

S224779

SUPREME COURT
FILED

JUL - 2 2015

Frank A. McGuire Clerk
Deputy

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Citizens for Fair REU Rates, et al.

Plaintiffs and Appellants,

vs.

City of Redding, et al.,

Defendants and Respondents.

**NOTICE OF MOTION AND MOTION FOR JUDICIAL NOTICE
IN SUPPORT OF ANSWER BRIEF ON THE MERITS**

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

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OF THE STATE OF CALIFORNIA

Citizens for Fair REU Rates, et al.

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

**To the Honorable Presiding Justice and Associate Justices of
the Supreme Court of the State of California:**

Pursuant to California Rules of Court, Rule 8.252, California Evidence Code section 452 (h), and section 459, Appellants hereby move this court to take judicial notice of the following document:

A. City of Redding Resolution No. 2013-015, A Resolution of the City Council of the City of Redding Establishing the Electric Utility Rates for Service to Customers Within the Corporate Limits of the City of Redding Effective March 5, 2013, and March 4, 2014.

This Resolution is relevant to the appeal because it supports Appellants' arguments and positions with respect to the Supreme Court's Order Granting Review and the three issues to be briefed and argued. Specifically, Exhibit A supports Appellants' position that the City's 2010 rate increase included and was intended to fund the Payment In-Lieu of Taxes (PILOT). The City's Resolution No. 2010-179 increasing rates, the Resolution at issue in this case (4 AR 1041-1045), lists six specific purposes for the imposition of the increase. One of the six purposes is "to obtain funds necessary to maintain such intra-City transfers as authorized by law." Appellants request judicial notice be taken of Exhibit A, City of Redding Resolution No. 2013-015, because it makes clear that the intra-City transfer referred to in Resolution 2010-179 is the PILOT. Resolution No. 2013-015 lists five specific purposes for the imposition of the 2013 and 2014 increase in electricity rates, including "such intra-City transfers as previously authorized by law" and giving as an example "Resolution 2011-111 from the June 22, 2011, City Council meeting approving the budget for FY 2011-912 and FY 2012-13." This budget Resolution triggered the second case filed in the trial court in this

matter (referred to as “the Budget Case” in the City’s Opening Brief to this court) because it contained language, findings and pronouncements relating to electric utility rates and the PILOT charge that had never been included in any prior Budget Resolution, and that appeared to be a re-affirmation and approval of the incorporation of the PILOT charge in the REU rate increases previously adopted by Resolution No. 2010-179. (Resolution 2011-111 is found at Tab 203, 11 AR 2466).

The above-listed materials were not presented to the trial court, as Resolution 2013-015 was not passed until February 5, 2013, after the trial proceedings were concluded, and after the trial court’s decision of December 21, 2011.

This motion is based on the attached Memorandum of Points and Authorities, Declaration of Walter P. McNeill, Exhibit A attached thereto, the completed records and files of this Court, and the accompanying proposed order granting this motion.

Respectfully submitted,
MCNEILL LAW OFFICES

Dated: July 1, 2015



WALTER P. McNEILL

Attorneys for Citizens for Fair REU
Rates, et al.

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE REQUESTED JUDICIAL NOTICE IS APPROPRIATE

A. General Principles of Judicial Notice

Upon a party's request, appellate courts have the same power as trial courts to take judicial notice of a matter properly subject to judicial notice (Evidence Code §459; *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 CA4th 875, 881). Appellate courts may take judicial notice of any matter subject to discretionary judicial notice by the trial court under Evidence Code §452. Pursuant to California Evidence Code §452(h), judicial notice may be taken of "facts ... that are not reasonably subject to dispute." Pursuant to Evidence Code §453, judicial notice of such facts is mandatory in the trial court upon request if notice is given to the adverse party that enables the adverse party to prepare to meet the request, and if the requesting party furnishes the court with sufficient information to enable it to take judicial notice of the matter.

B. The Court Should Take Judicial Notice of the City of Redding Resolution No. 2013-015, A Resolution of the City Council of the City of Redding Establishing the Electric Utility Rates for Service to Customers Within the Corporate Limits of the City of Redding Effective March 5, 2013, and March 4, 2014.

The Court should judicially notice Exhibit A, City of Redding Resolution No. 2013-015, A Resolution of the City Council of the City of Redding Establishing the Electric Utility Rates for Service to Customers Within the Corporate Limits of the City of Redding Effective March 5, 2013, and March 4, 2014. This Resolution is judicially noticeable pursuant to Evidence Code §452(b), as a

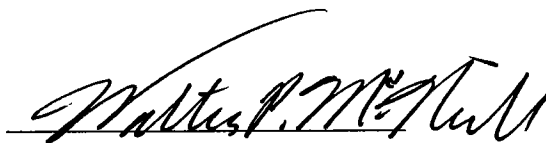
“legislative enactment(s) issued by or under the authority of ... any public entity in the United States.” For the reasons given above, this document is relevant to Appellants’ arguments and positions with respect to the Supreme Court’s Order Granting Review and the three issues to be briefed and argued, and specifically, to Appellants’ position that the City’s 2010 rate increase included and was intended to fund the Payment In-Lieu of Taxes (PILOT).

CONCLUSION

Appellants respectfully request that this Court grant Appellants’ motion to notice Exhibit A to the declaration of Walter P. McNeill filed concurrently herewith and consider it in support of Appellants’ Reply Brief.

Respectfully submitted,
MCNEILL LAW OFFICES

Dated: July 1, 2015

A handwritten signature in black ink, appearing to read "Walter P. McNeill", written over a horizontal line.

WALTER P. McNEILL

Attorneys for Citizens for Fair REU
Rates, et al.

DECLARATION OF WALTER P. MCNEILL
[CRC 8.54(a)(2)]

I, WALTER P. MCNEILL, declare as follows:

1. I am an attorney licensed to practice law in the State of California and before this Court. I am the attorney of record for Appellants Citizens for Fair REU Rates, Michael Schmitz, Shirlyn Pappas, and Fee Fighter, LLC. I have personal knowledge of the matters set forth herein and if called upon as a witness, I could and would completely testify thereto.

2. Attached hereto as Exhibit A is a true and correct certified copy of the City of Redding Resolution No. 2013-015, A Resolution of the City Council of the City of Redding Establishing the Electric Utility Rates for Service to Customers Within the Corporate Limits of the City of Redding Effective March 5, 2013, and March 4, 2014

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 1, 2015, at Redding, California.



WALTER P. MCNEILL

Attorney for Citizens for Fair REU
Rates, et al.

Exhibit "A"

RESOLUTION NO. 2013-015

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF REDDING ESTABLISHING THE ELECTRIC UTILITY RATES FOR SERVICE TO CUSTOMERS WITHIN THE CORPORATE LIMITS OF THE CITY OF REDDING EFFECTIVE MARCH 5, 2013, AND MARCH 5, 2014

WHEREAS:

A. Section 14.22.170 of the Redding Municipal Code provides that the City Council shall establish electric utility rates by resolution; and

B. For the reasons set out in the attached Report to Council, it has been recommended that the City Council adopt new, increased electric utility rates incorporated herein by reference; and

C. The City Council has carefully considered this recommendation; reviewed the existing electric utility rate structures; studied the tariffs required to cover the adjustments for 2013 and 2014; and deems it to be in the best interests of the City of Redding to establish the new, revised, and adjusted electric rates as proposed.

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

1. Pursuant to Section 14.22.170 of the Redding Municipal Code, the City Council hereby approves a 7.84 percent rate increase effective for usage beginning on the first day of the first electric billing cycle of March 2013, and a subsequent 7.84 percent rate increase effective for usage beginning on the first day of the first electric billing cycle of March 2014, and directs staff to appropriately amend the electric utility rate tariffs.

2. That the purposes for the imposition of the increases and other changes are as follows: (1) to meet operating expenses and to fund state-mandated programs; (2) to meet financial reserve needs and requirements; (3) to obtain funds for capital projects necessary to maintain service reliability; (4) to meet the costs of purchased power; and (5) to obtain funds necessary to maintain such intra-City transfers as previously authorized by law (see e.g. Resolution 2011-111 from the June 22, 2011, City Council meeting approving the budget for FY 2011-12 and FY 2012-13.

3. That the City Clerk and the Finance Officer of the City of Redding be hereby directed to maintain available certified copies of this resolution in their respective offices for inspection and review by any interested person or persons.

I HEREBY CERTIFY that the foregoing resolution was introduced and read at the regular meeting of the City Council of Redding on the 5th day of February, 2013, and was duly adopted at said meeting by the following vote:

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

Attest:

Pamela Mize
PAMELA MIZE, City Clerk

Rick Bosetti
RICK BOSETTI, Mayor
Form Approved:
Richard A. Duvernay
RICHARD A. DUVERNAY, City Attorney

BY *Pamela Mize*
PAMELA MIZE
CITY CLERK OF THE CITY COUNCIL
OF THE CITY OF REDDING, COUNTY OF SHASTA,
STATE OF CALIFORNIA

JUL 01 2015

THIS INSTRUMENT IS A CORRECT COPY
OF THE ORIGINAL ON FILE IN THIS OFFICE
ATTEST
R-2013-015

[Proposed]

ORDER GRANTING JUDICIAL NOTICE OF DOCUMENTS

Good cause appearing, IT IS HEREBY ORDERED that Appellants' Motion Requesting Judicial Notice is granted. IT IS ORDERED that this Court shall take judicial notice of the following:

A. City of Redding Resolution No. 2013-015, A Resolution of the City Council of the City of Redding Establishing the Electric Utility Rates for Service to Customers Within the Corporate Limits of the City of Redding Effective March 5, 2013, and March 4, 2014.

DATED: _____ By _____
Justice of the Supreme Court

PROOF OF SERVICE

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

**NOTICE OF MOTION AND MOTION FOR JUDICIAL NOTICE
IN SUPPORT OF ANSWER BRIEF ON THE MERITS**

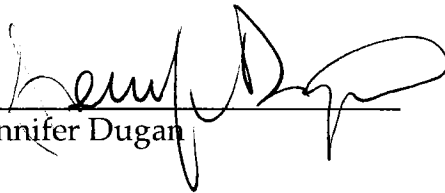
X **BY FIRST CLASS MAIL:** The envelope was mailed with postage thereon fully prepaid in a sealed envelope and addressed as follows:

SEE ATTACHED LIST

X I hereby certify that the document(s) listed above was/were produced on paper purchased as recycled.

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

Executed on July 1, 2015 at Redding, California.



Jennifer Dugan

SERVICE LIST

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

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