

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Lori Mitchell

**SUBJECT:** SEE BELOW

**DATE:** March 7, 2019

Approved

*D. DSYL*

Date

*3/7/19*

**SUBJECT: AMEND TITLE 26 OF MUNICIPAL CODE TO PERMIT RATE DECREASES AND ADJUSTMENTS TO RATES THAT ARE FIXED AGAINST PACIFIC GAS AND ELECTRIC COMPANY RATES WITHOUT REQUIRING CUSTOMER NOTICE OR A FINDING OF EXTRAORDINARY CIRCUMSTANCES BY CITY COUNCIL**

## RECOMMENDATION

Approve an ordinance amending Section 26.40.020 of Chapter 26.40 of Title 26 of the San José Municipal Code ("Title 26") to permit San José Clean Energy ("SJCE") to (1) decrease rates, and (2) adjust rates that are fixed against Pacific Gas and Electric Company ("PG&E") rates, without requiring written notice to customers or a finding of extraordinary circumstances by City Council if the rate is decreased or modified more than twice a year.

## OUTCOME

Amending Title 26 to permit rate adjustments to rates that are pegged to PG&E rates without requiring (1) written notice to customers, or (2) a finding of extraordinary circumstances by City Council if the rate is modified more than twice a year, is consistent with the City Council's direction to maintain rates equal to or below similar PG&E rates. Further, amending the noticing provisions of Title 26 to limit customer noticing requirements to SJCE rate increases, provided that the increase is not related to a rate fixed to PG&E rate, will allow SJCE to reduce the expense of direct mail to customers for rate decreases and minimize paper and printing waste. All rate changes (i.e., increases and decreases) would continue to be posted on SJCE's website and be available electronically.

## **BACKGROUND**

On November 7, 2017, the City Council approved an ordinance to add Title 26 to the San José Municipal Code to provide procedures for the operation and management of San José Clean Energy. Title 26 specified several procedures and notification requirements for all rate changes.

On January 30, 2018, the City Council approved revisions to the launch schedules, reducing the number of launches from three to two. Phase I launch (city accounts) began on September 1, 2018 and Phase II (residential and commercial accounts) began on February 1, 2019.

On November 6, 2018, City Council adopted a resolution authorizing SJCE to set rates for the GreenSource product at one percent (1 %) below Pacific Gas and Electric Company's ("PG&E") generation rate.

## **ANALYSIS**

Staff recommends that the words "adjusted" in Section 26.40.020, subsection B, of Title 26, and "change" or "changes" in subsection D of the same Section be replaced with the terms "increased" and "increase", as appropriate.

Currently, subsections B and D of Section 26.40.020 of the Municipal Code state:

"B. Rates shall not be **adjusted** more than twice in any fiscal year absent a finding of extraordinary circumstances by the City Council.

....

D. Written notice of any proposed **change** in rates for electricity shall be provided in advance of approval of any rate **change** as follows:

1. Notice shall be published in a newspaper of general circulation at least fifteen days in advance of the City Council consideration of such **changes**.
2. No more than 45 days, but no less than 30 days prior to the City Council's consideration of a rate **changes**, notice shall be sent directly to the customer with the customer's regular bills if possible, or by separate letter or by other means intended to provide timely notice to the customer." (emphasis added).

Under the existing subsection B of Section 26.40.020 of the Municipal Code, rates cannot be adjusted upward or downward more than twice in any fiscal year, except with a finding of extraordinary circumstances by the City Council. Staff recommends changing Section B of Chapter 26.40.020 of the Municipal Code to permit rate decreases more than twice in any fiscal year without a finding of extraordinary circumstances by the City Council. A finding of

extraordinary circumstances by the City Council would continue to be required if rates, other than rates fixed against PG&E rates, are increased more than twice in a fiscal year.

In addition, under existing subsection D of Section 26.40.020 of the Municipal Code, SJCE must notify its customers any time that rates increase or decrease. Staff recommends changing Section D of Chapter 26.40.020 of the Municipal Code to limit the requirement to provide notification to customers only when SJCE increases rates that are not pegged to PG&E rates.

Staff also requests an amendment of the Municipal Code to add a provision (as subsection E to Section 26.40.020), as follows:

E. Subsections B and D of this Section shall not apply to a rate increase or decrease if all of the following conditions are met:

1. As required under Section 26.40.010, the rate was equal to or below similar PG&E rates when it was established and will continue to be equal to or below similar PG&E rates after the rate increase or decrease;
2. The rate increase or decrease follows a rate increase or decrease by PG&E; and
3. The rate increase or decrease is consistent with City Council resolutions establishing rates.

Staff recommends these changes for the following reasons:

1. **To reduce operating costs:** SJCE does not send bills to customers directly. PG&E is required by statute and utility regulations to act as billing agent and collect revenues from customers on behalf of SJCE. Therefore, any mass noticing to customers by SJCE entails printing and mailing a postcard or letter. Each mailing costs approximately \$90,000-\$150,000, depending on the form of mailing and class of postage.
2. **To reduce waste:** the printing and mailing of more than 300,000 paper notices creates significant greenhouse gas emissions and utilizes trees and water associated with paper production to print and mail notifications.
3. **To improve agility:** PG&E may modify its rates several times in any given year by decreasing or increasing generation rates or changing customer charges, among other possibilities. Each time that PG&E adjust its rates, SJCE must follow to maintain City Council's direction to provide rates that are cheaper than PG&E rates. The proposed Subsection E will provide SJCE with flexibility to adjust rates that are pegged to PG&E rates. Further, SJCE is in a competitive business with the incumbent utility provider and must be able to react quickly when PG&E changes its rates.

This recommendation would only impact situations in which SJCE decreases rates or the rate is pegged to PG&E rate, as approved by City Council.

### **EVALUATION AND FOLLOW-UP**

Staff will bring any recommendation to change rates in a manner that is different than one percent below PG&E's generation rates to City Council for approval.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's website for the March 19, 2019 City Council meeting.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

There is no commission recommendation or input associated with this action.

### **FISCAL/POLICY ALIGNMENT**

The recommended actions support the City's 2017 Green Vision (Goals 2 and 3), the Climate Smart Plan, and the Envision San José 2040 General Plan (Goal MS-2 and Appendix 8: GHG Reduction Strategy).

### **COST SUMMARY/IMPLICATIONS**

Amending Chapter 26.40.020 of Title 26 will save \$90,000-\$150,000 per rate decrease, or rate adjustment if the rate is pegged to PG&E rates, by avoiding the expense of printing and postage, which is expected approximately once per year.

HONORABLE MAYOR AND CITY COUNCIL  
March 7, 2019  
**Subject: Amend Title 26 of Municipal Code**  
Page 5

**CEQA**

Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.

/s/  
LORI MITCHELL  
Director, Community Energy

For questions, please contact Lori Mitchell, Director of Community Energy Department, at (408) 535-4880.