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CITIZENS FOR FAIR REU RATES, et al., Plaintiffs and Appellants, v. CITY OF REDDING, et al., Defendants and Respondents

C071906

COURT OF APPEAL OF CALIFORNIA, 3RD DISTRICT

2013 CA App. Ct. Briefs 71906; 2013 CA App. Ct. Briefs LEXIS 1257

June 4, 2013

Appealing from a Judgment of the Superior Court of the State of California, for the County of Shasta.

Honorable William D. Gallagher, Judge Presiding.

Amicus Brief

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INTERESTS: CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

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Date:

Justin C. Wynne
(TYPE OR PRINT NAME)

/s/ [Signature]
(SIGNATURE OF PARTY OR ATTORNEY)

TITLE: Application by the California Municipal Utilities Association to File Brief as Amicus Curiae and Proposed Brief in Support of Defendants and Respondents the City of Redding

TEXT: APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE CALIFORNIA COURT OF APPEAL, THIRD APPELLATE DISTRICT:

The California Municipal Utilities Association ("CMUA") n1 requests leave to file a brief as *amicus curiae* in this case in support of Respondents, the City of Redding, pursuant to *California Rules of Court, rule 8.200(c)*.

n1 CMUA electric utility members include the Cities of Alameda, Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Corona, Glendale, Gridley, Healdsburg, Hercules, Lodi, Lompoc, Los Angeles, Moreno Valley, Needles, Palo Alto, Pasadena, Pittsburg, Rancho Cucamonga, Redding, Riverside, Roseville, Santa Clara, Shasta Lake, Ukiah, and Vernon, as well as the Imperial, Merced, Modesto, Turlock Irrigation Districts, the Northern California Power Agency, Southern California Public Power Authority, Transmission Agency of Northern California, Lassen Municipal Utility District, Power and Water Resources Pooling Authority, Sacramento Municipal Utility District, the Trinity and Truckee Donner Public Utility Districts, the Metropolitan Water District of Southern California, and the City and County of San Francisco, Hetch-Hetchy.

[*2]

INTEREST OF AMICUS

Formed in 1933, CMUA represents the common interests of a coalition of California publicly owned utilities and provides a forum to develop and discuss statewide policy issues affecting its members. CMUA's diverse membership allows it to be a persuasive advocate for the advancement of public policies that mutually benefit its members and the people of the State of California. CMUA advocates on behalf of its members by fostering a better understanding of issues relevant to the State's publicly owned utilities and disseminating accurate information regarding its members, which include public agencies that provide electricity to approximately 25 percent of Californians.

Many of CMUA's members are cities that operate electric utilities just as Redding does. As electric utilities are often one of the largest undertakings operating within a city, these local governments would collect significant tax revenue if a privately owned utility (commonly referred to as an "investor-owned utility") served their residents, businesses, and property owners. These funds are needed to provide other municipal services that are necessary to support the operation of an electric [*3] utility, such as streets, law enforcement, fire protection, and emergency medical services. To address this disparity in funding capacity between cities served by investor-owned utilities and those whose voters have chosen public power utilities, CMUA's city members commonly rely on an operating transfer or a payment in lieu of

taxes ("PILOT") to the city's general fund (which finances essential municipal services) to approximate the revenue that investor-owned utilities pay to their host cities.

This case is of significant importance to CMUA and its members because the positions advocated by Appellants, Citizens for Fair REU Rates, Mr. Michael Schmitz, Ms. Shirlyn Pappas, and Fee Fighter, LLC, would undermine municipally owned electric utilities. Eliminating or severely restricting the use of these existing practices would substantially impair the operations of many municipally owned electric utilities by imposing a false choice on Californians between adequately-funded cities and public power utilities, which provide reliable, safe, and affordable power without the necessity of paying returns to private investors. Beyond the impact to PILOTs, applying Proposition 26 retroactively [*4] would undo many longstanding state and local programs and disrupt the electric industry. CMUA therefore requests leave to file this amicus brief in support of Redding.

No party other than CMUA and its counsel authored the proposed *amicus* brief in whole or in part or made a monetary contribution to its preparation or submission.

SUMMARY OF ARGUMENT

At issue in this case is Redding's longstanding practice of transferring a specified PILOT to its general fund. Appellants argue that the adoption of Proposition 26 in 2010 ended cities' power to do so. However, Redding's Brief persuasively demonstrates that Proposition 26 does not apply retroactively to charges legislated before its adoption in November 2010, such as the PILOT at issue here. In this Brief, CMUA demonstrates that: (1) operating transfers and PILOTs are normal and near universal elements of the publicly owned electric industry; (2) the California Public Utilities Commission ("CPUC") has recently interpreted Proposition 26 in a very limited manner to protect the operation of the electric industry from the concerns noted here; and (3) the retroactive application advocated by Appellants would have a substantial and [*5] wide-ranging impact on the electric utility industry.

ARGUMENT

I. TRANSFERS TO MUNICIPAL GENERAL FUNDS ARE A NORMAL AND INTEGRAL PART OF THE PUBLIC POWER INDUSTRY.

In general, there are two broad models for providing retail electric service used in California: (1) through investor-owned utilities subject to the requirements of the Public Utilities Act (*Cal. Pub. Util. Code § 201* et seq.) and heavily regulated by the CPUC; or (2) through publicly owned electric utilities that are generally subject to less comprehensive statutory regulations and are instead regulated by their local elected officials.

As a private business operating in a locality, investor-owned utilities are subject to various taxes, including property taxes and franchise fees (fees for the use of public rights of way). These taxes are necessary to fund the wide variety of municipal services that enable a private business, such as an electric utility, to function. Where, however, an electric utility is owned and operated by a city, the utility is exempt from these taxes. Despite this tax exemption, a city operating a power utility incurs the same costs to support the operation of an electric utility [*6] as neighboring communities served by investor-owned utilities. Streets, police, fire, etc. are needed for public and private power providers alike. This reality has led to the near universal adoption of some form of transfer from a municipally owned electric utility to the host city's general fund. This is true not only in California, but throughout the United States.

The American Public Power Association ("APPA"), the national trade association for municipally owned electric utilities, issues a report every two years on the size and types of these contributions. In 2012, APPA released a report titled, "Payments and Contributions by Public Power Distribution Systems to State and Local Governments, 2010 Data," ("APPA Report"). The APPA Report reports the results of a survey of 256 public power systems throughout the country. (*Id.* at 7). In 2010, these 256 power systems provided over \$ 1.1 billion to state and local governments. (*Id.*) Over 77 percent of the utilities surveyed paid some form of PILOT, which amounted to over 62 percent (\$ 697,000,000) of the amount contributed to state and local governments. (*Id.*) A variety of methods are used to calculate PILOTs. (*Id.* [*7] at 9). Twenty-five percent of utilities pay a PILOT calculated as a percentage of gross electric operating revenue, 17 percent pay a flat amount, and 14 percent pay a property tax equivalent like that in issue here. (*Id.*) In addition to PILOTs, nearly 60 percent of these publicly owned and operated utilities paid some form of tax, such as gross receipts taxes, franchise fees, or property taxes. (*Id.* at 7). Tax revenues account for over 31 percent (\$ 403,200,000) of the total funds remitted to state and local governments by America's publicly owned electric utilities. (*Id.*)

In California, municipally owned electric utilities almost universally make transfers to their city's general fund. The following table provides a summary of general fund transfers for some of the largest municipally owned electric utili-

ties, reflecting (with one exception) Fiscal Year 2012 information made available in formally adopted, publicly available, financial statements.

Municipal Electric Utility	Amount Transferred to City General Fund	Total Operating Revenue	General Fund Transfer as a percentage of Total Operating Revenue n2
City of Los Angeles	\$ 250,000,000 n3	\$ 3,028,000,000 n4	8.25%
City of Riverside	\$ 33,533,000 n5	\$ 351,056,000 n6	9.55%
City of Glendale	\$ 21,107,000 n7	\$ 205,715,000 n8	10.26%
City of Anaheim	\$ 20,784,00 n9	\$ 411,320,000 n10	5.05%
City of Pasadena	\$ 15,860,000 n11	\$ 185,951,000 n12	8.53%
City of Palo Alto	\$ 11,587,000 n13	\$ 125,207,000 n14	9.25%
City of Burbank	\$ 10,564,000 n15	\$ 296,071,000 n16	3.57%
City of Vernon	\$ 9,147,090 n17	\$ 171,112,589 n18	5.35%
City of Lodi	\$ 6,997,000 n19	\$ 65,220,000 n20	10.73%
City of Roseville n21	\$ 5,952,666 n22	\$ 164,143,515 n23	3.63%
City of Alameda	\$ 4,084,000 n24	\$ 51,435,000 n25	7.94%
Total [*8]	\$ 358,759,090	\$ 4,839,652,589	17.41%

n2 All calculations in this column are made by dividing the "Amount Transferred to City General Fund" by the "Total Operating Revenue."

n3 Los Angeles Department of Water and Power, Power System, Financial Statements and Required Supplementary Information, June 30, 2012 and 2011, at 5, *available at* https://www.ladwp.com/cs/idcplg?IdcService=GET_FILE&dDocName=OPLADWP036637&RevisionSelectionMethod=LatestReleased.

n4 *Id.*

n5 City of Riverside, Riverside Public Utilities, 2012 Financial Report at 15, *available at* <http://www.riversideca.gov/utilities/pdf/annual/2011-2012%20Financial%20Report.pdf>.

n6 *Id.*

n7 City of Glendale, Glendale Water and Power, Annual Report 2011-2012, Independent Auditor's Report at 4, *available at* http://www.glendalewaterandpower.com/pdf/annual_reports/11-12/ElectricUtilityFinancialsandAuditorsMesssage.pdf.

n8 *Id.*

n9 City of Anaheim, Electric Utility Fund, Financial Statements, June 30, 2012 and 2011, at 7, *available at* [http://www.anaheim.net/utilities/AnnualReport/ar2012/ElleFin\[ILLEGIBLE WORD\].pdf](http://www.anaheim.net/utilities/AnnualReport/ar2012/ElleFin[ILLEGIBLE WORD].pdf).

[*9]

n10 *Id.*

n11 City of Pasadena, Pasadena Water and Power, 2012 Annual Report, at 15, *available at* <http://www.ci.pasadena.ca.us/WorkArea/DownloadAsset.aspx?id=6442468757>.

n12 *Id.*

n13 City of Palo Alto, Fiscal Year 2012, Adopted Operating Budget at 212, *available at* <http://www.cityofpaloalto.org/civicax/filebank/documents/28179>.

n14 *Id.*

n15 City of Burbank, Annual Budget for Burbank Water and Power for Fiscal Year 2012-2013, at 290, *available at* <http://www.burbankwaterandpower.com/download/bwp-12-13-budget.pdf>.

n16 *Id.*

n17 City of Vernon, The Light and Power Department Fund and the Gas Department Fund of the City of Vernon, California, Annual Financial Report For Fiscal Year Ended June 30, 2012, at 6, *available at* <http://www.cityofvernon.org/images/docs/financial/2012%20Audited%20L&P%20Financials.pdf>.

n18 *Id.*

n19 City of Lodi, Comprehensive Annual Financial Report for the Year Ended June 30, 2012, at 155, *available at* <http://www.loodi.gov/finance/pdf/2012%20CAFR.pdf>.

n20 *Id.*

n21 Data for Roseville reflect the Fiscal Year Ended June 30, 2011.

[*10]

n22 City of Roseville, Roseville Electric, 2011 Annual Report, at 12, *available at* <http://www.roseville.ca.us/civicax/filebank/blobdload.aspx?BlobID=23775>.

n23 *Id.*

n24 City of Alameda, Comprehensive Annual Financial Report for the Fiscal years Ended June 30, 2012 and 2011, at 6, *available at* http://www.alamedamp.com/images/pdf/misc/cafr_2012.pdf.

n25 *Id.*

These transfers are thoroughly integrated in the municipally owned electric industry. In 2011, Moody's Investor Service released its "Rating Methodology: U.S. Public Power Electric Utilities with Generation Ownership Exposure." n26 Moody's methodology to rate the credit-worthiness of America's public power utilities is based on five factors: (1) Cost Recovery Framework Within Service Territory; (2) Willingness to Recover Costs with Sound Financial Metrics; (3) Management of Generation Risk; (4) Rate Competitiveness; and (5) Financial Strength. (*Id.* at 7) One of the key elements of Factor 2 is the relationship between the publicly owned electric utility and the host local government, which [*11] Moody's explains as follows:

A key consideration in Factor 2 is the relationship of the local government to the electric utility ... We consider who governs the utility, who sets its rates, and who issues the revenue bonds for the utility, as well as the degree to which the general government is responsible for supporting the utility in times of financial stress. Local governments have a strong record of supporting their public power electric utilities in times of fiscal stress. For example, during the 2001 Western Energy Crisis, the City of Seattle (rated Aaa) used its significant liquidity to assist the city utility, Seattle Light (rated Aa2), to recover from a short-term cash flow problem.

The city then implemented rate surcharges in a timely fashion to bolster utility finances.

General Fund Transfer (GFT) policies [(such as operating transfers and PILOTs)] are also an important issue Moody's evaluates since the policy is an example of the relationship between a utility and their local government. The GFT is the transfer of surplus utility revenues from the utility to the city's General Fund. Moody's believes an established GFT transfer policy that is accepted [*12] by both the utility and the local government adds credit strength for both entities as it increases the predictability of the transfer amount. However, when a transfer policy is established after a contentious debate and represents a substantial portion of the utility's own revenues, this could have a negative rating impact if it produces un-

competitive electric rates or leaves limited internal funds available for utility operations, maintenance, and repairs. (*Id.* at 9-10.)

Therefore, substantial disruptions to established general fund transfer policies have the potential to interfere with the relationship between the local government and the electric utility, which could negatively impact both entities' credit ratings.

n26 Moody's Investor Service, Rating Methodology: U.S. Public Power Electric Utilities with Generation Ownership Exposure, November 9, 2011.

It is also relevant to note that when courts have analyzed the treatment of state taxes for investor owned utilities, these same general types [*13] of charges are clearly considered a "cost of service" which may be passed through to ratepayers via power rates:

Rates of a publicly regulated utility are based on two components: (1) the utility's operating expenses (cost of service), and (2) a fair return on its investment, which is found by multiplying its authorized rate of return by the value of property devoted to public use (rate base). (See *City and County of San Francisco v. Public Utilities Com.* (1971) 6 Cal.3d 119, 129, 98 Cal.Rptr. 286, 490 P.2d 798 (hereafter City of San Francisco).) **As taxes are part of a utility's cost of service, this expense is borne by the ratepayers.** n27

n27 *S. Cal. Gas Co. v. Pub. Utilities Com.*, 23 Cal. 3d 470, 474 (1979) (emphasis added).

PILOTs and other similar transfers to city general funds are an integral part of the electric industry. Any restriction of this ability could have wide-ranging impacts. If existing PILOTs were eliminated or severely restricted, it would [*14] have the paradoxical impact of requiring municipal governments to raise taxes to cover costs to support the operations of the municipal electric utility or to reduce that support. Municipalities would be presented with the choice to raise funds elsewhere, accept a lower standard of municipal services, or to abandon the municipal utility model. In light of the significant revenues involved, as demonstrated by the summary table above, such an outcome is entirely probable.

II. THE CPUC HAS CONSIDERED AND NARROWLY INTERPRETED PROPOSITION 26.

While the focus of this case is on the Proposition 26's changes to Article XIII C, Proposition 26 also amended Article XIII A, applicable to state government. Article XIII A § 3(a) provides:

Any change in state statute which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.

Paralleling Article XIII C § 1(e), Article XIII A § 3(b) defines a "tax" as any "levy, charge, or [*15] exaction of any kind imposed by the state except the following" Article XIII A § 3(b) then lists five exceptions to the lax definitions including the following:

(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of conferring the benefit or granting the privilege to the payor.

(2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of providing the service or product to the payor.

These provisions are essentially identical to those of Article XIII C, § 1(e);

(1) A charge imposed for a specific benefit conferred or privilege granted 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 conferring the benefit or granting the privilege.

(2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, [*16] and which does not exceed the reasonable costs to the local government of providing the service or product.

While the issue before this court is a matter of first impression, it is relevant to note that the CPUC has considered Article XIII A § 3 as it applies to its actions to establish fees charged by investor-owned utilities and has adopted a very narrow interpretation. The CPUC considered the requirements of Proposition 26 when developing its Electric Program Investment Charge ("EPIC"), which, as described below, replaced the prior public benefits charge. Both are comparable to charges imposed by Redding and other municipal utilities to fund such things as low-income and senior-citizen discounts, conservation and efficiency programs, and "green" power sources.

As part of the wide-ranging restructuring of the electric industry pursuant to Assembly Bill ("AB") 1890 (Stats. 1996, ch. 854), the Legislature adopted a public goods charge applicable to the State's three largest investor owned utilities: Pacific Gas & Electric, Southern California Edison, and San Diego Gas & Electric. AB 1890 specified minimum dollar amounts each of the investor owned utilities must collect from its [*17] customer base to fund four general categories of "public goods": (1) energy efficiency programs; (2) research, development, and demonstration projects; (3) development of renewable resources; and (4) low-income subsidy programs. n28 This original legislation included a sunset date of March 31, 2002. (Former *Cal. Pub. Util. Code* § 381(g)). These statutory provisions were renumbered, reorganized, and a new sunset date of January 1, 2012 established by Stats. 2006, ch. 512. The Legislature did not extend this sunset date and the CPUC's funding authority under this provision therefore expired.

n28 Former *Cal. Pub. Mil. Code* § 381(c), added by Stats 1996, ch. 854, amended by Stats 2006, ch. 512.

In response, the CPUC instituted a rulemaking to adopt a program nearly identical to the public goods charge, called the Electric Program Investment Charge, and maintained prior funding levels for the prior programs. n29 Southern California Edison sought rehearing of the CPUC's decision, arguing adoption of the EPIC [*18] violated Proposition 26 because it amounted to a new tax requiring a vote of 2/3rds of each chamber of the Legislature. n30 The CPUC rejected SCE's argument and narrowly interpreted Proposition 26, stating:

We also find that SCE's argument that the Commission is barred from adopting the EPIC program by operation of Proposition 26 lacks merit. Enacted by voters in 2010, Proposition 26 provides that tax changes must be approved by a two-thirds vote of both houses of the Legislature, unless one of the exceptions outlined in Article XIII A, section 3(b) applies. (See *Cal. Const.*, Art. XIII A, § 3, subd. (b).) While SCE's rehearing application focuses on section 3(b) of Proposition 26, it does not mention section 3(a), which limits the application of Proposition 26 to "[a]ny change in state statute" resulting in higher taxes. (See *Cal. Const.*, Art. XIII A, § 3, subd. (a).) As the Commission's adoption of the EPIC program does not result in any statutory change, Proposition 26 is thus inapplicable. Further, Proposition 26 by its

terms does not effect any change to Article XII of the California Constitution, which is where the Commission's constitutional authority lies, and does [*19] not purport to alter or modify the Commission's statutory jurisdiction and responsibilities. (See D.13-01-016, *supra*, at pp. 6-18 (slip op.)) For these reasons, we find that SCE's taxation argument lacks merit. n31

n29 See CPUC Decision 12-05-037.

n30 Southern California Edison Company's (U338-E) Application for Rehearing of Decision 12-05-037, July 2, 2012, at 9.

n31 CPUC Decision 13-01-016 at 3-4.

While the matter and statutory language before the CPUC was distinct from matter at issue here, it is relevant because it demonstrates how narrowly the CPUC applies the new requirements of Proposition 26. It also demonstrates that public goods charges remain a vital element of the investor-owned utility market and, given the ballot arguments highlighted in Redding's brief, the voters expected it to remain part of the public utility market, as well. Even where the CPUC creates new charges for investor owned utility ratepayers to fund programs that are arguably not related to the [*20] cost of service, the CPUC did not consider Proposition 26 applicable because the Legislature had not changed a statute.

It is also noteworthy that the CPUC relied on its own broad authority under the Constitution unaltered by Proposition 26. Municipally owned electric utilities are similarly empowered by the State Constitution, pursuant to Article XI, § 9(a):

A municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication. It may furnish those services outside its boundaries, except within another municipal corporation which furnishes the same service and does not consent.

In considering the application of Proposition 26 to local governments, the court should ensure that the regulatory authorities for publicly owned electric utilities are not subject to substantially more severe requirements than the regulatory authority for investor owned utilities. Creating an uneven playing field in the power market to the detriment of public power utilities was certainly not a stated purpose of Proposition 26, nor an implied purpose, either, as the legislative history Redding [*21] details in its brief demonstrates,

III. RETROACTIVE APPLICATION OF PROPOSITION 26 WOULD HAVE BROAD AND DEVASTATING IMPACTS ON THE ELECTRIC UTILITY INDUSTRY

Appellants' claim in their Reply Brief they never argued that Proposition 26 applies retroactively. (Appellant's Brief at 13) However, Appellants' expansive interpretation of the Proposition 26 requirements would do just that. Appellants argue in reply that Proposition 26 requires the City of Redding to:

compare proposed rates, fees or charges to the 'reasonable costs' of providing the service or product each time its takes the discretionary action of adopting (as pertinent here) an electric rate resolution.[FN] (Cal. Const. Article 13C § 1(e)(2) and the last paragraph of (e).) This is a recursive process. Even if no change in rates is proposed the comparison process must still be engaged, because there may be significant change in the 'reasonable costs' as compared to the previous occasion when rate were adopted or modified.

Reply Brief at 14-15. Similarly, Appellants argue:

[T]here is no 'grandfathering' of previous assessments of costs, and the process requires a new examination of costs [*22] each time the City engages in the discretionary process of setting new electric rates.

Reply Brief at 18. A complete reassessment of all preexisting costs every time that a City adjusts rates is precisely the retroactive application Redding warns of. (Respondents' Brief at 27-31). As Respondents argue, such retroactive application is at odds with the clear language of Proposition 26 and with the rules of statutory construction. (RB at 18-21, 29).

Such a fundamental disruption of the utility industry would have wide-ranging impacts on long-standing programs. Redding's Brief correctly identifies vital state policies that would be jeopardized by the retroactive application of Proposition 26. (RB at 28) However, many publicly owned electric utilities have gone beyond the minimum statutory requirements and have adopted more demanding requirements for public goods programs to serve the needs and wishes of their ratepayers. These programs, such as Redding's low-income rates for senior households, are also at risk of elimination under Appellants' proposed interpretation of Proposition 26. Proposition 26 cannot be construed to retroactively invalidate the PILOT without jeopardizing [*23] senior citizen rates as well.

Cities have commonly expanded on statutory public goods requirements by adopting programs to provide financial assistance to needy customers. *California Public Utilities Code section 385* authorizes publicly owned electric utilities to collect funds for "[s]ervices provided for low-income electricity customers, including, but not limited to, energy efficiency services, education, weatherization, and rate discounts." (*Cal. Pub. Util. Code § 385(a)(4)*). Publicly owned electric utilities have expanded upon this direction and provide significant relief to: (1) low-income customers n32; (2) eligible seniors n33; (3) customers with life support medical equipment in their homes n34; and (4) customers with certain medical conditions. n35 These programs use a variety of mechanisms, including a percentage discount, n36 lower baseline rates, n37 fixed credits, n38 and exemptions from fees and taxes. n39 These programs are not statutorily required. However, they do provide a substantial and necessary benefit to these local communities and nothing in the text or legislative history of Proposition 26 suggests the voters intended these vital social programs to end [*24] upon the first rate-making after the November 2010 adoption of Proposition 26. Yet this is the logic of the position Appellants urge and which the trial court rightly rejected.

n32 Nearly every publicly owned electric utility provides some form of assistance to low-income customers. *See, e.g., City of Glendale, Glendale Care Program, available at* http://www.glendalewaterandpower.com/save_money/low_income/glendale_care.aspx. The Glendale Care Program is available to customers that either (1) receive public assistance, such as Medi-Cal, food stamps, or Women, Infants, Children benefits; or (2) fall under an income eligibility limit. *Id.*

n33 *See, e.g., City of Ukiah, Ukiah CA.R.E.S. Programs, available at* http://www.cityofukiah.com/pageserver/?page=ukiah_cares. Seniors 62 years of age and older whose gross annual incomes are within 200 percent of the Federal Poverty Guidelines are eligible for a monthly \$ 40 credit. *Id.*

n34 *See, e.g., City of Alameda, Alameda Municipal Power, Medical Discount Program, available at* <http://www.alamedamp.com/customer-service/financial-assistance/9-customer-service/financial-assistance/38-medical-discount-program>. Households with a disabled occupant reliant on a life-support device are eligible for a 10% discount. *Id.*

[*25]

n35 *See, e.g., Los Angeles Department of Water and Power, Physician Certified Allowance, available at* https://www.ladwp.com/ladwp/faces/ladwp/residential/r-financialassistance/r-fa-discount-rates?_adf.ctrl-state=ae66u0dj6_4&_afLoop=308982090238000. Provides a discount on electric bills if a member of the household is a paraplegic, hemiplegic, quadriplegic, a multiple sclerosis patient, neuromuscular patient, or scleroderma patient being treated for a life-threatening illness. *Id.*

n36 *See, e.g., Palo Alto Rate Assistance Program, available at* <http://www.cityofpaloalto.org/gov/depts/utl/billpay/assist.asp>. Provides a 25 percent discount on utility bills for customers meeting the medical need requirements. *Id.*

n37 *See, e.g.,* City of Cotton, Medical Baseline Billing, *available at* <http://www.ci.colton.ca.us/index.aspx?nid=352>. Provides a lower baseline charge for customers relying on life support devices. *Id.*

n38 *See, e.g.,* City of Ukiah, Ukiah C.A.R.E.S. Programs, *available at* http://www.cityofukiah.com/pageserver/?page=ukiah_cares. Customers whose gross annual income is within 200 percent of the Federal Poverty Guidelines are eligible for up to \$ 350 benefit over each 12 month period. *Id.*

[*26]

n39 *See, e.g.,* City of Glendale, Glendale Water and Power, Utility Users Tax Exemption, *available at* http://www.glendalewaterandpower.com/save_money/low_income/utility_users_tax_exemption.aspx. Seniors and disabled customers meeting specified income limitations are eligible for exemption from the Utility Users Tax. *Id.*

Similarly, many publicly owned electric utilities pursue innovative and aggressive environmental goals. For example, Silicon Valley Power (owned and operated by the City of Santa Clara) established a 33 percent renewable target years before Senate Bill ("SB") 1X-2 (Stats. 2011, 1st ex. sess., ch. 1) mandated a 33 percent renewable portfolio standard be attained by 2020. n40 Silicon Valley Power has procured renewable resources in excess of the statutory requirement in service of its local policy. n41

n40 City of Santa Clara Renewable Energy Resources Procurement Plan, Dec. 6, 2011, *available at* http://energy.ca.gov/portfolio/pous/silicon_valley_power/2011-12-22_RPS_Procurement_Plan_Resolutions.pdf.

[*27]

n41 *See* Silicon Valley Power 2011 Power Content Label, *available at* <https://siliconvalleypower.com/index.aspx?page=1952>.

A number of publicly owned electric utilities have adopted innovative programs to allow customers to participate in the procurement of renewable energy. For example, the Sacramento Municipal Utility District has a longstanding Greenergy program that allows customers to pay a nominal surcharge on each electric bill to fund procurement of additional renewable power. n42 Similarly, Silicon Valley Power's Santa Clara Green Power Program offers customers the option of 100 percent renewable energy in exchange for a supplemental monthly payment. Anaheim's Public Utility offers three options for renewable procurement (25 percent, 50 percent, or 100 percent renewables) for supplemental monthly power charges. n43 These programs pursue vital state and local goals, but the funds supporting these types of programs are not necessarily tied to a cost of service and might not survive the retroactive application of Proposition 26 that Appellants seek.

n42 Sacramento Municipal Utility District Greenergy Program, *available at* <https://www.smud.org/cn/residential/environment/greeneray/>.

[*28]

n43 *See, e.g.,* Anaheim Public Utilities, Green Power Program, *available at* <http://www.anaheim.net/article.asp?id=4141>.

Under Appellants' interpretation of Proposition 26, all of these programs could potentially be at risk because any new rate adjustment would require a detailed cost-of-service analysis even if the pre-existing program was not altered or the charge or fee modified, precisely the facts in issue here. Such a result is clearly at odds with the plain language of Proposition 26 and with the relevant legislative history as described by Respondents (RB at 19-21), including the ballot

arguments in support of Proposition 26, which plainly stated that Proposition 26 would "not eliminate or phase out any of California's environmental or consumer protection laws." (RB at 20). It would also be bad public policy to abruptly eliminate these local programs that have evolved over years to suit the needs of the utility's customers without a word of warning to voters that Proposition 26 would have that effect. Such disruption to the electric utility industry was clearly not envisioned [*29] by the voters who approved Proposition 26.

CONCLUSION

For all these reasons, CMUA respectfully requests that the court reject the arguments raised by the Appellants and affirm the judgment in favor of Redding.

May 23, 2013

Respectfully submitted,

C. ANTHONY BRAUN (Bar No.
176113)
JUSTIN C. WYNNE (Bar No. 251377)

By: /s/ [Signature]
JUSTIN C. WYNNE

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CERTIFICATE OF WORD COUNT

The text of APPLICATION BY THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION TO FILE A BRIEF AS AMICUS CURIAE AND PROPOSED BRIEF IN SUPPORT OF PLAINTIFFS AND RESPONDENTS, THE CITY OF REDDING consists of 4723 words (including footnotes but excluding the table of contents, the table of authorities, and certificates) as counted by Microsoft Word 2011 word-processing program.

Dated May 23, 2013

/s/ [Signature]
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CERTIFICATE OF SERVICE

I hereby certify that I am a citizen of the United States, over the age of 18 years, with business address at 915 L Street, Suite No. 1270, Sacramento, California and am neither a party nor interested in Citizens For Fair REU Rates, et al. v. City of Redding, Civil No. C071906, before the Court of Appeal of the State of California, Third Appellate District.

On May 23, 2013, in Sacramento, California, I caused to be served the following: APPLICATION BY THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION TO FILE A BRIEF AS AMICUS CURIAE AND PROPOSED BRIEF IN SUPPORT OF DEFENDANTS AND RESPONDENTS, THE CITY OF REDDING

X OVERNIGHT MAIL: I caused such true copy of the above document to be delivered to UPS for overnight courier service to the office of the party as set forth below:

Richard A. Duvernay
Office of the City Attorney, City of Redding
777 Cypress Avenue, 3rd Floor
Redding, CA 96001

Michael G. Colantuono
Colantuono & Levin o & Levin. PC
11364 Pleasant Valley Road
Penn Valley, CA 95946-9000

Clerk of the Shasta County Superior Court (1 copy)
Honorable William D. Gallagher, Judge
Shasta [*31] County Courthouse
1500 Court Street, Rm 319
Redding, CA 96001

X BY ELECTRONIC SERVICE: In compliance with the California Rules of Court,

Rule 8.212, I caused such true copy of the above documents to be delivered via electronic service to the party as set forth below:

California Supreme Court, 350 McAllister Street, San Francisco, CA www.courts.ca.gov/7423.htm

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.

Dated May 23, 2013

/s/ [Signature]
Paula Polomo