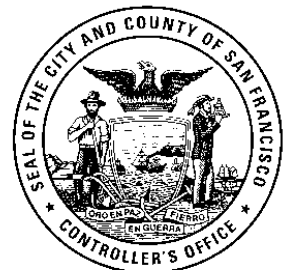


# Energy Center San Francisco LLC Paid the Correct Franchise Fees for 2019 and 2020 But Paid Its 2019 Fee Months Late and Did Not Always Meet Reporting Requirements

Board of Supervisors



April 20, 2023

City & County of San Francisco  
Office of the Controller  
City Services Auditor

## About the Audits Division

The City Services Auditor (CSA) was created in the Office of the Controller through an amendment to the Charter of the City and County of San Francisco (City) that was approved by voters in November 2003. Within CSA, the Audits Division ensures the City's financial integrity and promotes efficient, effective, and accountable government by:

- Conducting performance audits of city departments, contractors, and functions to assess efficiency and effectiveness of service delivery and business processes.
- Investigating reports received through its whistleblower hotline of fraud, waste, and abuse of city resources.
- Providing actionable recommendations to city leaders to promote and enhance accountability and improve the overall performance and efficiency of city government.

### Team:

Winnie Woo, *Audit Manager*

Mark de la Rosa  
Director of Audits  
Office of the Controller  
City and County of San Francisco  
(415) 554-7574

### Consultant:

Sjoberg Evashenk Consulting, Inc.

For media inquiries, please contact  
[con.media@sfgov.org](mailto:con.media@sfgov.org).



[sf.gov/controller](https://sf.gov/controller)



[@sfcontroller](https://twitter.com/sfcontroller)



[LinkedIn Office of the Controller](#)

## Audit Authority

CSA conducted this audit under the authority of the San Francisco Charter, Section 3.105 and Appendix F, which requires that CSA conduct periodic, comprehensive financial and performance audits of city departments, services, and activities.



**OFFICE OF THE CONTROLLER**  
CITY AND COUNTY OF SAN FRANCISCO

Ben Rosenfield  
Controller  
Todd Rydstrom  
Deputy Controller

April 20, 2023

Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Dear President Peskin and Members:

The City Services Auditor (CSA) of the Office of the Controller (Controller) engaged Sjoberg Evashenk Consulting, Inc., (SEC) to audit the payment of franchise fees by Energy Center San Francisco LLC (Energy Center) to the City and County of San Francisco (City) for 2019 and 2020. Energy Center pays the City franchise fees to use its streets to install, construct, maintain, and operate steam pipe conduits for distributing steam for heating purposes. Energy Center is required to report its annual gross receipts to the City and pay the City 2 percent of the receipts subject to the franchise fee. The San Francisco Public Utilities Commission (SFPUC) oversees the franchise, except for certain financial requirements, the enforcement of which is the responsibility of the Controller's Budget and Analysis Division (Division).

**Reporting Period:** January 1, 2019, through December 31, 2020

**Franchise Fee Paid:** \$338,100

Energy Center correctly reported \$30,917,763 in total gross receipts and \$16,904,990 in gross receipts subject to the franchise fee and correctly paid \$338,100 in fees to the City. However, Energy Center submitted its 2019 statement and paid its 2019 fee late. The audit also found that the SFPUC and Division generally fulfilled their obligations in administering and monitoring the franchise, but the Division did not always follow its internal policies.

The report makes two recommendations for how the Division can better monitor Energy Center's compliance with its payment and reporting requirements. The responses of SFPUC and the Division are attached to this report.

CSA and SEC appreciate the assistance and cooperation of Energy Center, SFPUC, and Controller's Budget and Analysis Division staff during the audit. For questions about the report, please contact me at [mark.p.delarosa@sfgov.org](mailto:mark.p.delarosa@sfgov.org) or 415-554-5393 or CSA at 415-554-7469.

Respectfully,

A handwritten signature in black ink, appearing to read "Mark de la Rosa".

Mark de la Rosa  
Director of Audits

cc: Board of Supervisors  
Budget Analyst  
Civil Grand Jury  
Citizens Audit Review Board  
City Attorney  
Mayor  
Public Library

Board of Supervisors:

Energy Center San Francisco LLC Paid the Correct Franchise Fees for 2019 and 2020 But Paid Its 2019 Fee Months Late and Did Not Always Meet Reporting Requirements

April 17, 2023



# EXECUTIVE SUMMARY

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## Purpose of the Audit

As required by the San Francisco Administrative Code, Chapter 11 – *Franchises*, the City Services Auditor assessed (1) whether Energy Center San Francisco LLC (formerly NRG Energy Center San Francisco LLC) complied with the reporting requirements and payment obligations contained in the chapter and in San Francisco Steam Franchise Ordinance 418-75 and (2) whether San Francisco departments complied with the relevant requirements for administering and monitoring the Steam Franchise Ordinance.

## Highlights

The San Francisco Board of Supervisors may grant a franchise by ordinance to another entity to construct, install, and/or operate facilities in public rights-of-way within the City and County of San Francisco (City).

In 1993, Energy Center San Francisco LLC (Energy Center) was granted a steam franchise authorizing it to install, maintain, and operate underground steam pipe conduits to carry steam and/or steam condensate for heating and other purposes through City streets, alleys, and other public places. In consideration for the franchise, Energy Center must annually submit a statement of gross receipts and a franchise fee payment to the City.

The San Francisco Public Utilities Commission (SFPUC) is responsible for administering and reporting on non-financial aspects of the franchise, while the Office of the Controller's Budget and Analysis Division (Division) is responsible for receiving and reviewing franchise statements and payments.

The audit found that Energy Center generally complied with its obligations under the steam franchise ordinance and the relevant provisions of the San Francisco Administrative Code but did not always meet reporting and payment deadlines and reporting requirements. The audit also found that although the SFPUC and Division generally fulfilled their obligations in administering and monitoring the franchise, the Division did not always follow its internal policies. If implemented, two of the audit's recommendations will help the Division to improve its oversight of Energy Center's compliance with its reporting and payment requirements.

# INTRODUCTION

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## **Audit Authority**

The Office of the Controller (Controller) is required under the San Francisco Administrative Code (Administrative Code), Chapter 11, Section 11.44(a), to file a report no less than every two years with the Board of Supervisors (Board) analyzing whether each franchisee is complying with the reporting requirements and payment obligations in the chapter and the relevant franchise ordinance.

The City and County of San Francisco (City) also has the right under the Administrative Code, Chapter 11, Section 11.38, to access the books and records of a franchisee to monitor compliance with the chapter, the franchise ordinance, or other applicable law.

Further, the San Francisco Charter provides the Controller's City Services Auditor Division (CSA) with broad authority to conduct audits. Sjoberg Evashenk Consulting, Inc., conducted this audit on behalf of CSA under these authorities.

## **Background**

In 1975, the San Francisco Board of Supervisors granted Pacific Gas and Electric Company (PG&E) a franchise to install, maintain, and operate underground steam pipe conduits to carry steam and/or steam condensate for heating and other purposes through City streets, alleys, and other public places.<sup>1</sup>

In 1993, the Board approved the transfer of the steam franchise from PG&E to Energy Center San Francisco LLC (Energy Center), formerly NRG.<sup>2, 3</sup>

In consideration for the franchise, Energy Center must, by March 31<sup>st</sup> each year, submit to the City a duly verified statement of its gross receipts subject to the franchise fee, which is based on the ratio of Energy Center's franchise assets to total operating assets valued at historical cost. By April 15<sup>th</sup> each year, Energy Center must pay the City 2

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<sup>1</sup> Ordinance No. 418-75.

<sup>2</sup> Ordinance No. 124-93.

<sup>3</sup> Energy Center is a subsidiary of NRG Yield, Inc., which is owned by NRG Energy, Inc. In August 2018, NRG Yield, Inc., changed its name to Clearway Energy Inc., doing business as Energy Center San Francisco LLP.

percent of its annual gross receipts arising from the use, operation, or possession of the franchise (gross receipts subject to the franchise fee). Franchise assets encompass all assets related to the sale of steam and located in public spaces, while assets located on private property are considered “non-franchise” assets. Energy Center maintains historical cost asset lists that track the historical cost of each asset and distinguish between franchise assets and non-franchise assets.

The Administrative Code, Chapter 11, designates the San Francisco Public Utilities Commission (SFPUC) as the entity responsible for administering and reporting to the Board on the City’s steam franchise, except for certain aspects that the Controller administers. The Controller’s Budget and Analysis Division (Division) is responsible for receiving Energy Center’s annual statement and collecting the franchise fees.

## **Objective and Scope**

The objective of the audit was to determine whether Energy Center complied with the reporting requirements and payment obligations contained in Administrative Code Chapter 11 – *Franchises* and Steam Franchise Ordinance 418-75 (franchise agreement) and whether City departments complied with the relevant requirements for administering and monitoring the franchise.

Specifically, the audit determined whether:

- Energy Center timely and accurately reported its gross receipts subject to the franchise fee under the terms of the franchise agreement;
- Energy Center correctly calculated and timely paid the City the proper franchise fee under the terms of the franchise agreement; and
- SFPUC and the Division complied with all applicable requirements in administering and monitoring the franchise.

This audit covered the period from January 1, 2019, to December 31, 2020.



## Methodology

To conduct the audit, the auditors reviewed the applicable provisions of Chapter 11 of the Administrative Code and the franchise agreement as well as conducted interviews of Energy Center, SFPUC, and Division management and staff.

To determine whether Energy Center accurately reported its gross receipts, the auditors identified and analyzed Energy Center's internal controls over franchise activities and compared receipts reported to the City to amounts recorded in Energy Center's records (monthly billing spreadsheets, annual sales summaries, and year-end income statements). On a sample basis, the audit team tested whether Energy Center invoiced customers according to meter-reading records and applicable rates and whether invoiced amounts were appropriately recorded as gross receipts. Further, the auditors determined whether adjustments to receipts were adequately supported.

To determine whether Energy Center correctly calculated the gross receipts subject to the franchise fee based on the ratio of franchise assets to total operating assets, the audit team compared historical cost asset lists between years for reasonableness and completeness, as well as verified key formulas to ensure the lists encompass all relevant values. The auditors also reviewed asset descriptions and evaluated whether Energy Center reasonably characterized assets as franchise and non-franchise. In addition, the auditors traced the historical cost assigned to each asset added in 2019 and 2020 to Energy Center's records (depreciation schedules, year-end trial balances, and year-end work in progress reports) and compared asset values on historical cost asset lists to values reported on Energy Center's statements of gross receipts.

To determine whether Energy Center correctly calculated and paid the City the correct franchise fee under the terms and deadlines specified in the franchise agreement, the audit team reviewed Division date stamps, if any, on Energy Center's annual statements of gross receipts and franchise fee payments, confirmed that the statements of gross receipts were duly verified, and checked each calculation in Energy Center's computation of its franchise fee to ensure mathematical accuracy. The audit team applied a materiality threshold set by CSA of the lesser of \$2,000 or 2 percent of Energy Center's calculated annual franchise fee due to any underpayments and overpayments identified.

To determine how well SFPUC and the Division complied with applicable requirements in administering and monitoring the

franchise, the audit team reviewed the most recent compliance report that SFPUC submitted to the Board and the tools the Division used to track and review franchise fee reports and payments.

**Statement of Auditing Standards**

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives.

**Auditee Response**

Energy Center agreed with the audit results but chose not to submit a written response to this report. SFPUC and the Division also agree with the audit finding results as shown in their responses attached to this report.

# AUDIT RESULTS

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## Summary

For the period of January 1, 2019, through December 31, 2020, Energy Center generally complied with its obligations under the steam franchise agreement and the relevant provisions of the Administrative Code by properly reporting and paying its franchise fee to the City. However, Energy Center was months late in submitting the required annual report and paying the franchise fee for 2019.

SFPUC and the Division generally complied with most of the requirements for administering and monitoring the franchise, but the Division did not always follow its internal procedures. Opportunities exist to better ensure Energy Center complies with franchise deadlines and reporting requirements.

## **Although Energy Center Accurately Reported Its Gross Receipts and Paid the Correct Franchise Fees, It Paid Its 2019 Fee Three Months Late and Did Not Meet Reporting Deadlines**

For 2019 and 2020, Energy Center reported a combined \$30,917,763 in total gross receipts with \$16,904,990 of that amount subject to the franchise fee and accurately paid \$338,100 in franchise fees to the City, as shown in Exhibit 1, in compliance with the franchise agreement and the relevant provisions of the Administrative Code.

However, Energy Center did not always meet payment deadlines or reporting requirements as set forth in the franchise agreement. The San Francisco Steam Franchise Ordinance (Ordinance 418-75) sets forth specific schedules and reporting provisions that require Energy Center to file a duly verified annual statement by March 31<sup>st</sup> of the year following the reporting (calendar) year and pay its annual franchise fee to the City by April 15<sup>th</sup> of the year following the reporting year.

Thus, although Energy Center's 2019 franchise statement and payment were due March 31 and April 15, 2020, respectively, the Division received Energy Center's 2019 statement on July 22, 2020, approximately four months late, and received the 2019 franchise payment on July 22, 2020, approximately three months late. Energy Center stated that it sent the 2019 franchise fee statement and payment late due to multiple entities handling payments as well as slower delivery services by the postal service because of the COVID-19 pandemic. Energy Center paid a late payment penalty of \$5,654.70, that was calculated based on Administrative Code section 11.27.

**Exhibit 1: Energy Center Reported Gross Receipts and Franchise Fees Paid:  
January 1, 2019, to December 31, 2020**

Year	(A) Total Gross Receipts	(B) Ratio of Franchise Assets to Total Operating Assets	(C) Gross Receipts Subject to Franchise Fee = (A) x (B)	Franchise Fee* = (C) x .02
2019	\$17,211,552	54.756809%	\$9,424,497	\$188,490
2020	\$13,706,211	54.577395%	\$7,480,493	\$149,610
<b>Total</b>	<b>\$30,917,763</b>	<b>—</b>	<b>\$16,904,990</b>	<b>\$338,100</b>

*Figures have been rounded to the nearest dollar.*

\*Franchise fee due is 2 percent of Energy Center's annual gross receipts subject to the franchise fee.

Sources: Energy Center's annual steam franchise statements of gross receipts and Division payment records.

**SFPUC Issued Its Statutorily Required Franchise Compliance Report**

SFPUC is required by the Administrative Code, Chapter 11, Article 5, Section 11.44(b), to file a report with the Board of Supervisors (Board) no less than every two years, analyzing whether each franchise grantee is complying with all provisions of the chapter and its franchise, except for those addressed by the Controller's report.<sup>4</sup> SFPUC issued a compliance report to the Board dated August 26, 2022.

**Controller's Budget and Analysis Division Generally Fulfilled Its Administrative Requirements**

The Division generally fulfilled its administrative requirements and generally followed its internal procedures with some minor adjustments as a result of the COVID-19 pandemic that began in early 2020 and continued into 2021, and California's governor issued Executive Order N-33-20 2020, that included requirements for non-essential workers to stay home due to the pandemic, referred to as the Shelter-in-Place Order.

The Division is responsible for ensuring Energy Center complies with the following agreement obligations:

- Franchise fee is correctly calculated;
- Franchise fee payment submitted by due date; and
- Annual statement submitted by due date and duly verified.

For the 2019 and 2020 statements and fee payments, the Division generally adhered to its written process for reviewing

<sup>4</sup> The Controller's Report refers to the report requirement under the Administrative Code, Chapter 11, Article 5, Section 11.44(a), analyzing whether each person owing a franchise fee is complying with the audit and reporting requirements and payment obligations in the Chapter.

the annual statements and payments. Specifically, the Division reviewed franchise fee statements and payments by continuing to use a spreadsheet to track key dates and payments, and completed data analyses to identify variances greater than 10 percent between expected franchise fee and surcharge revenue receipts and actual revenue receipts. However, the Division did not follow its established process to reach out Energy Center if variances greater than 10 percent were identified. Specifically, a variance of nearly 23 percent was identified for the 2020 payment; yet, the Division did not proactively follow up with Energy Center until notified by the audit team. In a minor deviation from the Division's written processes, the Division did not date stamp the physical copies of the statements sent by Energy Center; however, this represents a reasonable variance as there were no personnel from the Division physically present to date stamp the statements due to the COVID-19 pandemic and ensuing Shelter-in-Place order.

## **Recommendations**

1. The Controller's Budget and Analysis Division should follow its established procedures and contact Energy Center to determine the cause when variances between expected and actual franchise fee amounts are greater than 10 percent.
2. The Controller's Budget and Analysis Division should implement a process to notify the franchisee when annual statements and franchise fee payments are late.

# ATTACHMENT A: SFPUC'S RESPONSE

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525 Golden Gate Avenue, 13th Floor  
San Francisco, CA 94102  
T 415.554.3155  
F 415.554.3161  
TTY 415.554.3488

April 5, 2023

Mark de la Rosa  
Director of Audits  
City Hall, Room 476  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Subject: Energy Center San Francisco LLC Paid the Correct Franchise Fees for 2019 and 2020 But Paid Its 2019 Fee Months Late and Did Not Always Meet Reporting Requirements

Dear Mr. de la Rosa,

Thank you for providing us the opportunity to review the audit report, *Energy Center San Francisco LLC Paid the Correct Franchise Fees for 2019 and 2020 But Paid Its 2019 Fee Months Late and Did Not Always Meet Reporting Requirements*, prepared by the Controller's Office City Services Auditor.

We appreciate the time your staff dedicated to this audit and are pleased that there are no findings related to SFPUC's role in administering and reporting on the non-financial aspects of the franchise.

If there are any questions or additional information is needed, please do not hesitate to contact me at 415-554-1600.

Sincerely,

Dennis Herrera  
General Manager

CC: Ronald Flynn, Deputy General Manager  
Nancy Hom, AGM Business Services/CFO  
Irella Blackwood, Audit Director

**London N. Breed**  
Mayor

**Newsha K. Ajami**  
President

**Sophie Maxwell**  
Vice President

**Tim Paulson**  
Commissioner

**Anthony Rivera**  
Commissioner

**Kate H. Stacy**  
Commissioner

**Dennis J. Herrera**  
General Manager

**OUR MISSION:** To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.



# ATTACHMENT B: CONTROLLER'S RESPONSE

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## OFFICE OF THE CONTROLLER CITY AND COUNTY OF SAN FRANCISCO

Ben Rosenfield  
Controller  
Todd Rydstrom  
Deputy Controller

April 6, 2023

Mr. Mark de la Rosa  
Director of Audits  
City Hall, Room 476  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

RE: 2019 and 2020 Energy Center franchise audit

Dear Mr. de la Rosa,

Thank you for the opportunity to review the audit of franchise fees and surcharges remitted to the City by Energy Center for 2019 and 2020. We agree with the findings and do not note any errors or omissions.

Sincerely,

/s/ \_\_\_\_\_

Michelle Allersma  
Director, Budget & Analysis Division

CITY HALL • 1 DR. CARLTON B. GOODLETT PLACE • ROOM 316 • SAN FRANCISCO, CA 94102-4694  
PHONE 415-554-7500 • FAX 415-554-7466

## Recommendations and Responses

For each recommendation, the responsible agency should indicate in the column labeled *Agency Response* whether it concurs, does not concur, or partially concurs and provide a brief explanation. If it concurs with the recommendation, it should indicate the expected implementation date and implementation plan. If the responsible agency does not concur or partially concurs, it should provide an explanation and an alternate plan of action to address the identified issue.

Recommendation	Agency Response	CSA Use Only Status Determination*
<p>The Controller's Budget and Analysis Division should:</p> <p>1. Follow its established procedures and contact Energy Center to determine the cause when variances between expected and actual franchise fee amounts are greater than 10 percent.</p>	<p><input checked="" type="checkbox"/> Concur    <input type="checkbox"/> Do Not Concur    <input type="checkbox"/> Partially Concur</p> <p>The Budget and Analysis Division concurs it should adhere to its own internal process to review variance from forecast when statements and payments are received each spring. The lapse occurred in Spring 2020 during a global pandemic, when the Division was focused intensely on forecasting and rebalancing large, current-year and future-year shortfalls, rather than rigidly adhering to previously established procedures around the steam franchise, worth about \$200,000. Now that our work is more stable, the Division is re-focused on training and adhering to its desk procedures.</p>	<p><input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested</p>
<p>2. Implement a process to notify the franchisee when annual statements and franchise fee payments are late.</p>	<p><input checked="" type="checkbox"/> Concur    <input type="checkbox"/> Do Not Concur    <input type="checkbox"/> Partially Concur</p> <p>The Budget and Analysis Division concurs it should notify the franchisee as soon as an annual statement and payment are late. This will be added to our procedures sheet.</p>	<p><input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested</p>

\* Status Determination based on audit team's review of the agency's response and proposed corrective action.