

Decision No. 23553

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
PACIFIC GAS AND ELECTRIC COMPANY and  
MODESTO IRRIGATION DISTRICT, for an  
order of the Railroad Commission of the  
State of California authorizing appli-  
cants to execute written agreements  
and a deed in words and figures as  
written in the forms therefor which  
are hereto annexed, marked Exhibits 1,  
A, B, and C and made a part hereof,  
etc.

ORIGINAL

Application No. 23553

R. W. DuVal, for Pacific Gas and Electric  
Company.

Vernon F. Gant and F. O. Hoover, for  
Modesto Irrigation District.

Frank Andrews, for Modesto Irrigation District  
Power and Water Users Association.

BAKER, COMMISSIONER:

O P I N I O N

The above captioned application was filed herein by the Pacific Gas and Electric Company (hereinafter sometimes referred to as "Pacific") and the Modesto Irrigation District (hereinafter sometimes referred to as "District") as their joint petition for an order of the California Railroad Commission authorizing the execution of a series of agreements which provide, among other things, for the transfer by the Pacific Gas and Electric Company to the Modesto Irrigation District of certain described electric distribution properties and the sale by the former to the latter of electric

energy, all as more particularly specified and set forth in Exhibit No. 1, and Exhibits "A", "B" and "C", on file in this proceeding.

With reference to the major agreement of the said series (Exhibit No. 1), the following significant items might be specially noted:

- (1) The Pacific Gas and Electric Company agrees to sell, transfer and convey to the Modesto Irrigation District those certain electric distribution properties which, with a single minor exception, lie within the District's defined operative area, which electric distribution properties are more particularly described and set forth in Exhibit "A" of the said application.
- (2) The stipulated purchase price of the said property is the sum of \$325,000, and, as further consideration therefor, the execution of a pole contact agreement (Exhibit "B") and a yet another agreement (Exhibit "C") for the sale and purchase of electric energy. Of the said \$325,000, the sum of \$50,000 is to be paid in cash at the time of the execution and delivery of the agreement of sale, with regular monthly installments, in the sum of \$3,100 each, to be paid thereafter until payment in full of the said purchase price, with interest payable on all unpaid balances at the rate of 6% per annum.

- (3) Upon the execution and delivery of the several instruments hereinbefore referred to, involving an escrow deposit of an appropriate deed of conveyance from Pacific to the District, the possession of the said electric system shall be forthwith delivered to the said Modesto Irrigation District, whereupon the said District shall assume, and thenceforth discharge, the present public utility obligations of the Pacific with respect to service through the medium of the said electric system.
- (4) It is further specified in the said agreement (Exhibit No. 1) that from and after the date thereof, and until March 12, 1954, the District shall, subject to certain minor exceptions, confine within its defined operative area its business of selling and distributing electric energy, and that it will not extend its electric distribution lines beyond the borders of such operative area, or dispose of electric energy within such operative area for resale or use beyond the boundaries thereof; and, conversely, it is further provided that Pacific shall not, subsequent to the date of the said agreement, engage in the business of selling and distributing electric energy within the District's said operative area, or to dispose of electric energy outside of the said District's operative area for

resale or use within such area, subject to certain minor specified exceptions.

By and through another of the said series of agreements, designated Exhibit "C", it is provided that Pacific shall sell and deliver to the District, and that the latter shall purchase, all electric energy which the District may require for its service within its operative area over and above that which the District may generate itself, or which it is obligated to purchase under any existing contracts. It is further provided, that the District's monthly demand in kilowatts shall in no case be less than 2,500 kilowatts. The stipulated rate to be paid by the District for such electric energy as it may require from Pacific is in accordance with the Pacific's filed tariff, namely, Schedule P-6-S. This is a limited Schedule and applies to the District and to the Southern California Edison Company Ltd. for power delivered by Pacific to the Edison Company at Hanford.

This particular agreement, designated Exhibit "C", contains a section to the effect that at all times it shall be subject to such changes or modifications as the California Railroad Commission, may, from time to time, direct in the exercise of its jurisdiction.

A public hearing was held on the said application in the Court House, at Modesto, California, on Monday, August 5, 1940, at which time and place evidence, both oral and documentary, was received and the matter thereupon submitted for decision.

It is of record that Pacific, together with its predecessors in interest, has continuously rendered electric service in the Modesto area since 1890, and that since the month of October, 1923, at which time the District instituted a parallel electric system, the electric distribution system of each has been in active competition with the system of the other.

By Decision 27050, dated May 14, 1934, in Application No. 18653, (Vol. 39, Opinions and Orders of the Railroad Commission, page 212), the Commission fixed the just compensation to be paid by the District to the Pacific's predecessor, Sierra and San Francisco Power Company, for certain of the electric system of Pacific's predecessor located within the District area. The Pacific's predecessor refused to accept the compensation fixed by the Commission. In 1934 the District commenced an action in eminent domain in the Superior Court of the State of California, in and for the County of Stanislaus, to acquire the land and properties for which the Commission had fixed just compensation. This proceeding is still pending in the said Court.

The testimony shows that during 1939 the Pacific had about 1,075 customers attached to the properties which it has agreed to sell to the District; and that it sold to said customers 3,455,725 kilowatt hours of electric energy, for \$69,091.94.

No protest has been filed against the granting of the said application, and no one appeared at the hearing in opposition thereto.

The execution of the agreements hereinabove mentioned will eliminate the competitive condition that has existed in the District since 1923. Both the Pacific and the District will be relieved of competitive expenses. Also, future duplication of investment, facilities and service will be avoided. The pending condemnation case will be dismissed.

The following form of order is submitted:

O R D E R

The Commission having considered the evidence in this proceeding and it being of the opinion that this application should be granted subject to the provisions of this order, therefore,

IT IS HEREBY ORDERED that Pacific Gas and Electric Company may, on or before December 31, 1940, execute agreements and an indenture of deed in the same form as the agreements and the indenture of deed filed in this proceeding as Exhibit No. 1 and Exhibits "A", "B" and "C", all for the primary purpose of transferring to Modesto Irrigation District the properties described in said Exhibit "A".

IT IS HEREBY FURTHER ORDERED that Pacific Gas and Electric Company shall, within sixty (60) days after the transfer of said properties, notify the Commission of the date when said properties were transferred, and correct its filed rates, withdrawing rates applicable to the service area transferred.

IT IS HEREBY FURTHER ORDERED that Pacific Gas and Electric Company shall file with the Railroad Commission within

ninety (90) days after the transfer of said properties a copy of each book entry whereby it has recorded the sale of said properties.

IT IS HEREBY FURTHER ORDERED that the authority herein granted shall become effective upon the date hereof.

The foregoing Opinion and Order are hereby approved and filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13<sup>th</sup> day of August, 1940.

Clyde Liley  
Frank D. Allen  
Raymond W. ...  
...  
Justus J. Casner  
Commissioners.