



Council Agenda Report

Item 5d

Department: Public Works
Cost Center: 5001
For Agenda of: 1/11/2022
Placement: Consent
Estimated Time: N/A

FROM: Matt Horn, Public Works Director
Prepared By: Paul Fields, Administrative Analyst

SUBJECT: ADOPT A RESOLUTION OF INTENTION TO APPROVE A RENEWED FRANCHISE AGREEMENT WITH PHILLIPS 66 PIPELINE, LLC FOR EXISTING PIPELINES LOCATED WITHIN THE CITY RIGHT-OF-WAY

RECOMMENDATION

Adopt a Resolution of Intention entitled, “A Resolution of the City Council of the City of San Luis Obispo, California, declaring the City’s intent to approve an Ordinance, superseding Ordinance 1564 (2011 Series), to continue to allow the use of the City’s right of way for the continued operation and maintenance of existing pipelines for the transportation of oil and other specified materials in the City of San Luis Obispo by Phillips 66 Pipeline LLC and setting a public hearing for February 15, 2022” to consider a renewed franchise agreement with Phillips 66 Pipeline LLC pursuant to the provisions of Article X of the City Charter and Section 6232 of the California Public Utilities Code.

DISCUSSION

On June 24, 2021, Phillips 66 Pipeline LLC requested to renew its existing franchise agreement pertaining to common carrier pipelines located in the City’s right-of-way. Common carrier pipelines transport the products of other companies as well as the products of the franchisee.

Background

The City has several franchise agreements with utility companies to allow the use of public rights of ways for both the transmission and distribution of different products or services. For example, currently the City has franchise agreements with Pacific Gas and Electric, the Gas Company, and Charter Communications.

On July 10, 2001, the City Council adopted Ordinance No. 1391 granting a franchise to Union Pipeline Company (UNOCAP) for a period of ten years (Attachment A). On April 17, 2007, the City Council adopted Ordinance No. 1504 transferring the franchise from UNOCAP to ConocoPhillips Pipeline Company (Attachment B). On June 21, 2011, the City Council adopted Ordinance No. 1564 to renew the franchise agreement with ConocoPhillips Pipeline Company (Attachment C). On February 5, 2013, the City Council adopted ordinance 1587, transferring the franchise from ConocoPhillips Pipeline Company to Phillips 66 Pipeline LLC (Attachment D).

This agreement expired on June 20, 2021 and Phillips 66 Pipeline LLC is subject to encroachment permit requirements until a new franchise agreement is approved. The City received an application for renewal from Phillips 66 Pipeline LLC on November 5, 2021 (Attachment E).

Additional Franchise Agreement Held by Phillips 66 Company

Phillips 66 Pipeline LLC is a wholly owned subsidiary of Phillips 66 Company. Phillips 66 Company holds a separate franchise with the City pertaining to proprietary pipelines. Those pipelines exclusively used for transferring the products of the franchisee. The public hearing following this Resolution of Intention, would be for the “common carrier” pipelines franchise held by Phillips 66 Pipeline LLC, not the proprietary pipelines franchise held by Phillips 66 Company. The franchise agreement for proprietary pipelines expired on October 17, 2021, and the City is awaiting a renewal proposal from Phillips 66 Company.

Scope of Franchise Agreement

The proposed renewed franchise agreement would provide Phillips 66 Pipeline LLC the non-exclusive right to “construct, erect, maintain, operate, repair, renew and change the size of and remove pipelines ... for the transportation of oil, products, thereof, hydrocarbon gases and other gas necessary for the operation and maintenance of the pipelines...” The application requests approval of a three-year term as Phillips 66 Pipeline LLC is planning to divest operations within the San Luis Obispo region. Currently, Phillips 66 has no plans to install new pipelines. The franchise agreement will require Phillips 66 Pipeline LLC to provide the City with plans for the decommissioning and removal of pipelines from the City right of way. All its existing pipelines are shown in an exhibit attached to the application requesting franchise approval (Attachment F).

Franchise Fee

Franchise fees for distribution pipelines are set by the Public Utilities Code Section 6231.5. The fee ranges from \$0.088 to \$0.66 per lineal foot based on pipeline diameter, with CPI adjustments added since 1989 when these rates were first established. The proposed franchise agreement limits pipeline diameter to 12 inches, which corresponds to a fee of \$.264 (plus CPI) per lineal foot. The majority of the pipeline length installed has an 8-inch internal diameter, resulting in a fee of \$.176 (plus CPI) per lineal foot. Based on the Phillips 66 Pipeline facilities that are installed within City Rights of Way, the resulting annual revenue is approximately \$6,700.

In addition to the annual franchise fee, the City is proposing a granting fee of \$10,000 to cover staff costs associated with preparing the agreement, advertising the request, holding the required public meetings (three total and described below), and managing the franchise agreement after adoption.

Previous Council or Advisory Body Action

The City Council renewed the franchise agreement for common carrier pipelines in July 2011 and approved the transfer of the franchise from ConocoPhillips Pipeline Company to Phillips 66 Pipeline LLC in February 2013. No other advisory body review is required for this action.

Policy Context

The process for adoption of a new franchise agreement is prescribed by the Public Utilities Code (Section 6232-6234). The following schedule is proposed:

- January 11, 2022: Introduce and pass resolution of intent
- February 15, 2022: Hold public hearing and introduce ordinance
- March 15, 2022: Second reading and final adoption or ordinance
- April 14, 2022: Ordinance becomes effective

Per the above schedule, the proposed renewal agreement will be presented to the Council on February 15. The resolution proposed as part of this agenda report simply indicates the Council's intent to renew the franchise (Attachment F). The February 15, meeting would serve as Council and the Community's public hearing at which public comment and Council discussion on the merits of this renewed franchise agreement would occur. At that meeting, staff will come prepared with additional alternatives for Council's consideration.

Article X of the City Charter empowers the City Council to grant by ordinance a franchise to furnish the City and its inhabitants with public utilities. In line with the Public Utilities Code, the City Charter requires the adoption of a resolution declaring an intention to grant the franchise and the setting of a public hearing.

Public Engagement

Adoption of the resolution would schedule a public hearing on February 15, 2022, to allow for public comment on the agreement.

CONCURRENCE

The finance department concurs with this recommendation.

ENVIRONMENTAL REVIEW

The renewal of the franchise agreements is categorically exempt from the provisions for the California Environmental Quality Act in accordance with section 15061(b)(3).

FISCAL IMPACT

Budgeted: No
Funding Identified: Yes

Budget Year: 2021-22

Fiscal Analysis:

Funding Sources	Total Budget Available	Current Funding Request	Remaining Balance	Annual Ongoing Cost
General Fund	\$	\$	\$	\$
State				
Federal				
Fees				
Other:				
Total	\$	\$	\$	\$

There is a minor positive fiscal impact to the General Fund in the amount of \$6,700 associated with granting of the proposed franchise agreement for pipeline services.

ALTERNATIVES

The City Council may reject the application by Phillips 66 Pipeline LLC for a new franchise agreement. This alternative is not recommended because it is in the City's best interest to have a qualified company operate and maintain the existing pipeline infrastructure within the City's right-of-way. Should the City Council express its intention to not award the franchise to Phillips 66 Pipeline LLC, the applicant would have three available options. The first would be to request City approval to physically remove the pipeline from the City's right-of-way. The second option would be to leave the pipeline in its current location but seal it where it enters and leaves the City, thereby rendering it unusable. The third option would be to initiate a condemnation action against the City under the Public Utilities Code in order to obtain through eminent domain a subsurface easement or other rights to utilize the pipeline within the City. The proposed \$10,000 granting fee is sufficient to cover the staff time associated with preparing the franchise agreement and holding and advertising the associated public hearings.

ATTACHMENTS

- A - Ordinance No. 1391 granting a franchise to Union Pipeline Company (UNOCAP)
- B - Ordinance No.1504 transferring the franchise from UNOCAP to ConocoPhillips Pipeline Company. Phillips 66 Franchise Application
- C - Ordinance No. 1564 to renew the franchise agreement with ConocoPhillips Pipeline Company. Proposed Resolution of Intention to approve a new franchise agreement
- D - Ordinance No. 1587, transferring the franchise from ConocoPhillips Pipeline Company to Phillips 66 Pipeline LLC
- E - Phillips 66 Pipeline LLC Franchise Application
- F - Draft Resolution of Intention to approve a new franchise agreement with Phillips 66 Pipeline LLC