

Decision No. 23583

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the matter of the application of PACIFIC GAS AND ELECTRIC COMPANY, a corporation, for an order of the Railroad Commission of the State of California, granting to applicant a certificate of public convenience and necessity, to exercise the right, privilege and franchise granted to applicant by Bill No. 325, Ordinance No. 413 (Series of 1939) of the People of the City and County of San Francisco, State of California.

Application No. 23583

In the matter of the application of PACIFIC GAS AND ELECTRIC COMPANY, a corporation, for an order of the Railroad Commission of the State of California, granting to applicant a certificate of public convenience and necessity, to exercise the right, privilege and franchise granted to applicant by Bill No. 326, Ordinance No. 414 (Series of 1939) of the People of the City and County of San Francisco, State of California.

Application No. 23584

R. W. DUVAL, for the Applicant.

JOHN J. O'TOOLE, City Attorney,
DION R. HOLM, Assistant City Attorney,
and PAUL BECK, valuation rate engineer,
by PAUL BECK, for the City and County
of San Francisco.

BY THE COMMISSION:

O P I N I O N

Pacific Gas and Electric Company seeks certificates to exercise two franchises recently granted by the City and County

of San Francisco, one covering the maintenance of facilities for the distribution of gas and the other for the distribution of electricity.

Applicant has long rendered both gas and electric service within San Francisco, it claiming the right to do so by virtue of Section 19 of Article XI of the Constitution. However, upon the insistence of the City and for the purpose of eliminating any uncertainty as to its legal right to distribute gas and electricity for all purposes, applicant applied for and has received franchises of indeterminate duration. The sum of \$200,000 was paid for each. The annual fees provided in said franchises correspond to those set forth in the general Franchise Act of 1937, one per cent of the revenues obtained from the sale of gas for all purposes, and one-half of one per cent of revenues obtained from the sale of electricity for all purposes.

It is obvious that public convenience and necessity require that applicant should be authorized to exercise such franchise rights. The sums paid therefor, while large, were exacted by the City under the claim that applicant has been enjoying an unauthorized use of the streets without payment of any fee. It is clear that whatever considerations may have influenced the parties in arriving at an agreement in respect to the amounts to be paid for the respective franchises, such amounts must be taken as payments made "in consideration" for the grants and represent the "cost" thereof. Under such circumstances, we must conclude that applicant may properly make the usual accounting disposition of such costs and be permitted to enter them under the appropriate fixed capital accounts.

O R D E R

A public hearing having been had upon the above entitled applications, the matters having been fully considered, and

it appearing, and being found as a fact that public convenience and necessity so require, Pacific Gas and Electric Company is hereby granted certificates to exercise the rights and privileges granted it by the City and County of San Francisco under Bill No. 325, Ordinance No. 413 (Series of 1939) and under Bill No. 326, Ordinance No. 414 (Series of 1939), provided that no claim of value for either of such franchises or the authority herein granted in excess of the actual cost thereof shall ever be made by grantee, its successors or assigns, before this Commission or before any court or other public body.

The authority herein granted shall become effective on the twentieth day after the date hereof.

Dated, San Francisco, California, this 11th day of February, ¹⁹⁴¹~~1940~~

[Handwritten signature]
Ray & Riley
Justin J. Casmen

~~SECRETARY OF THE PUBLIC UTILITIES COMMISSION~~

COMMISSIONERS.

~~Secretary of the Board of Commissioners of the State of California~~

For substantially the same reasons which I assigned in the Alameda gas franchise case, application No. 22432, I dissent from the majority order and opinion in this case.

In the present instance it is claimed that applicant paid the City and County of San Francisco the sum of \$200,000 as the purchase price of a gas franchise, although the evidence indicates that the city had asserted a claim for compensation for the company's use of the streets during past years, and the franchise significantly discharges all such claims against the company. It appears further from the evidence that the applicant and the city had agreed upon a total amount of \$400,000 to be paid for two franchises, one for gas and one for electricity, and that the alleged purchase price of each franchise was arbitrarily fixed at one-half of the agreed total. These franchises also contain a provision that the alleged purchase payment shall be refunded if the city ever buys the applicant's property, or if the Railroad Commission should refuse a certificate to exercise the franchise rights.

The unusual provisions of this franchise, and the large amount of the asserted purchase price, strengthen my belief that the Commission should proceed immediately to determine a policy with respect to proper payments for franchises. I recognize that the continued service of gas is a public necessity in San Francisco, and would favor the issuance of a certificate for the exercise of the franchise rights in this case as soon as such a policy is determined.

Francis R. Havens
Commissioner.

For the reasons hereinafter set forth, as well as for reasons which I assigned in the San Francisco gas franchise case, application No. 23583, and the Alameda gas franchise case, application No. 22432, I dissent from the majority opinion and order in this case.

I am informed by the City Attorney of San Francisco that a proposed leasing agreement between the City and County of San Francisco and the Pacific Gas and Electric Company, whereby the City and County will lease and operate all of the company's facilities for the distribution of electricity in San Francisco, will be presented to the Railroad Commission for approval in the immediate future.

It would appear that the question whether public convenience and necessity require the issuance of a certificate to enable the Pacific Gas and Electric Company to exercise authority to distribute and sell electricity granted by Bill No. 326, Ordinance No. 414 (Series of 1939) of the City and County of San Francisco, cannot be accurately determined until the Commission has had an opportunity to examine all of the provisions of the proposed leasing agreement. The new franchise granted by the City and County of San Francisco was primarily intended to amplify and expand the authority conferred by the so-called constitutional franchise of 1911 so that electricity might be sold for all kinds of uses. The constitutional franchise of 1911 apparently authorized the sale of electricity for lighting purposes only. If the company is about to transfer all of its local commercial electric business, including the sale of electricity for all purposes, to the City and County of San Francisco by the proposed leasing agreement, the question arises whether it will be necessary at this time for the company to exercise its new franchise authority to sell electricity for all of these purposes.

It is difficult for the Commission to form an opinion of the company's need for the exercise of additional franchise authority after the leasing agreement is entered into until we have an opportunity to examine the terms of the agreement. I therefore believe that action on this certificate of public convenience and necessity should be deferred until the leasing agreement now being negotiated is received and examined by the Commission.

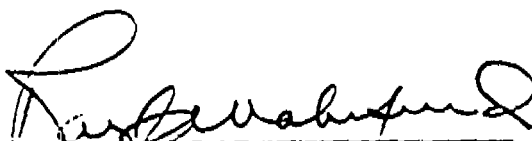

Francis D. Havens
Commissioner.

I dissent upon the same general grounds as those expressed in my dissent to Decision No. 33902 in Application No. 22432, Pacific Gas and Electric Company for an order granting to applicant a certificate of public convenience and necessity to exercise the franchise granted by Ordinance No. 665 N.S. of the Council of the City of Alameda. While the facts are slightly different, the same general considerations are involved.

These San Francisco franchises (differing therein from the Alameda franchise) purport to grant to the applicant "a franchise to introduce into, transmit, distribute and supply to the City and County of San Francisco and its inhabitants electricity" and gas, as well as to construct and use facilities in the streets for those purposes. Since no authority in the City and County of San Francisco, other than to grant the right to use the streets, has come to my attention, the situation does not seem to differ from that of the Alameda franchise. The foregoing order only grants to the applicant the right to exercise the franchises. It does not therefore grant any greater rights than the City could lawfully grant.

The question of the amount paid for the franchises is further complicated here by the fact that the amount to be paid by the company to the City was after extended negotiations (involving, as in the Alameda case, the proper reimbursement for past use of the streets) fixed at \$400,000, and the amount was then "arbitrarily" divided between the gas and electric franchises. According to the evidence, neither the City nor the company considered the relative value of the two franchises and the majority opinion above does not do so although the company's electric revenues from its business in San Francisco are about twice its gas revenues. Treatment of the matter in this way is a discrimination against the gas consumers in

favor of the electric consumers, in addition to the other infirmities in the order pointed out in connection with the Alameda application.



Commissioner.