
Electric Utility Fund Ending Balance ($ Mil)	**32.2**	**25.7**	**18.9**	**15.0**	**14.7**	**22.3**
Reserves (as a % of O&M Requirement)	**29.0%**	**23.7%**	**17.1%**	**13.6%**	**13.4%**	**20.0%**
Debt Service Coverage Ratio	**1.93**	**1.42**	**1.22**	**1.39**	**2.14**	**2.85**

ATTACHMENT NO. 2

Resolution No. 2011 - 111

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF REDDING APPROVING AND ADOPTING THE BIENNIAL BUDGET FOR FISCAL YEARS ENDING JUNE 30, 2012 AND 2013

WHEREAS, proposed budget requests have been submitted to the City Manager by Department Directors of the City; and

WHEREAS, such requests and all sources of revenue have been studied by the City Manager and the Finance Department; and

WHEREAS, the City Manager has submitted a Proposed Budget which was balanced and prudent; and

WHEREAS, the City Council held a budget hearing and solicited input from the public; and

WHEREAS, the City Council has considered the Proposed Budget to serve the residents of the City of Redding; and

WHEREAS, the Proposed Budget reflects previously approved legislative direction of the present and former City Councils to employ cost accounting formulas and methodologies carried forward from budget to budget including, but not limited to: a cost allocation plan apportioning the cost of shared resources among the various departments which benefit from those resources, internal service funds and enterprise funds, and a payment-in-lieu of property tax (PILOT) from the Redding Electric Utility (REU) to the General Fund; and

WHEREAS, the City Council first adopted the PILOT upon approving the budget for fiscal year 1988-89. Before doing so, the City surveyed 34 cities with public power utilities regarding their use of in-lieu payments or operating transfers (a transfer from a utility fund to a general fund in an amount determined without reference to the value of utility assets) and found that half used one or the other method; and

WHEREAS, the City Council has approved continuation of the PILOT in every budget since 1988-89. Upon adoption of the FY 1992-1993 budget, the City Council amended the PILOT to include the value of capital improvement projects undertaken during the budget year in the asset base to which the 1% payment in lieu of tax is applied. Upon adoption of the FY 2002-2003 budget, the City Council further revised the PILOT to adjust the value of assets for inflation in the calculation of the PILOT. Upon adoption of a two-year budget in June 2005, the City Council amended the PILOT into its current form by including the value of joint-venture assets in which REU has a share in the asset base to which the 1% payment in lieu of tax is applied. The City's practice is to estimate the value of its assets over the life of a two-year budget and to calculate the PILOT based on that estimate and to correct any variance between the PILOT calculated for the last two-year budget and the actual asset value experienced in that time. Estimates are necessary because the PILOT formula:

(i) includes capital projects to be completed in the two future years covered by a budget and (ii) uses an estimate of inflation during that time. The City Council has included the PILOT pursuant to this formula in each budget since June 2005, most recently on June 11, 2009, with respect to the current-two-year budget, which appropriates funds for City police, fire and other services for the 2009-10 and 2010-11 fiscal years; and

WHEREAS, in light of the adoption of Proposition 26 on November 2, 2010, which precludes certain new fees, levies or charges but is not retroactive as to local governments, the City Council desires to maintain the existing PILOT utilizing the current accounting formula and methodology as last modified in 2005. Attachment A to this Resolution reflects the electric in-lieu computation worksheet incorporated into the Proposed Budget and is hereby incorporated by reference into this Resolution. The City Council understands that Proposition 26 does not vitiate legislation adopted prior to November 3, 2010, such as the PILOT.

WHEREAS, it has been determined that this matter is not subject to the provisions of the California Environmental Quality Act;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Redding as follows:

1. That the foregoing recitals are true and correct.

2. That it is deemed to be in the best interest of the City of Redding to adopt and approve the budget appropriations contained in the Biennial Budget for fiscal years ending June 30, 2012 and 2013, at this time.

3. That the budget appropriations referred to hereinabove are set forth in the Proposed Budget for fiscal years ending June 30, 2012 and 2013, and that said budget appropriations are hereby approved as the Biennial Budget for the City of Redding for the fiscal years ending June 30, 2012 and 2013.

4. That should any section, subsection, clause, or provision of this Resolution or the Biennial Budget it adopts for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Resolution and the Biennial Budget; it being hereby expressly declared that this Resolution and the Biennial Budget, and each section, subsection, sentence, clause, and phrase hereof would have been adopted irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

I HEREBY CERTIFY that the foregoing Resolution was introduced and read at a special meeting of the City Council of the City of Redding on the 22nd day of June, 2011, and was duly adopted at said meeting by the following vote:

AYES:	**COUNCIL MEMBERS:**	**Bosetti, Dickerson, Sullivan, and McArthur**
NOES:	**COUNCIL MEMBERS:**	**Jones**
ABSENT:	**COUNCIL MEMBERS:**	**None**
ABSTAIN:	**COUNCIL MEMBERS:**	**None**

MISSY McARTHUR, Mayor

ATTEST:

PAMELA MIZE, City Clerk

FORM APPROVAL:

FOR RICHARD A. DUVERNAY, City Attorney
BARRY E. DeWALT

THIS INSTRUMENT IS A CORRECT COPY
OF THE ORIGINAL ON FILE IN THIS OFFICE
ATTEST

JAN 05 2012

PAMELA MIZE
CITY CLERK OF THE CITY COUNCIL
OF THE CITY OF REDDING, COUNTY OF SHASTA,
STATE OF CALIFORNIA
BY Margery J. Stockwell 2468

PROOF OF SERVICE

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

I, Ashley A. Lloyd, declare:

I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 11364 Pleasant Valley Road, Penn Valley, California 95946. On May 29, 2015 I served the document(s) described as **OPENING BRIEF** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED LIST

__X__ BY MAIL: The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Penn Valley, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 29, 2015 at Penn Valley, California.

Ashley A. Lloyd

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

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