

# NEVADA COUNTY UTILITY FRANCHISES

## REASON FOR INVESTIGATION

The Nevada County Civil Grand Jury has the responsibility to review county departments, programs, and processes to determine if they are meeting the needs of the community. The Grand Jury wants to insure that appropriate procedures and practices are in place to guarantee that the county is receiving agreed-to fees from utility franchises operating within the county.

## PROCEDURE FOLLOWED

The Grand Jury interviewed the three county managers responsible for franchises in the unincorporated areas of the county: the Transit Director for cable TV, the Department of Transportation and Sanitation for garbage collection, and the Auditor-Controller for gas and electric. The Grand Jury reviewed county documentation that included: (1) Ordinance Nos. 161, 162 and 670, (2) Article 1 Regulations Affecting Franchises in Nevada County, and (3) The Nevada County General Code Chapter II: Franchises, revised 3/7/00, hereafter referred to as County Code.

## FINDINGS

1. The California Public Utilities Code Section 6201-6205.1, known as the Franchise Act of 1937, authorizes municipalities including counties to grant franchises to utilities to establish operations within the localities and to collect a franchise fee for using public facilities such as roads. Such fees apply to private-sector utilities only.
2. In Nevada County franchises are established by contract and documented in most cases in County Code and several ordinances. County Code establishes the fees a franchisee shall pay to the county. These regulations cover cable TV entertainment transmissions, garbage collection, and the Sierra Pacific Power Company. PG&E is not covered in the County Code and there is no general section that describes gas and electric franchises. PG&E operates under a 1948 contract with the county under the same general terms as for Sierra Pacific Power. Telephone service is not covered by code, and Pacific Bell pays no franchise fees as far as the Grand Jury can determine.
3. Franchise fees contribute approximately \$600,000 to the county general fund, or about 3% of total local fees and taxes. The breakdown by franchise type is as follows:

<i>Franchise Type</i>	<i>FY 1999/2000</i>
Cable TV	146,516.04
Garbage	226,107.47
Electric*	211,973.13
Gas*	25,617.26
Total	610,213.90

\*Includes PG&E and Sierra Pacific Power

4. County Code specifies that cable TV franchisees pay a maximum of 5% of gross revenue each year. The Board of Supervisors sets the actual percentage paid. This is a non-exclusive franchise of fifteen years duration.
  - In practice, the county conforms to County Code in determining the revenue formula.
  - The county is not in conformance with the County Code requirement to audit the franchisee at least once every three years to assure that the county has received the appropriate amount of revenue.
5. County Code states, "The grantee of a [garbage] franchise hereunder shall pay to the county, during the term of such franchise, the sum of fifty dollars per calendar year or portion thereof." Taken literally, the county would receive a total of \$50 per year. This is a non-exclusive franchise, which is not to exceed twenty-five years duration.
  - In practice, the county does not conform to the County Code. Franchisees pay an annual fee of 4% of gross revenue where garbage service is mandatory. Where it is voluntary, fees are 3% of gross revenue.
  - The county is not required to conduct an audit. However, it has no method for assuring the accuracy of fee payments.
6. County Code says that the Sierra Pacific Power Company shall pay between 1% and 2% of the gross annual receipts. This is a non-exclusive franchise for fifty years.
  - County practice conforms to the County Code.
  - PG&E appears to be paying fees at a rate comparable to Sierra Pacific Power Company.
  - The county is not required to conduct an audit. However, it has no method for assuring the accuracy of fee payments.
7. Money received by the county is based upon statements and reports provided by each franchisee. The county has never conducted any type of audit of the current utility franchises.

## CONCLUSIONS

1. There are no apparent procedures and practices in place to guarantee that the county is receiving agreed-to fees from all franchises operating within the county.
2. If the County Code requires an audit of the cable TV franchise, audits of the other franchises should also be required.
3. The County Code does not include all utility franchises within the county (i.e. PG&E). It does not guide the method for calculating all franchise fees due to the county.

## **RECOMMENDATIONS**

The responsible county officials should:

1. Review and update the County Code (Nevada County General Code Chapter II: Franchises) to:
  - Include all utility franchises operating within the county.
  - Establish a definitive method for calculating each franchise fee.
  - Establish procedures to insure that the county is receiving all agreed-to fees from franchises operating within the county. These procedures should include audits and/or other reviews of each franchise.
2. Perform the required audits and/or reviews, as stated in the updated County Code, of each franchise at the earliest opportunity.

## **REQUIRED RESPONSES**

Board of Supervisors – no later than 90 days  
County Administrator – no later than 60 days  
Auditor-Controller – no later than 60 days

# COUNTY OF NEVADA

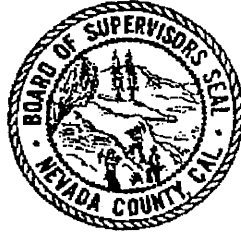
STATE OF CALIFORNIA

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September 11, 2001

The Honorable Ersel L. Edwards  
Presiding Judge of the Nevada County Courts  
Nevada County Court House  
Nevada City CA 95959

**Subject: Board of Supervisors Responses to the 2000-2001 Nevada County Civil Grand Jury Interim Report No. 14, dated June 13, 2001 regarding Nevada County Utility Franchises.**

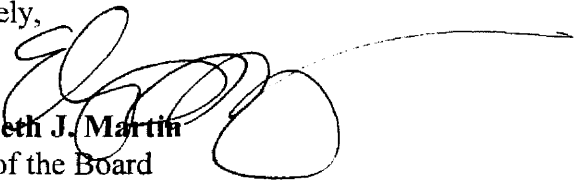
Dear Judge Edwards:

The attached responses by the Board of Supervisors to the 2000-2001 Nevada County Civil Grand Jury Interim Report No. 14, dated June 13, 2001, are submitted as required by California Penal Code §933.

These responses to the Grand Jury's findings and recommendations were approved by the Board of Supervisors at their regular meeting on September 11, 2001. Responses to findings and recommendations are based on either personal knowledge, examination of official county records, review of the response by the County Administrator and the Auditor-Controller, or testimony from the Board chair and county staff members.

The Board of Supervisors would like to thank the members of the 2000-2001 Grand Jury for their participation and effort in preparing this Interim report.

Sincerely,

  
Elizabeth J. Martin  
Chair of the Board

Attachment

ejm:pjw:pb

cc: Foreman, Grand Jury  
Ted Gaebler, County Administrator  
County Counsel  
Auditor-Controller

**NEVADA COUNTY BOARD OF SUPERVISORS RESPONSES TO  
2000-2001 CIVIL GRAND JURY INTERIM REPORT NO. 14  
DATED JUNE 13, 2001  
RE: NEVADA COUNTY UTILITY FRANCHISES**

*Responses to findings and recommendations are based on either personal knowledge, examination of official county records, review of the response by the County Administrator and the Auditor-Controller, or testimony from the board chairman and county staff members.*

**I. GRAND JURY INVESTIGATION:**

**Nevada County Utility Franchises**

**A. RESPONSE TO FINDINGS & RECOMMENDATIONS:**

**Findings:**

1. **The California Public Utilities Code Section 6201-6205.1, known as the Franchise Act of 1937, authorizes municipalities including counties to grant franchisees to utilities to establish operations within the localities and to collect a franchisee fee for using public facilities such as roads. Such fees apply to private sector utilities only.**  
  
Agree
  
2. **In Nevada County, franchises are established by contract and documented in most cases in County Code and several ordinances. County Code establishes the fees a franchise shall pay to the county. These regulations cover cable TV entertainment transmissions, garbage collection, and the Sierra Pacific Power Company. PG&E is not covered in the County Code and there is no general section that describes gas and electric franchises. PG&E operates under a 1948 contract with the county under the same general terms as for Sierra Pacific Power. Telephone service is not covered by code, and Pacific Bell pays no franchise fees as far as the Grand Jury can determine.**  
  
Agree
  
3. **Franchise fees contribute approximately \$600,000 to the county general fund, or about 3% of total local fees and taxes. The breakdown by franchise type is as follows:**

<i>Franchise Type</i>	<i>FY 1999/2000</i>
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**\*Includes PG&E and Sierra Pacific Power**

Agree

**4. County Code specifies that cable TV franchises pay a maximum of 5% of gross revenue each year. The Board of Supervisors sets the actual percentage paid. This is a non-exclusive franchise of fifteen years duration.**

- In practice, the county conforms to County Code in determining the revenue formula**
- The county is not in conformance with the County Code requirement to audit the franchise at least once every three years to assure that the county has received the appropriate amount of revenue.**

Agree

The County Code provisions relating to cable television franchises include provisions requiring the books and all financial records reasonably related to the franchise shall be available for inspection and providing for an audit of the books, records and accounts of the franchisee during the term of the franchise not less frequently than every three years. These provisions are included in the Code by the County to provide the County access to a franchisee's books and financial records as the County may determine is necessary to enforce the franchise and determine whether the franchisee has paid franchisee fees in the amounts prescribed. The County Code also provides that the cost of any audit shall be at the sole expense of the County. The Director of Transit Services advises that he keeps a very close watch over how much money is coming in from the cable TV franchises. He further advises that a professional audit would be very expensive so that the costs of an audit need to be weighed against the potential benefits of an audit.

**5. County Code states, "The grantee of a [garbage] franchise hereunder shall pay to the county, during the term of such franchise, the sum of fifty dollars per calendar year or portion thereof." Taken literally, the county would receive a total of \$50 per year. This is a non-exclusive franchisee, which is not to exceed twenty-five years duration.**

- In practice, the county does not conform to the County Code. Franchises pay an annual fee of 4% of gross revenue where garbage service is mandatory. Where it is voluntary, fees are 3% of gross revenue.**

- **The county is not required to conduct an audit. However, it has no method for assuring the accuracy of fee payments.**

Partially disagree

The provision of the Franchise Act of 1937 and the County General Code provision adopted pursuant thereto for payment of a \$50.00/year fee by a garbage collection franchisee is not the sole source of authorization for charging a franchise fee for waste collection services. In 1989, subsequent to the County's adoption of the General Code provision regarding a franchise fee for garbage collection, the State legislature adopted comprehensive new regulations regarding collection and management of waste commonly referred to as the California Integrated Waste Management Act of 1989. This Act added an entire new division 30 to the Public Resources Code, codified in sections 40000 - 49602. That division contains extensive provisions relating to and authorizing franchises for waste collection and serves as the basis for the current franchise agreement for collection, transportation and disposal of solid waste. That Franchise Agreement, referencing the Integrated Waste Management Act dated June 23, 1998 and extended in 2000, provides for franchise fees in addition to and in excess of the amount provided for in the General Code, doing so under the authorization of the subsequent State legislation. The basic franchise fee provided therein is 3% of the gross revenues received from residential waste and recycling activities and commercial solid waste hauling and disposal during the agreement period.

The current Franchise Agreement does provide a method for assuring the accuracy of fee payments. In Section 15, it requires the grantee of the franchise to maintain a proper set of books and records, subject to inspection, examination or audit by the County or its agents at any time upon advance notice, with each party to bear their own costs associated with review of the records unless an underpayment of more than 2% is discovered, in which case the grantee pays the County's entire costs of audit or examination. The franchise agreement also requires the franchisee to provide a revenue statement, setting forth quarterly franchise fees, and the basis for the calculation thereof, certified under penalty of perjury by an officer of the Grantee.

**6. County Code says that the Sierra Pacific Power Company shall pay between 1% and 2% of the gross annual receipts. This is a non-exclusive franchise for fifty Years.**

- **County practice conforms to the County Code**
- **PG&E appears to be paying fees at a rate comparable to Sierra Pacific Power Company.**
- **The county is not required to conduct an audit. However, it has no method for assuring the accuracy of fee payments.**

Partially disagree

Even though the County Code provisions do not include an express provision for audit of the franchisee books and records, the ability to inspect, audit and examine such books and records to determine whether full and accurate payments were being received would be implied from the provisions for payment that are included, most specifically the express provision in General Code Sec. G-II 4.8 for forfeiture of the franchise if the franchise payment is not made.

7. **Money received by the County is based upon statements and reports provided by each franchisee. The county has never conducted any type of audit of the current utility franchises.**

Agree

The Board is not aware of any audit that may have been previously conducted.

**Recommendations:**

1. **Review and update the County Code (Nevada County General Code Chapter II: Franchises) to:**
  - **Include all utility franchises operating within the County**
  - **Establish a definitive method for calculating each franchise fee**
  - **Establish procedures to ensure that the county is receiving all agreed-to fees from franchises operating within the county. These procedures should include audits and/or other reviews of each franchise.**

The Recommendation has not been acted upon and requires further analysis to be completed by January 31, 2002. Implementation is anticipated by June 30, 2002.

The Board recognizes and acknowledges the need to update all County Codes and regulations on an ongoing basis, including without limitation, General Code sections relating to all franchise operations. Such provisions and revisions, and agreements pursuant thereto, should include definitive methods for calculating franchise fees and verifying that County is receiving the full payment to which it is entitled.

Further analysis is necessary by staff to determine the nature and extent of any necessary revisions and amendments to Chapter II of the County General Code in this regard. The directors of the concerned departments, together with the County Administrator and County Counsel, with assistance from the Auditor-Controller, by this response are directed to review the provisions of General Code Chapter II: Franchises applicable to franchises overseen by their department and present recommendations back to the Board regarding additions or revisions necessary to update local regulation of utility franchises within the County, paying special attention to the Grand Jury recommendations. To the extent existing regulations and/or



contracts do not establish a definitive method for calculating and charging an authorized fee and procedures to ensure that the County is receiving full payment of such fees, further provisions shall be recommended including provision for audits and/or other inspection, review and examination of the books and records of each franchise.

**2. Perform the required audits and/or reviews, as stated in the updated County Code, of each franchise at the earliest opportunity.**

The recommendation has not yet been implemented but will be by June 30, 2002.

Following analysis of existing provisions of General Code Chapter II: Franchises, and after adoption of any updated code sections addressing utility franchise audit requirements, audits and/or reviews will be accomplished as required by the code. (See response to Recommendation 1).

The County Administrator, with assistance from the Auditor-Controller, is also directed by this response to complete an audit of existing cable TV franchises as required by the County General Code by June 30, 2002. As authorized by the General Code, the audit is to be completed either by the Auditor-Controller or by an independent CPA firm retained by the Auditor Controller.

The County Administrator is additionally directed to review other county utility franchise agreements and County Code requirements and determine if and to what extent an audit or examination of franchisee books is justified. Any required financial reviews or audits are also to be completed by June 30, 2002.

**B. OTHER RESPONSES REQUIRED:**

Board of Supervisors – September 11, 2001  
County Administrator – August 13, 2001  
Auditor-Controller – August 13, 2001

**COUNTY OF NEVADA**  
**COUNTY ADMINISTRATOR**

Eric Rood Administrative Center  
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Nevada City, CA 95959  
(530) 265-7040  
Fax 265-7042  
E-MAIL: cao@co.nevada.ca.us

rec'd  
8-16-01

TAR: KPB

August 10, 2001

Honorable Judge Carl F. Bryan, II  
Nevada County Superior Court  
201 Church Street  
Nevada City, CA 95959

Judge Bryan:

**RE: Response to Grand Jury Report—Nevada County Administrator**

Attached is the Nevada County Administrator's response to the Nevada County Grand Jury report on the Nevada County Utility Franchises. I believe my response to be accurate and appropriately detailed to address the issues raised by the Grand Jury.

Sincerely,



Ted A. Gaebler  
County Administrator

Nevada County Administration  
Grand Jury Report  
Response to Nevada County Utility Franchises Inquiry

FINDINGS

1. The California Public Utilities Code Section 6201-6205.1, known as the Franchise Act of 1937, authorizes municipalities including counties to grant franchises to utilities to establish operations within the localities and to collect a franchise fee for using public facilities such as roads. Such fees apply to private-sector utilities only.

*Response: Agree*

2. In Nevada County franchises are established by contract and documented in most cases in County Code and several ordinances. County Code establishes the fees a franchisee shall pay to the county. These regulations cover cable TV entertainment transmissions, garbage collection, and the Sierra Pacific Power Company. PG&E is not covered in the County Code and there is no general section that describes gas and electric franchises. PG&E operates under a 1948 contract with the county under the same general terms as for Sierra Pacific Power. Telephone service is not covered by code, and Pacific Bell pays no franchise fees as far as the Grand Jury can determine.

*Response: Agree*

3. Franchise fees contribute approximately \$600,000 to the county general fund, or about 3% of total local fees and taxes. The breakdown by franchise type is as follows for FY 1999/2000:

*Response: Agree*

4. County Code specifies that cable TV franchisees pay a maximum of 5% of gross revenue each year. The Board of Supervisors sets the actual percentage paid. This is a non-exclusive franchise of fifteen years duration.

In practice, the county conforms to County Code in determining the revenue formula.

The county is not in conformance with the County Code requirement to audit the franchisee at least once every three years to assure that the county has received the appropriate amount of revenue.

*Response: Agree*

5. County Code states, "The grantee of a [garbage] franchise hereunder shall pay to the county, during the term of such franchise, the sum of fifty dollars per calendar year or portion thereof." Taken literally, the county would receive a total of \$50 per year. This is a non-exclusive franchise, which is not to exceed twenty-five years duration.

In practice, the county does not conform to the County Code. Franchisees pay an annual fee of 4% of gross revenue where garbage service is mandatory. Where it is voluntary, fees are 3% of gross revenue.

The county is not required to conduct an audit. However, it has no method for assuring the accuracy of fee payments.

*Response: Agree*

6. County Code says that the Sierra Pacific Power Company shall pay between 1% and 2% of the gross annual receipts. This is a non-exclusive franchise for fifty years.

- County practice conforms to the County Code.
- PG&E appears to be paying fees at a rate comparable to Sierra Pacific Power Company.
- The county is not required to conduct an audit. However, it has no method for assuring the accuracy of fee payments.

*Response : Agree*

7. Money received by the county is based upon statements and reports provided by each franchisee. The county has never conducted any type of audit of the current utility franchises.

*Response: Agree, this office is not aware of audits of the current utility franchises.*

#### RECOMMENDATIONS

The responsible county officials should:

1. Review and update the County Code (Nevada County General Code Chapter II: Franchises) to:

- Include all utility franchises operating within the county.
- Establish a definitive method for calculating each franchise fee.
- Establish procedures to insure that the county is receiving all agreed-to fees from franchises operating within the county. These procedures should include audits and/or other reviews of each franchise.

*Response: Recommendation requires significant further analysis. The County would conduct such analysis during an update of the entire County Code. Such an update may be considered in the future.*

2. Perform the required audits and/or reviews, as stated in the updated County Code, of each franchise at the earliest opportunity.

*Response: Recommendation will not be implemented for some time. Due to the lengthy and involved legal analysis to comprehensively update the County Code, it will some time before this recommendation may be implemented.*

# COUNTY OF NEVADA

**BRUCE A. BIELEFELT**

Auditor-Controller  
Eric Rood Adm. Bldg.  
950 Maidu Avenue  
Nevada City, CA 95959  
(530) 265-1244  
FAX: (530) 265-1568

*rec'd*  
JUL 11

June 28, 2001

Honorable Judge Carl F. Bryan, II  
Nevada County Superior Court  
201 Church Street  
Nevada City, CA 95959

Dear Honorable Judge Bryan,

***RE: Response to Grand Jury Report – Nevada County Auditor-Controller***

Herewith is the Nevada County Auditor-Controller's response to the Nevada County Grand Jury report with reference to Utility Franchises. My responses are truthful and comprehensive, detailing the issues raised by the Grand Jury.

Sincerely,

  
Bruce Bielefelt  
Nevada County Auditor-Controller

Nevada County Auditor-Controller  
Grand Jury Report Response

**FINDINGS**

1) The California Public Utilities Code Section 6201-6205.1, known as the Franchise Act of 1937, authorizes municipalities including counties to grant franchises to utilities to establish operations within the localities and to collect a franchise fee for using public facilities such as roads. Such fees apply to private-sector utilities only.

**Response:** *Agree with the findings of the Grand Jury in regards to counties granting franchises to utilities to establish operations within localities and collect a franchise fee for using public facilities.*

2) In Nevada County franchises are established by contract and documented in most cases in County Code and several ordinances. County Code establishes the fees a franchisee shall pay to the county. These regulations cover cable TV entertainment transmissions, garbage collection, and the Sierra Pacific Power Company. PG&E is not covered in the County Code and there is no general section that describes gas and electric franchises. PG&E operates under a 1948 contract with the county under the same general terms as for Sierra Pacific Power. Telephone service is not covered by code, and Pacific Bell pays no franchise fees as far as the Grand Jury can determine.

**Response:** *Agree*

3) Franchise fees contribute approximately \$600,000 to the county general fund, or about 3% of total local fees and taxes.

**Response:** *Agree*

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- In practice, the county conforms to County Code in determining the revenue formula.
- The county is not in conformance with the County Code requirement to audit the franchise at least every three years to assure that the county has received the appropriate amount of revenue.

**Response:** *Agree*

Nevada County Auditor-Controller  
Grand Jury Report Response

**FINDINGS**

1) The California Public Utilities Code Section 6201-6205.1, known as the Franchise Act of 1937, authorizes municipalities including counties to grant franchises to utilities to establish operations within the localities and to collect a franchise fee for using public facilities such as roads. Such fees apply to private-sector utilities only.

**Response:** *Agree with the findings of the Grand Jury in regards to counties granting franchises to utilities to establish operations within localities and collect a franchise fee for using public facilities.*

2) In Nevada County franchises are established by contract and documented in most cases in County Code and several ordinances. County Code establishes the fees a franchisee shall pay to the county. These regulations cover cable TV entertainment transmissions, garbage collection, and the Sierra Pacific Power Company. PG&E is not covered in the County Code and there is no general section that describes gas and electric franchises. PG&E operates under a 1948 contract with the county under the same general terms as for Sierra Pacific Power. Telephone service is not covered by code, and Pacific Bell pays no franchise fees as far as the Grand Jury can determine.

**Response:** *Agree .*

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**Response:** *Agree*

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**Response:** *Agree*

5) County Code states, "The grantee of a [garbage] franchise hereunder shall pay to the county, during the term of such franchise, the sum of fifty dollars per calendar year or portion thereof." Taken literally, the county would receive a total of \$50 per year. This is a non-exclusive franchise, which is not to exceed twenty-five years duration.

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**Response:** *Agree*

6) County Code says that the Sierra Pacific Power Company shall pay between 1% and 2% of the gross annual receipts. This is a non-exclusive franchise for fifty years.

- County practice conforms to the County Code.
- PG&E appears to be paying fees at a rate comparable to Sierra Pacific Power Company.
- The county is not required to conduct an audit. However, it has no method for assuring the accuracy of fee payments.

**Response:** *Agree*

7) Money received by the county is based upon statements and reports provided by each franchisee. The county has never conducted any type of audit of the current utility franchises.

**Response:** *Agree*



## RECOMMENDATIONS

The responsible county officials should:

1) Review and update the County Code (Nevada County General Code Chapter II: (Franchises) to:

- Include all utility franchises operating within the county.
- Establish a definitive method for calculating each franchise fee.
- Establish procedures to insure that the county is receiving all agreed-to fees from franchises operating within the county. These procedures should include audits and/or other reviews of each franchise.

**Response:** *Recommendation requires further analysis. A review and update of the County Code is a lengthy process, which will require the services of County Counsel. It will have to be a collaborative process that includes all the respondents and the franchisees. It can be accomplished by the November 12<sup>th</sup> deadline if work begins now.*

2) Perform the required audits and/or reviews, as stated in the updated County Code, of each franchise at the earliest opportunity.

**Response:** *Recommendation will not be implemented because I believe it is unreasonable to expect completion of the required audits and/or reviews on or before November 12<sup>th</sup>, the six month deadline, when it may take six months to rewrite the County Code.*