SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

CASE TITLE: Parada v. City of Riverside CASE NO.: RIC1818642 DATE: October 9, 2020	Department 1	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE OCT 09 2020 M. VARGAS

PROCEEDING: Order Denying Request for Interlocutory Remand, and Setting Further Hearing re Remedies

LAT OCT 14 2020 R

The petitioners' petition for writ of mandate and complaint for declaratory relief having come on for hearing on June 5, 2020, the parties having filed supplemental briefs, the City's request for an interlocutory remand having been heard on October 8, 2020, and the matter having been taken under submission, the Court now rules as follows.

LEGAL BACKGROUND

As enacted by the passage of Proposition 218 in 1996, article XIII C of the California Constitution provides that "[a]ll taxes imposed by any local government shall be deemed to be either general taxes or special taxes." (Cal. Const., art. XIII C, § 2, subd. (a).) Local governments may not impose, increase or extend (a) any general tax unless it has been approved by a majority vote at a general election, or (b) any special tax, unless it has been approved by a two-thirds vote of the electorate. (*Id.*, subd. (b) & (d).)

Proposition 218 did not define "tax." That omission was cured when article XIII C, section 1, was amended by the passage of Proposition 26 in 2010. Proposition 26 added subdivision (e) to that section. Subdivision (e) broadly defines "'tax' to mean any levy, charge, or exaction of any kind imposed by a local government . . . ." (Cal. Const., art. XIII C, § 1, subd. (e).) However, the definition goes on to state seven exceptions. A charge that satisfies an exception is, by definition, not a tax. Relevant here is the exception for "[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." (*Id.*, subd. (e)(2).)

In addition to defining "tax," section (e) also allocates the burden of proving whether one of the seven exceptions applies: "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 a 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." (Cal. Const., art. XIII C, § 1, subd. (e); hereinafter, "section 1(e).")

The City of Riverside ("City") is a charter city. (Answer, ¶ 6.) Within the City is a Department of Public Utilities that provides both electricity and water service. (Charter, § 1200.) Those utilities are required to transfer a portion of their revenues to the City's general fund. Specifically, the Charter requires the two utilities to transfer "an amount not to exceed 11.5 percent of the gross operating revenues, exclusive of surcharges, of each specific utility for the last fiscal year ended and reported upon by independent public auditors." (Charter, § 1204, subd. (f).)

FACTUAL AND PROCEDURAL BACKGROUND

Riverside Public Utilities ("RPU") is governed by a nine-member board ("Board") appointed by the City Council. (Petition, ¶ 13; Answer, ¶ 13.) Through RPU, the City provides electric utility service to customers in the City. (Answer, ¶ 14.) Specifically, RPU generates, transmits, and distributes electricity to approximately 109,000 electricity customers in a 90-square-mile territory, and generates annual operating revenues of approximately $350 million. (Petition, ¶ 13; Answer, ¶ 13.)

On May 22, 2018, the City adopted Resolution No. 23307 ("Resolution"). (Answer, ¶ 14.) The Resolution increased the rates charged by the City for electricity, effective January 1, 2019. (132 AR) The electorate has not voted to approve those increased rates. (Answer, ¶¶ 19 & 34.)

Petitioners, Summer and Vincent Parada, sued the City. In their First Amended Petition ("Petition"), the petitioners allege that the City's electric utility rates are taxes, as defined by section 1(e), because they are a charge that the City imposes on Petitioners and other utility customers for electric utility service and the charges exceed the reasonable cost of providing that service.

In its First Amended Answer to the First Amended Petition ("Answer"), the City acknowledges that it sets its electric utility rate in an amount sufficient to fund the general fund transfer of up to 11.5 percent as described in section 1204 of the City's charter, and that the funds transferred to the general fund are spent to provide government services and improvements unrelated to the provision of electric service. (Answer, ¶ 16.) However, it contends that its electric utility annually derives enough non-retail-rate revenue to fund those annual transfers. (Answer, ¶ 16.) The City also asserts 21 so-called affirmative defenses.[1] (Answer, pp. 7-12.)

The petitioners seek a writ of mandate, directed to the City, commanding it to rescind the Resolution, to cease its collection of the increased rates prescribed by the Resolution until such time as they may be approved by the electorate, and to refund all

---

1 Code of Civil Procedure section 431.30, subdivision (b) provides that an answer to the complaint "shall contain," in addition to a "general or specific denial" of the complaint's allegations, "[a] statement of any new matter constituting a defense." Only a factual contention on which a defendant has the burden of proof at trial constitutes an affirmative defense. (*Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 239.) Although all 21 are labelled as affirmative defenses, many of them are merely denials.

illegal taxes paid pursuant to the Resolution since January 1, 2019. They also seek a declaratory judgment to the same effect, and attorney's fees pursuant to Code of Civil Procedure section 1021.5. (Petition, pp. 7-8.) The City denies that the petitioners are entitled to any relief, because the charges do not qualify as taxes under section 1(e). (Answer, p. 11.)

The Court issued a written tentative ruling, proposing to grant the petition. At the subsequent hearing on the petition, the Court invited further briefing on the issue of exhaustion of administrative remedies. Those briefs have been received and considered. In total, the Court has considered: the Petition; the City's Answer; the petitioners' Opening Brief and Request for Judicial Notice, both filed September 6, 2019; the City's Opposition and Request for Judicial Notice, both filed October 11, 2019; the Administrative Record lodged on October 17, 2019, as augmented by the Court's order of March 12, 2020; the petitioners' Reply, request for judicial notice, and supporting declaration, all filed November 1, 2019; the City's Opening Supplemental Brief, filed June 5, 2020; the petitioners' Opposing Supplemental Brief, filed June 25, 2020; and the City's Reply Supplemental Brief, filed June 30, 2020.

RULINGS

The petitioners' request for judicial notice filed September 6, 2019, is granted.

The City's request for judicial notice, filed October 11, 2019, is granted.

The petitioners' second request for judicial notice, filed November 1, 2019, is denied.

There were no adequate administrative remedies that the petitioners were required to exhaust. Therefore, the petitioners are not barred from seeking judicial relief in the form of a writ of mandate.

The existing administrative record does not prove that the City's electric rates imposed by Resolution No. 23307 do not exceed the reasonable cost of providing electric service, as required by California Constitution, article XIII C, section I, subdivision (e).

The City's request for an interlocutory remand to allow the City to assemble evidence that might prove that the rates do not exceed the reasonable cost of providing electrical service is denied.

The Court schedules a hearing on the issue of the remedies to which the petitioners are entitled as a result of those decisions, to be conducted October 29, 2020, at 1:30 P.M. At that time, the parties shall be prepared to discuss the following:

- Does the Court's conclusion that the administrative record fails to prove that the increased rates are not taxes mean that the entire rate increase must be vacated, or only that portion that had been funding the general fund transfer? If the latter, what portion?

- Is a refund or other monetary relief appropriate? If so, what is the amount of that relief, and to which utility customers or former customers would it be paid? Specifically:
    - Can the amount of that refund be determined from the administrative record, or must evidence be introduced to establish it?
    - Can the identity of the parties to whom any refund must be paid be determined from the administrative record, or must evidence be introduced to establish it?
    - Will discovery be necessary to determine either the amount of any refund or the parties to whom that refund is due?
    - How much time do the parties require in order to prepare for a hearing to determine the disputed issues regarding monetary relief?

ANALYSIS

1. The Requests for Judicial Notice

As to the petitioners' first request, a request to take judicial notice of a city charter (Ex. H) is unnecessary. (Evid. Code, § 451, subd. (a).) Nevertheless, because the City does not oppose any part of the request, it is granted in full.

The City's request for judicial notice is granted because the petitioners do not oppose it.

The petitioners' second request for judicial notice is irrelevant in view of the admissions made by the City in its Answer, and is denied on that basis.

2. Exhaustion of Administrative Remedies

Other than alleging that they had complied with the governmental claims act (Petition, ¶¶ 21 & 32), the Petition is silent as to any administrative remedies. In its Answer, the City alleges as a defense that the petition fails "because Petitioners failed to seek, pursue, or exhaust their administrative remedies and failed to comply with statutory claiming requirements." (Answer, p. 8.) The City alleged no facts in support of that conclusion, either by identifying the administrative remedy available or by asserting the manner in which the petitioners either failed to avail themselves of that remedy or failed to comply with statutorily mandated claim procedures.[2]

---

2 The facts establishing an affirmative defense must be pled as carefully and with as much detail as the facts that constitute a cause of action. (*Department of Finance v. City of Merced* (2019) 33 Cal.App.5th 286, 294.) Accordingly, the Sixth Affirmative Defense fails to state facts sufficient to constitute a defense, and was subject to demurrer on that basis. However, the petitioners did not raise such a challenge.

In their supplemental briefing, the petitioners contend that they were not required to exhaust any administrative remedies, but if they were, they did so. The City contends that the petitioners were required to but failed to exhaust their administrative remedies, and that their Petition must be denied as a result.

a. The Test to Determine Whether a Challenger Is Bound to Pursue an Administrative Remedy Is Whether the Alleged Remedy Is both Available and Adequate.

The petitioners argue that exhaustion of an administrative remedy is required only when "a statute explicitly demands it." (Oppo. Supp., p. 7.) That is an exaggeration. "The more accurate statement of the law is that exhaustion of administrative remedies is required wherever it is 'permitted or authorized by statute *or by rule of the administrative agency involved*.'" (*Lopez v. Civil Service Com.* (1991) 232 Cal.App.3d 307, 314, quoting from and adding emphasis to *Henry George School of Social Science* v. *San Diego Unified School Dist.* (1960) 183 Cal.App.2d 82, 85.) Thus, neither a statute nor a mandatory procedure is required. Instead, the question is whether a potential remedy is available. As the Supreme Court has said: "Generally, 'a party must exhaust administrative remedies before resorting to the courts. [Citations.] Under this rule, an administrative remedy is exhausted only upon termination of all available, nonduplicative administrative review procedures.'" (*Plantier v. Ramona Municipal Water Dist.* (2019) 7 Cal.5th 372, 383, quoting from *Coachella Valley Mosquito & Vector Control Dist.* (2005) 35 Cal.4th 1072, 1080.)

However, by itself, availability of a remedy is not enough. Even when administrative procedures exist, exhaustion is not required "if the remedy is inadequate to resolve a challenger's dispute." (*Plantier*, *supra*, 7 Cal.5th at p. 384.) "As a general matter, a remedy is not adequate unless it 'establishes a clearly defined machinery for the submission, evaluation and resolution of complaints by aggrieved parties.'" (*Ibid.*, quoting from *Rosenfield v. Malcolm* (1967) 65 Cal.2d 559, 566.)

In short, if a remedy is both available and adequate, a plaintiff must avail itself of that remedy before seeking relief from the courts. (*Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 217.) None of the cases cited by the petitioners appear to hold or otherwise stand for the proposition that an available and adequate remedy may be ignored by a challenger if no statute "explicitly demands" that a challenger pursue that remedy.

In addressing what "remedies" are available, the petitioners appear to argue that a hearing conducted prior to a city's adoption of an ordinance, utility rate, or any other resolution is not a remedy. (Oppo. Supp., pp. 10-11.) Case law supports that conclusion.

Public Resources Code section 21177 provides in relevant part: "No action or proceeding may be brought pursuant to [CEQA] unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the

close of the public hearing on the project before issuance of the notice of determination." (*Id.*, subd. (a).) When enacting that provision, the Legislature characterized it as a codification of the doctrine of exhaustion of administrative remedies. (*Tahoe Vista Concerned Citizens v. County of Placer* (2000) 81 Cal.App.4th 577, 589-590.)

In *Tahoe Vista*, the Court of Appeal disagreed, explaining: "'Ordinarily we use the word remedy as meaning a device to redress a wrong. It is decidedly inappropriate to speak of remedying a wrong which has not occurred and may not occur. Prior to the adoption of a negative declaration under the scheme here in issue there is no wrong to be remediated. Hence, the mere public opportunity to participate in an administrative proceeding prior to the adoption of a negative declaration is not a remedy." (*Id.*, 81 Cal.App.4th at p. 590.) Therefore, "'[t]he right of a person to appear in administrative proceedings leading to the adoption of a negative declaration under CEQA is not properly speaking an administrative remedy which must be exhausted.'" (*Ibid.*, quoting from *California Aviation Council v. County of Amador* (1988) 200 Cal.App.3d 337, 348-349 (conc. opn. of Blease, J.).) "Rather, the right to appear in a hearing leading to the adoption of a negative declaration is more appropriately viewed as an obligation required to be fulfilled in order to obtain standing. (*Tahoe Vista*, p. 590.) The requirement to demonstrate standing "'is sometimes confused with the entirely separate issue of exhaustion of administrative remedies.'" (*Id.*, p. 591, quoting from *California Aviation Council, supra,* 200 Cal. App. 3d at p. 349 (conc. opn. of Blease, J.).)

Assuming that the distinction is technically correct, the Court will disregard it. Whether the conduct of the challenger at some administrative procedure comes before or after an administrative decision is made, it is commonly analyzed in the context of exhaustion of administrative remedies rather than standing. (See, e.g., *Plantier v. Ramona Municipal Water Dist., supra,* 7 Cal.5th at p. 388.) This Court will do so as well.

b. The Administrative Remedies Available Were Not Adequate.

The City argues that there were multiple opportunities for the petitioners and other members of the electricity-using public to comment on the proposed rate increases. It notes that the City Council "directed staff to conduct a Citywide community outreach initiative" during October and November of 2017, and directed staff to schedule both a joint meeting between the City Council and the RPU Board in November of 2017 "to discuss community outreach feedback" and a public hearing in front of the RPU Board in January of 2018. (20 AR 936-937.) In accordance with those directives, the City's staff: conducted nine community meetings; appeared at various meetings of service clubs, neighborhood groups and business groups; distributed printed information to 150 groups or locations; posted on social media; and posted the plan on the RPU website. (58 AR 1483.) Public hearings were conducted by the Board and ultimately by the City Council before a modified version of the rate-increase plan was adopted. Thus, the petitioner had the opportunity to comment on the proposal both to the Board and to the City Council directly. Arguably, therefore, an administrative remedy was available.

However, as noted above, to deprive a court of jurisdiction, an administrative remedy must not only be available, but adequate. Even if notice and the opportunity to protest at a meeting or public hearing could be interpreted to constitute an available "'remedy,' it does not establish that the mere opportunity to comment at a public hearing constitutes an *adequate* remedy." (*Plantier v. Ramona Municipal Water Dist., supra,* 7 Cal.5th at p. 388.) "[A] remedy is not adequate unless it 'establishes a clearly defined machinery for the submission, evaluation and resolution of complaints by aggrieved parties.'" (*Id.,* p. 384.) The City fails to demonstrate that the "outreach meetings" and public hearings constituted an adequate remedy that the petitioners were required to exhaust.

It is not enough that an agency conducts informal meetings or formal public hearings at which opponents may submit oral comments or written materials describing their opposition. An adequate "administrative remedy is provided only in those instances where the administrative body is required to actually accept, evaluate and resolve disputes or complaints." (*City of Coachella v. Riverside County Airport Land Use Com.* (1989) 210 Cal.App.3d 1277, 1287; accord, *City of Oakland v. Oakland Police & Fire Retirement System* (2014) 224 Cal.App.4th 210, 237.) An opponent's opportunity to participate in a public hearing is not an adequate administrative remedy if the agency conducting the hearing is not required to do anything in response to the opponent's testimony or written submissions. The City offers no evidence and no citation to any constitutional provision, statute, charter provision, municipal ordinance, or RPU regulation that the outreach meetings or the public hearings satisfied those criteria.

In arguing that the administrative remedies provided by the City's rate-making procedures were adequate, the City relies upon three cases. (Open. Supp., p. 11.) None are similar to the facts presented here. None support the City's position.

In *Campbell v. Regents of the University of California* (2005) 35 Cal.4th 311, the plaintiff argued that the university's employment grievance procedures did not constitute an adequate administrative remedy because they would not allow the plaintiff to recover monetary damages. (*Id.*, p. 323.) The Supreme Court upheld the adequacy of the remedy, explaining that an administrative remedy is adequate even "when the administrative procedures arguably limit the remedy the agency may award." (*Ibid.*)

That case has no applicability here. The petitioners are not contending that the remedy was inadequate because the City lacked the power to give the petitioners the relief that they sought, i.e., lacked the power to decline to adopt the Resolution increasing the rates charged for electricity service.

Next, the City cites to *Lopez v. San Francisco Civil Service Commission, supra*, 232 Cal.App.3d 307. In *Lopez*, the city charter of San Francisco required the Commission to determine the prevailing wage for various classes of employees. (*Id.* at p. 310.) The Commission's rules, in turn, directed its general manager to conduct that survey and make that determination. (*Ibid.*) The same rules provided that any action by the general manager may be appealed to the Commission. (*Ibid.*) The plaintiff challenged

the general manager's prevailing-wage analysis by a petition for writ of mandate, without first appealing the general manager's conclusions to the Commission. The Court of Appeal found that the action was barred by the plaintiff's failure to exhaust his administrative remedies. (*Id.*, p. 315.)

The procedural circumstances of that case bear no resemblance whatsoever to the case at bar. The decision of which the petitioners complain here was made by the City Council, not by some lesser body. No right of appeal or rehearing existed once the Council had adopted the Resolution.

Third, the City cites to *Morton v. Superior Court* (1970) 9 Cal.App.3d 977. There, police officers in the City of Fresno filed a petition for a writ of mandate to require Fresno to treat the time consumed by police officers in putting on and taking off their uniforms to be compensable overtime. (*Id.*, pp. 980-981.) They did so without first pursuing Fresno's employee grievance procedures (*id.*, p. 981), one purpose of which was to "'provide for the settlement of differences relating to employment or working condition through an orderly grievance procedure'" (*id.*, p. 982). The Court of Appeal concluded that, although the grievance procedure was somewhat cumbersome, it was not inadequate. (*Id.*, pp. 983-984.)

Once again, that case is distinguishable. Here, unlike *Morton*, there is no grievance procedure established by the City's Charter, no regulations in any administrative manual describing how the grievance procedure works, and no appeal to the city manager.

In summary, there is no showing of any procedure by which some "administrative body is required to actually accept, evaluate and resolve disputes or complaints." (*City of Coachella v. Riverside County Airport Land Use Com., supra,* 210 Cal.App.3d at p. 1287.) More generally, there is no showing of "'a clearly defined machinery for the submission, evaluation and resolution of complaints by aggrieved parties.'" (*Plantier v. Ramona Municipal Water Dist., supra,* 7 Cal.5th at p. 384.) Therefore, the minimal administrative remedies available – i.e., the outreach meetings and the public hearings – are not adequate remedies. Accordingly, the petitioners were not compelled to pursue them prior to resorting to the courts.

Given that the public-comment opportunities afforded by the outreach meetings and public hearings are not adequate administrative remedies, the Court need not address the City's argument that the petitioners failed to fully pursue those remedies because the objections raised by the petitioners to the City were not sufficiently detailed. (Open. Supp., pp. 12-13.)

3. The Resolution Imposes an Unconstitutional Tax

a. Review by Ordinary Mandamus Is Proper.

Preliminarily, the Court notes that it is undisputed that review of the City's rate-setting by a petition for a writ of mandate is proper. A court will issue a writ of mandate

"to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specifically enjoins . . . ." (Code Civ. Proc., § 1085, subd. (a).) "In general, if an agency acts pursuant to legislative authority, review of the action is by ordinary mandamus." (*Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, 230.) "The fixing or refixing of rates for a public service is legislative, or at least quasi legislative." (*Kahn v. East Bay Mun. Util. Dist.* (1974) 41 Cal.App.3d 397, 409.)

b. The Court Reviews the Constitutionality of the Resolution Independently.

"[W]hether impositions are 'taxes' or 'fees' is a question of law for . . . courts to decide on independent review of the facts." (*Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 874.) In particular, whether the increased electrical utility rate is a tax within the definition of section 1(e) is a question of law to be decided by independent review. (*Citizens for Fair REU Rates v. City of Redding* (2018) 6 Cal.5th 1, 12 ("*Redding*").)

Contrary to the City's assertion, the Court's independent review of a question of constitutional law does not afford any deference to the City's decision on that same question. In interpreting language comparable to section 1(e) – i.e., the portion of article XIII D, section 4, subdivision (f), that states that the agency has the burden of demonstrating special benefit and proportionality in any legal action contesting the validity of any assessment – the Supreme Court specifically rejected a deferential standard of review, and instead held that the court must exercise independent judgment. (*Silicon Valley Taxpayers' Assn, Inc. v. Santa Clara Open Space Authority* (2008) 44 Cal.4th 431, 443-450.) It explained that deference to the local agency's discretionary decision was improper because "a local agency acting in a legislative capacity has no authority to exercise its discretion in a way that violates constitutional provisions or undermines their effect." (*Id.*, p. 448.) Similarly, when it is alleged that a district's water rate increase violates article XIII D, section 6, the court "will not provide any deference to the District's determination of the constitutionality of its rate increase." (*Morgan v. Imperial Irrigation Dist.* (2014) 223 Cal.App.4th 892, 912.)

The cases on which the City relies do not hold to the contrary. *Fukuda v. City of Angels* (1999) 20 Cal.4th 805 involves an action under Code of Civil Procedure section 1094.5 to review the factual findings made by an administrative agency, not to decide a question of law. The cited portion of *Michael Leslie Productions, Inc. v. City of Los Angeles* (2012) 207 Cal.App.4th 1011 does not address the issue at all.

c. The City Has the Burden of Proving that the Resolution Does Not Impose a Tax.

As the City concedes, it "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." (§ 1(e).)

It contends, however, that the petitioners "must make a prima facie case to trigger the City's burdens of production and persuasion . . . ." As authority for that proposition, it cites to *California Building Industry Assn. v. State Water Resources Control Bd.* (2018) 4 Cal.5th 1032.

That argument fails. Although that case does state that "[t]he plaintiff must initially establish a prima facie case that the fee is invalid" (*California Building Industry Assn.*, p. 1046), it did so in the context of discussing its decision in *California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421. That earlier case arose *before* article XIII A and article XIII C were amended by the passage of Proposition 26 in 2010, and thus did not apply those new constitutional provisions allocating the burden of proof to the government. Indeed, as the court recognized in *California Building Industry Assn.*, the rule is now different:

> "Proposition 26 shifted the burden of proof, so that the *state* now '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 A, § 3, subd. (d).) The state, not the challenger, must now prove all facts necessary to show that a levy satisfies an exception to the definition of the term 'tax.'"

(*California Building Industry Assn., supra, p.* 1048.)

The Court concludes that the petitioners have no obligation to establish a *prima facie* showing. From the beginning, the burden of producing evidence is borne by the City, as is the burden of persuasion.

d. Rate Revenue and Non-Rate Revenue

Under section 1(e), "a challenge to an alleged tax involves three questions: (1) Is the alleged tax a levy, charge, or exaction imposed by a local government?; (2) Does it satisfy an exception to the definition of tax?; and (3) If it does not, was it properly approved by the voters?" (*Redding,* 6 Cal.5th at p. 12.) The parties agree that the charges are imposed by the City and that the charges have never been approved by the electorate. Therefore, the only issue here is whether an exception applies.

Given the exception that the City is relying upon and the City's burden of proof, the issue may be stated as follows: Has the City proven by a preponderance of the evidence that the charge imposed by the City for electrical service does not exceed the reasonable costs to the City of providing that service?

The petitioners argue that the rates charged for electricity exceed the cost of providing electrical service. Specifically, they assert that one of the costs claimed by the City is the general fund transfer, which is unrelated to the cost of providing electrical service. The City concedes that the general fund transfer is "unrelated to the provision of

electric service," but argues that the transfer is funded from "non-retail-rate revenues." (Answer, ¶ 16.)

Over the five-year span of the Cost of Service Study ("COSS"), the amount necessary to fund the maximum (i.e., 11.5%) general fund transfer was projected to range from $39.3 million in fiscal year 2019 to $45.3 million in fiscal year 2023. (126 AR 3428.) The specific issue to be decided, therefore, is whether the City has proven that the RPU's electric utility will generate at least those amounts in those years from non-rate revenue that can be used to pay the full amount of the annual general fund transfers.

The City projected "Other Revenues" of over $52 million annually, ranging from $52.6 million in FY 2021 to $57.8 million in FY 2020. (126 AR 3428.) The largest component of Other Revenues is Transmission Revenue, ranging from $39.2 million in FY 2019 to $40.7 million in FY 2022. (126 AR 3563.) Other Revenue also includes "Cap and Trade Auction" revenue, estimated to be $5.2 million in FY 2019 and $5.0 million in FY 2020, but zero thereafter. (126 AR 3562.)

e. Preliminary Matters

Before addressing the merits of the parties' respective arguments regarding Transmission Revenue and Cab & Trade revenue, the Court pauses to consider two preliminary matters.

i. The Judgment in *Parada I* Is Irrelevant.

In October of 2017, Ms. Parada filed a petition for writ of mandate (*Parada I*) alleging that the City's imposition of an electricity users' tax was improper to the extent that the tax was applied against that portion of the charges that are used to finance the 11.5 percent general fund transfer. (City RJN, Ex. 1.) In November of 2018, Judge Sykes entered a judgment against Parada. (City RJN, Exs. 2 & 3.)

Relying on proposed findings that Judge Sykes expressly struck from the judgment, the City claims that the judgment bars the petitioners from claiming that the general fund transfer "is unrelated to the cost of service." (Oppo., p. 21.)

The City is confused as to what issues are in controversy in this action. In its Answer, the City expressly admitted that the funds transferred by the electric utility to the City's general fund pursuant to section 1204 of the City's Charter "finance government services and improvements unrelated to the provision of electric service." (Id., ¶ 16.) That is a judicial admission that removes the issue from controversy for purposes of this action.

Because the issue that was supposedly decided in *Parada I* has already been admitted by the City, the petitioners have no need to prove that issue. Therefore, the judgment in *Parada I* is irrelevant.

To the extent that the City may be implicitly asking for relief from the effect of its judicial admission, the request is entirely unsupported by any showing of mistake,

surprise, inadvertence, neglect, or other good cause. Accordingly, any such request is denied.

ii. The City Fails to Demonstrate that the General Fund Transfer Is a Return on Investment.

Despite the admission that the general fund transfer pays for government services and improvements unrelated to the provision of electrical services, the City appears to argue that the general fund transfer nevertheless constitutes a reasonable cost of service because it "reflects a Charter-mandated return on investment to the general fund . . . ." (Oppo., p. 21.) However, that naked claim is entirely unsupported. The Charter provision that describes the general fund transfer is silent as to what that transfer "reflects." (Charter, § 1204.) In particular, it says absolutely nothing about the transfer being designed as a return on the City's investment in utility infrastructure. Nor does the City cite to any evidence in the record that the purpose of the general fund transfer is to provide a mechanism for the delivery of such a return on its investment.

There being no factual support for the transfer being a return on investment, the Court will not take the time to analyze the meager law cited by the City to determine whether a return of 11.5 percent could be properly considered to constitute a reasonable cost of service.

f. Transmission Revenue Cannot Be Used to Finance the General Fund Transfer.

In calculating the revenue necessary to provide electric service, the City's COSS listed Transmission Operating and Maintenance expenses of at least $63 million per year. (107 AR 2343.) These expenses included transmission costs associated with the Mead-Adelanto, Mead-Phoenix, STS, NTS, and SCE transmission lines. (107 AR 2558.) The transmission costs for those five transmission lines total approximately $30 million per year for FY 2019 through FY 2022, ranging from $28.7 million in FY 2022 to $31.1 million in FY 2021. (107 AR 2558.)

The petitioners argue that these transmission lines are ones that the City has placed under the operational control of the California Independent System Operator ("CAISO") and that the CAISO reimburses the City for those transmission costs through payments known as Transmission Revenue Requirements ("TRRs"). When determining its Transmission Operating and Maintenance expenses, the City does not credit those TRR reimbursements against the transmission costs to determine its net transmission operating expenses. Instead, it treats the TRRs as a separate revenue stream unrelated to the transmission expenses. In other words, it considers its gross transmission costs, not its net transmission costs.

The petitioners argue that if the City were to credit the TRR revenue against the Transmission Operating and Maintenance expenses, then Other Revenue would be reduced by approximately $30 million per year. As a result, the amount of Other Revenue available to finance the General Fund Transfer would drop by that same $30

million from about $52 to $57 million per year down to about $22 to $27 million per year. Given that the General Fund Transfer is in the range of $39 to $45 million per year, that would mean that $12 to $23 million of the General Fund Transfer would be financed by rate revenue annually. Since the rates have never been approved by the electorate, the Resolution is, to that extent, in violation of section 1(e) and is thus unconstitutional.

The City responds in part by claiming that the issue was "resolved" by *Webb v. City of Riverside* (2018) 23 Cal.App.5th 244 because that opinion characterized the TRR payments as "a wholesale revenue source" and that characterization is "binding here." (Oppo., p. 19.) No discussion is offered as to why that phrase disproves the petitioners' argument or why anything in that opinion is binding on the petitioners. Accordingly, the Court ignores the City's unsupported argument. (Cf. *People v. Stanley* (1995) 10 Cal.4th 764, 793 [courts need not consider point not supported with reasoned argument and citations to authority].)

More substantively, the City relies upon *Redding, supra*, 6 Cal.5th 1, for the proposition that it may transfer funds from the RPU to its general fund without violating section 1(e)'s cost-of-service limitation if the RPU has sufficient non-retail-rate revenues to fund the transfer. (Oppo., pp. 6, 15-16.) It argues that because *Redding* does not distinguish between different types of non-rate income, the petitioners' characterization of the TRR revenue as "reimbursement" or "cost recovery" is irrelevant. (Oppo., p. 19.)

The City overstates the extent to which *Redding* supports the City's position.

Like Riverside, "[t]he City of Redding operates an electric utility as a department of its city government. Each year, the city's budget includes a transfer from the utility's enterprise fund to the city's general fund. The transfer is designed to compensate the general fund for the costs of services that other city departments provide to the utility." (*Redding*, p. 4.) The transfer was referred to as a payment in lieu of taxes, or PILOT. (*Id.*, p. 6.)

The plaintiffs in *Redding* argued that the PILOT was a tax. (*Id.*, p. 7.) The *Redding* court rejected that assertion, holding "that the budgetary *transfer* itself is not a tax" (*Redding*, p. 4) because the budgetary act of transferring sums from one fund (the electric utility, or REU) to the other (the city) does not constitute the imposition of a levy, charge, or exaction by a local government on those who pay the charge (*id.*, p. 12). Since the petitioners here do not contend that the general fund transfer is itself a tax, that holding is irrelevant.

Alternatively, the *Redding* plaintiffs argued that the electric rate was a tax under section 1(e) because the city had "failed to show the PILOT reflected any actual costs of providing electric service. If the PILOT is included in REU's budget as an expense and it exceeds the costs of services it is designed to cover, then REU's rates must necessarily be invalid taxes." (*Redding*, p. 16.) The city responded by arguing "that REU's rates were not taxes because REU had sufficient nonrate revenues to pay the PILOT. Put another

way, the city argue[d] the amount of the PILOT is irrelevant to the determination whether the *rate* is a tax because rate revenues were not used to cover the PILOT amount." (*Ibid.*)

The Supreme Court agreed with the city, reasoning that "the mere existence of an unsupported cost in a government agency's budget does not always mean that a fee or charge imposed by that agency is a tax. The question is not whether each cost in the agency's budget is reasonable. Instead, the question is whether the charge imposed *on ratepayers* exceeds the reasonable costs of providing the relevant service. If the agency has sources of revenue other than the rates it imposes, then the total rates charged may actually be lower than the reasonable costs of providing the service." (*Redding*, p. 17.)

In that case, the plaintiffs challenged the propriety of only a single expense, the PILOT. (*Redding*, p. 17.) The undisputed evidence showed that the admittedly reasonable expenses, excluding the PILOT, were $130.7 million, while the rate revenue was only $102.1 million. (*Ibid.*) Because the rate revenue did not exceed the reasonable cost of providing the electrical service, the rates were not taxes that required voter approval. (*Ibid.*)

Redding is similar to the case at bar in that both concern challenges to the propriety of counting a transfer from the utility to the city as a cost of service: the PILOT in *Redding* and the general fund transfer in this case. And here, as in *Redding*, the amount of what the City characterizes as non-rate revenue (approximately $52 to $57 million per year) exceeds the challenged transfer (approximately $30 to $45 million per year).

Where the two cases differ is that, unlike the plaintiffs in *Redding*, the petitioners here challenge some of the components of the RPU's non-rate revenue. In particular, as noted above, the petitioners argue that instead of treating the Transmission Revenue as an independent income stream under Other Revenues, the RPU ought to apply those revenues to the reduction of the Transmission Costs, thereby reducing the overall net cost of service.

The Supreme Court appears to have expressly rejected that argument in *Redding*:

> "A fundamental premise underlying plaintiffs' argument . . . is that the city was required to subsidize REU's rates by using its nonrate revenues. If the city were required to cover REU's expenses with nonrate revenue, the city could not claim that its use of nonrate revenue to cover the PILOT removed the rate charged from the definition of a 'tax.' That is, if subsidization of rates with nonrate revenue was required, the PILOT would have to be shown to be a reasonable cost because the PILOT was part of the rate calculation. But such subsidization is not required by California law. [Fn. omitted.] . . . . Article XIII C does not compel a local government utility to use other nonrate revenues to lower its customers' rates. [¶] Plaintiffs cite no authority for their assertion that REU was 'legally required' to subsidize its rates with nonrate revenues. Settled authority runs to the contrary.

'[T]here is no … mandate that municipally owned public utilities pass along to the ratepayers any savings in its costs of providing service.'"

(*Redding*, p. 18, quoting from *American Microsystems, Inc. v. City of Santa Clara* (1982) 137 Cal.App.3d 1037, 1043.)

To the extent that the non-rate revenue is independent of or unrelated to the City's cost of service, the Supreme Court's rejection of that argument is clear. But the *Redding* plaintiffs did not challenge their city's characterization of particular income streams as non-rate revenue. Thus, it is not clear that the Supreme Court would come to the same conclusion if presented with the argument made by the petitioners: To the extent that the allegedly non-rate income is comprised of payments designed to reimburse the RPU for particular expenses that it incurred, that reimbursement must be applied to the associated expense.

Would the Supreme Court reject the proposed requirement that those reimbursements be applied to their associated expenses as a subsidization of the rate that the law does not compel? Or would it endorse such a requirement as the only way to accurately determine the reasonable costs of service?

Because the Supreme Court was not presented with that argument and that choice, *Redding* is distinguishable on that basis. The Court must answer the issue without the benefit of an appellate opinion on point.

In the final analysis, the Court is obligated to determine whether the constitutional test has been met, i.e., whether the rate exceeds "the *reasonable costs* to the local government of providing the service . . . ." (§ 1(e)(2); emphasis added.) If a utility needs a transmission line to reliably serve its electrical customers, and if the utility incurs $100 in operating and maintaining that transmission line, and if a third party pays the utility $100 to reimburse it for that expense, is the utility's "reasonable cost" of operating and maintaining that transmission line nevertheless $100? In other words, is the reasonable cost the gross expense incurred, or the net expense after any reimbursement for that expense has been applied?

Other than *Redding*, neither side cites to any statute, regulation, or case law that either requires the City to apply the TRRs against the transmission costs in determining its operating expenses or, conversely, expressly authorizes the City to treat the TRRs as Other Revenue unrelated to those transmission costs. Similarly, neither side cites to any utility industry standard or accounting or auditing practice that suggests that one method is more reasonable than the other.

Proposition 218, which enacted article XIII C, expressly provides that "[t]he provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent." (Prop. 218, § 5.) Proposition 26 was enacted "to ensure the effectiveness" of Proposition 218's limitations on the power of local government to increase taxes without voter approval. (Prop. 26, § 1, subd. (f).) Read together, those portions of the two propositions suggest that, if there is a close

question on how to interpret "reasonable costs," the Court should favor the interpretation that would limit the City's revenue and require a vote by the electorate.

Section 1(e) imposes upon the City the burden to prove "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." In this context, the City must prove that it is "fair or reasonable" to allocate the transmission *costs* to the ratepayers but not the transmission *revenues*.

In the absence of binding or persuasive legal authority, in the absence of evidence of accounting or auditing standards or practices in the utility industry, in light of the burden of proof imposed on the City by section 1(e), and in light of the rule of construction contained in Proposition 218, the Court finds that the use of gross expenses to calculate the cost of service is unreasonable if the utility has been reimbursed for some or all of that expense. Any reimbursement for an operating expense must be applied against that expense rather than being categorized as non-rate revenue.

The next question, therefore, is whether the City proved that the TRRs are not reimbursement for Transmission Costs. It does not. To the contrary, it expressly concedes that "FERC sets the City's TRR based on [the City's] estimated expenses to maintain its CAISO-operated infrastructure . . . ." (Oppo., p. 19.)

Instead, the City spends several pages arguing that "Transmission expenses are costs of service." (Oppo., pp. 21-24.) The Court does not understand the petitioners to dispute that those expenses are properly included in the cost of service. Their challenge is to the reasonableness of using the gross transmission expenses rather than the net transmission expenses after the transmission revenues have been credited against those expenses. The City does not address that issue at all.

Therefore, the City cannot rely on the TRR revenue as being part of the non-rate revenue available to finance the general fund transfer. Without the TRR revenue, the non-rate revenue is insufficient to fully finance the general fund transfer, and the Resolution imposes rates that constitute unconstitutional taxes.

g. <u>Cap & Trade Auction Revenues Cannot Be Used to Finance the General Fund Transfer.</u>

The City's sole response to the petitioners' arguments regarding the Cap & Trade Auction revenue is a single sentence: "Non-rate, cap-and-trade revenues are non-rate revenues under *Redding*, which states no limit on the non-rate revenues that may justify challenged expenses." (Oppo., p. 18.) As noted above, *Redding* did not have occasion to address any such limitations, because the issue was not raised there. According, the City's reliance on *Redding* is misplaced.

Even if *Redding* did apply and did not impose any such limit, other authority does. As the petitioners note, and as the City fails to refute, Cap & Trade Auction revenues "must be used for the primary benefit of retail electricity ratepayers of each electrical distribution utility, consistent with the goals of AB 32, and may not be used for the

primary benefit of entities or persons other than such ratepayers." (17 Cal. Code Regs. § 95892, subd. (d)(3).) The City's own staff conceded in the proceedings below that "Cap and Trade Auction Proceeds are restricted for certain purposes to benefit the ratepayer including offsetting renewable energy costs." (86 AR 1874.)

The City has failed to prove, or even attempt to prove, that the use of Cap & Trade Auction revenues to fund the general fund transfer would be a use "for the primary benefit of the ratepayers" or would otherwise be consistent with the regulatory restrictions placed on the use of those revenues. Accordingly, the Court finds that those revenues cannot be used to fund the general fund transfer.

4. New Voter Approval of the General Fund Transfer Is Not Required.

The Court agrees with the City that the general fund transfer is not a tax and thus does not need to be voted on by the electorate.

5. Electric Rates Are Not Charges for the Use of Local Government Property.

The Court is not persuaded that section 1(e)(4) has any application to these facts.

6. The Court Declines to Remand this Matter to the City for Further Fact-Finding.

The City claims that the petitioners "sandbagged" the City by failing to explain the reasoning supporting their contention that the rates exceed the cost of service until after the adoption of the Resolution. (Open.Supp., pp. 5 & 13; Reply Supp., p. 3.) Had the petitioners explained their contentions sooner, the City argues, it "could have considered them, applied its expertise, and made a robust record for judicial review." (Open.Supp., p. 5.) To cure the perceived unfairness caused by the petitioners' "conceal[ment]" and "gamesmanship" (Reply Supp., p. 6), the City urges the Court to remand the matter to the City to allow the City to develop a more complete record addressing the specific defects asserted by the petitioners. (Open.Supp., pp. 13-14.)

The Court has the power to order such an interlocutory remand. "Decisions have long expressed the assumption that the court in a mandamus action has inherent power, in proper circumstances, to remand to the agency for further proceedings prior to the entry of a final judgment." (*Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 527.) That power is expressly granted in the context of administrative mandamus. (Code Civ. Proc., § 1094.5, subd. (e).) However, a court has the same power when ruling on a petition for traditional mandamus. "There is no question but that, consistent with proper regulations, a court has inherent power to control the course of litigation before it. [Citing, *inter alia*, Code Civ. Proc., § 187.] This includes the power to remand a cause in mandamus for further proceedings which are deemed necessary for a proper determination. It is noted that section 1094.5 of the Code of Civil

Procedure authorizes a reviewing court to 'enter judgment . . . remanding the case to be reconsidered in the light of' evidence 'which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the respondent . . ..' However, aside from statutory provisions, such a power to remand also exists under the inherent powers of the court." (*Keeler v. Superior Court of Sacramento County* (1956) 46 Cal.2d 596, 600.)

The question, therefore, is whether the Court should exercise that power in this instance.

In their original petition, filed September 12, 2018, the petitioners alleged that the Resolution was unconstitutional because "the City cannot prove that it sets its electric utility fees and charges at an amount that does not exceed the reasonable cost of providing electric utility service." (¶ 3.) It specifically challenged reliance on the TRR, contending that TRR "is, in fact, a cost recovery mechanism that does not generate net income (i.e., profit) that the City can use to finance its general fund transfers . . . ." (¶ 17.) The City was presumably served with that petition no later than October of that year, when the City signed a stipulation to extend the time to file responsive pleadings. (Stipulation & Order filed 10-31-20.)

Thus, since at least October of 2018, the City has known the grounds on which the petitioners challenged the constitutionality of the Resolution. Any possible uncertainty regarding the specific contentions and reasoning that the City would be required to meet was eliminated when the petitioners served their opening brief on September 6, 2019. Since January of 2019, when the administrative record was certified, the City has known the precise scope and contents of that record. By comparing the petitioners' arguments to the evidence in the AR and to the applicable law, the City had the means to determine the degree to which the AR either does or does not prove that the general fund transfers were funded solely with non-rate revenue and that the electrical rates are not taxes.

From that time until the hearing on June 5, 2020, the City never indicated any concern about the sufficiency of that AR to prove that essential fact. To the contrary, the City has repeatedly argued that the consideration of the Petition should be limited solely to the administrative record as it existed in May of 2018.

Specifically, in August of 2019, the petitioners served a notice of deposition of the City's most knowledgeable person on 19 different topics, and seeking the production of 10 categories of documents. (Decl. of Dunn, filed 9-9-19, Ex. J.) By that notice, the petitioners sought to inquire about the "City's accounting practices as it pertains to tracking, identifying, and segregating expenses related to the generation of non-rate revenue, including but not limited to revenue referred to as transmission revenue." (*Id.*, ¶ 2.) They sought to depose the City concerning five different topics regarding the TRR, including "the calculation or fixing of the transmission revenue requirement ('TRR')" (¶ 7), and the "calculation of the City's costs associated with TRR" (¶¶ 8 & 9). They sought to depose the City regarding Cap & Trade revenues. (¶¶ 15 & 16.) They requested

documents concerning Other Revenue, and particularly concerning transmission revenues. (¶¶ 8 & 9 of document requests.)

In response to those discovery requests, the City moved on September 9, 2019, to quash the deposition notice. The motion argued that the petitioners were "limited to the evidence before the City Council when it made those rates – the administrative record. As such, discovery cannot lead to relevant evidence as there is none beyond the administrative record." (Motion, p. 7, and pp. 11-16.) Another judge of this court granted the motion and ruled that only the AR may be considered. (Ruling of 10-7-19.)3

By successfully taking the position that the decision must be made on the basis of the administrative record, the City is judicially estopped from now seeking to have the decision deferred until the City has a second change to create a new, expanded AR. The doctrine of judicial estoppel applies "when: (1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." (*Jackson v. County of Los Angeles, supra,* 60 Cal.App.4th at p. 183; accord, *Thomas v. Gordon* (2000) 85 Cal.App.4th 113, 118.)

The City presents no evidence here that the scope of the existing AR is the result of ignorance, fraud, or mistake. Nor is there any evidence that the City perceived any defect, weakness, or ambiguity in the AR prior to the issuance of the Court's tentative ruling. For instance, it presents no evidence that it offered to stipulate to a remand, or to stipulate to augmentation of the AR on issues concerning the TRRs or in any other respect, or to try to settle the case. It presents no evidence that it has started a new rate-making procedure. One must presume, therefore, that the City was confident that the existing AR proved that the increased rates are not taxes. It is only after learning from the tentative ruling that the Court is not persuaded that the existing AR proves what the City is obligated to prove, that the City belatedly decided that its AR needs to be more "robust."

Had that realization come earlier, and had it stemmed from the City's evaluation of the law and evidence rather than coming in response to the Court's tentative ruling, the Court might have been more inclined to grant the City's request. Instead, the timing suggests that the City either misinterpreted the applicable law, miscalculated the

---

3 Similarly, on September 6, 2019, the petitioners moved to augment the AR to include, *inter alia*, a number of documents concerning TRRs. With minor exceptions unrelated to TRRs, the City opposed the motion, again insisting that the court may consider only the administrative record that was before the City when the rates were adopted. (Opposition filed 10-11-19, p. 11.)

persuasive force of its evidence, or both, right up to the moment it read the Court's tentative ruling. Neither error justifies a second bite at the apple after the Court has ruled.

Besides, courts are not in the business of giving advisory rulings. Absent unusual circumstances, when presented with a petition to issue a writ of mandate or of administrative mandate, a court rules on whether the decision of the officer or agency is valid. If the petition is meritorious, it is granted. The court does not counsel the officer or agency as to how to fix the decision – or the evidentiary record supporting the decision – after the fact in order to defeat the petition.

As noted above, the Court *can* do so. What the City fails to adequately explain is why the Court *should* do so. A party that fails to carry its burden of proof at trial is not given a second trial at which it can try again with better evidence. Why would the interests of justice be advanced by giving the City a second chance to prove what it had been obligated to establish before it ever increased the rates? The answer cannot be simply that the petition will be granted unless the City is allowed to bolster the evidence in the existing AR. In the absence of a good answer to that question, the Court declines to exercise its discretion to order an interlocutory remand.

The extraordinary factor that motivated the interlocutory remand in *Voices of the Wetlands* appears to be that the evidentiary deficiency concerned a single, very narrow issue in a very long and complicated combination of administrative proceedings: evidence to support a particular finding (No. 48) by the regional water board when it issued a permit. Although the City contends that the issue here is similarly narrow (Open.Supp., p. 14), the Court does not agree. The deficiency here involves the lack of evidence to support the City's contention regarding the ultimate issue: whether the rates exceed the cost of service, and thus whether the rates are taxes.

Under all the circumstances, the Court is not inclined to afford the City a second chance to prove that the increased electrical rates are not taxes. The request for an interlocutory remand for that purpose is denied.

7. Further Proceedings

The relief sought by petitioners include a writ of mandate, declaratory relief, and a refund of taxes paid. The Court has questions concerning both the writ of mandate and the refund.

As to the writ of mandate, does the Court's conclusion that the administrative record fails to prove that the increased rates are not taxes mean that the entire rate increase must be vacated, or only that portion that had been funding the general fund transfer?

As to the monetary relief, the petitioners' opening brief seeks a refund in the sum of sought is $24,643,000 for calendar year 2019, but it does not address how the petitioners arrived at that sum. Nor does it address the refund for 2020. For its part, the City' brief does not even mention the possible remedies should the petitioners prevail.

Although the stipulation filed April 19, 2019, does not expressly say so, the issue of the appropriate remedies appears to have been deferred until the issue of the constitutionality of the increased electrical rates was decided. That decision having been made, the Court now turns to the issue of the exact relief to be granted as a result of that decision.

At the next hearing, the parties shall be prepared to discuss the following:

- Does the Court's conclusion that the administrative record fails to prove that the increased rates are not taxes mean that the entire rate increase must be vacated, or only that portion that had been funding the general fund transfer? If the latter, what portion?
    - The general fund transfer ($39 to $45 million per year) is funded by Other Revenue ($52 to $59 million per year). The Court has determined that the transmission revenue and cap and trade auction revenue (combined, $44 to $45 million per year) are not properly allocated to Other Revenue. That leaves up to $8 million per year in unchallenged Other Revenue to partially fund the general fund transfer. Is that relevant to the extent to which the increased rates are invalidated?
- Is a refund or other monetary relief appropriate? If so, what is the amount of that relief, and to which utility customers or former customers would it be paid? Specifically:
    - Can the amount of that refund be determined from the administrative record, or must evidence be introduced to establish it?
    - Can the identity of the parties to whom any refund must be paid be determined from the administrative record, or must evidence be introduced to establish it?
    - Will discovery be necessary to determine either the amount of any refund or the parties to whom that refund is due?
    - How much time do the parties require in order to prepare for a hearing to determine the disputed issues regarding monetary relief?

Craig G. Riemer, Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
4050 Main Street
Riverside, CA 92501
www.riverside.courts.ca.gov

CLERK'S CERTIFICATE OF MAILING

SUMMER PARADA

vs. CASE NO. RIC1818642

CITY OF RIVERSIDE

TO:

I certify that I am currently employed by the Superior Court of California, County of Riverside and I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the attached 10/08/20 on this date, by depositing said copy as stated above.

Court Executive Officer/Clerk

Dated: 10/09/20 by: _____
MICHELLE L VARGAS, Deputy Clerk

Notice 'CCMN' has been printed for the following Attorneys/Firms or Parties for Case Number RIC1818642 on 10/09/20:

BENINK & SLAVENS LLP
550 WEST C STREET SUITE 530
SAN DIEGO, CA 92101

COLANTUONO, HIGHSMITH & WHATLEY, P
790 E. COLORADO BLVD STE 850
PASADENA, CA 91101

KEARNEY LITTLEFIELD LLP
3051 FOOTHILL BLVD
SUITE B
LA CRESENTA, CA 91214

OFFICE OF THE CITY OF ATTORNEY
3900 MAIN STREET
FIFTH FLOOR
RIVERSIDE, CA 92522