Decision No. 32751

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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 Ordinance No. 258 of the Board of Supervisors of the County of Mendocino, State of California.	ORIGINAL Application No. 21744

BY THE COMMISSION:

SUPPLEMENTAL OPINION AND ORDER

Pacific Gas and Electric Company seeks a modification of the order contained in our Decision No. 32751 of January 23, 1940, which order granted a certificate for the partial exercise of the electric franchise obtained from the County of Mendocino.

The substance of the plea advanced for an amendment of that order is that the Commission has unnecessarily restricted applicant's future service areas to those portions of the county within which extensions of its existing electric system may be made in the ordinary course of business as permitted by any applicable extension rule approved by the Commission, provided that no other utility or political body may at the time be rendering a similar service. Applicant points out that it has stipulated not to invade any area now being served by other utilities or municipal corporations, and asserts that by Section 50(a) of the Public Utilities Act it is accorded the right to make extensions into areas contiguous to its present system as long as it

does not invade the territory served by other public utilities of like character.

Upon reconsideration of the matter, we are of the opinion that some modifications of the order first issued are appropriate and desirable. It has ever been the object of the Commission to provide some safeguard against uncontrolled competition, whether the competition be a possible invasion of one utility into the field occupied by another of like character, or the area invaded be served by a non-utility corporation. But when the possibility of such future conflict is largely removed by the applicant's declared intention not to make any extension in competition with existing services, it has never been the practice of the Commission, nor does the necessity now appear, to so limit the certificate granted as to foreclose the utility from making ordinary service extensions within the area it has undertaken to serve. Should another assert and possess a similar right, such conflicts may be dealt with by the Commission under its reserved power to restrict further utility extensions should the necessity for such limitation then appear.

We are of the opinion that the original order made in this proceeding should be amended.

O R D E R

The petition of Pacific Gas and Electric Company for a modification of the Commission's Decision No. 32751 having been fully considered, and good cause appearing, IT IS HEREBY ORDERED that the order contained in said decision be and hereby is amended to read as follows:

It appearing, and being found as a fact that public convenience and necessity so require, Pacific Gas and Electric Company

is hereby granted a certificate to exercise the rights and privileges granted by the County of Mendocino by Ordinance No. 258 adopted December 16, 1936, to the extent that Pacific Gas and Electric Company may exercise said rights and privileges within such parts or portions of said county as are now served by it or as hereafter may be served by it through extensions of its existing system made in the ordinary course of business as contemplated by Section 50(a) of the Public Utilities Act; provided, however, that this certificate shall be subject to the stipulation given by Pacific Gas and Electric Company that, except upon further authority of this Commission first obtained, it will not exercise such franchise for the purpose of furnishing or supplying electricity in those parts or portions of said county now being served by Central Mendocino County Power Company, the City of Ukiah, California Public Service Company, Benbow Power Company, Pt. Arena Electric Light and Power Company, or E. N. Frost, and subject also to the condition that the Railroad Commission may hereafter by appropriate proceeding and order limit the authority herein granted as to any territory within said county not then being served by Pacific Gas and Electric Company. It is provided further that no claim of value for such franchise 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 date hereof.

Dated, ~~San~~ ~~Francisco~~ Los Angeles, California, this 25th day of February, 1941.

Commissioners

I dissent from the foregoing supplemental order.

I believe Decision 32751 should be amended to include a direct finding of public convenience and necessity, in so far as public convenience and necessity can be found, for the exercise of whatever rights are granted by the decision. I feel that Decision 32751 should otherwise remain in effect as issued, except to enlarge the meaning of the phrase "political body" as hereinafter pointed out, and to clarify the question of whether operating rights are being granted.

I differ from the foregoing prevailing opinion and the supplemental order based thereon, in the following particulars:

1. It is not clear therefrom whether operating rights or only rights to use the highways are being dealt with. Other orders of the Commission granting certificates where city or county franchises were involved have not been clear on this point but the issue has now been raised as to what sort of certificate is being granted and, being raised, it should be decided. If in this proceeding the Commission is not dealing with operating rights, and if no right to operate an electric system is being granted by the foregoing supplemental order, the Commission should say so. Otherwise, the Commission puts it in the power of the applicant to construe an order which only grants the right to exercise a franchise to use the highways as an order granting operating rights, and to represent to the interested investment officials in other states that it has rights to "operate" in areas where it does not actually possess them.

2. There should be a greater limitation on where the applicant may operate, if operating rights are being granted. The limitation contained in the foregoing supplemental order, that the applicant shall abide by its stipulation, voluntarily given, that it will not compete with existing utilities or the City of Ukiah in territory "now being served" by such other agencies, is not sufficient to protect against competition where the others may be serving (outside of the area now being served) when the applicant desires to start competition.

It has been suggested that this latter objection can be fully met by a general order of the Commission applying to all utilities and adopting appropriate rules governing extensions. I think that may be true and I shall favor the adoption of such a general order adequately meeting the problem herein involved. However, such an order is not now before us; we do not know what terms the Commission can agree on for such a general order; and I do not believe the Commission should grant the authority which it does in the foregoing supplemental order to this applicant at this time without greater limitation.

3. The conclusion that public convenience and necessity require the exercise of the franchise on a county-wide basis is factually inaccurate unless the limitations I propose are adopted. Public convenience and necessity do not now require that the applicant serve the whole county; there is little possibility that they will ever require it; and certainly public convenience and necessity do not require that applicant be given authority now which may permit it to extend its service at some time in the future into an area then being adequately served by another agency.

In view of my conclusions and the importance of this matter, a discussion of the proceeding and what is involved therein is desirable.

Pacific Gas and Electric Company has filed a petition for amendment and modification of the order of the Commission rendered in Decision No. 32751 on January 23, 1940, in this proceeding. This decision grants to applicant a certificate of public convenience and necessity to exercise in part a franchise granted by the Board of Supervisors of Mendocino County.

Applicant requests amendment in the order to include a direct finding of public convenience and necessity. Such a direct finding was not made in Decision No. 32751, although the Commission therein "ordered that a certificate of public convenience be and hereby is made and granted to Pacific Gas and Electric Company." This request should be granted, as is done in the foregoing order, though I cannot agree that public convenience and necessity was established to the extent found under one of the possible interpretations of the order hereafter discussed.

Applicant's further request for modification arises out of the fact that the certificate to exercise the franchise was granted only in part and subject to certain limitations. The foregoing supplemental order, while not eliminating all restrictions, does modify them in the applicant's favor.

The franchise in question was granted by Ordinance No. 258 of the Board of Supervisors of Mendocino County, the granting portion of which is as follows (being all of Section 1 of said Ordinance):

"Section 1. The right, privilege and franchise of erecting, constructing and maintaining electric lines consisting of poles or other suitable structures and wires, crossarms and other appliances installed thereon, including wires for the private telephone and telegraph purposes of the grantee, in so many and in such parts of the public highways, streets, roads and places of said County of Mendocino as the grantee of said right, privilege and franchise may from time to time elect to use for the purposes hereinafter specified, and of using such electric lines for the purpose of transmitting, conveying, distributing and supplying electricity to the public for light, heat, power and all lawful purposes, are hereby granted by said County of Mendocino for the term of fifty (50) years from and after the time when this ordinance shall take effect, to Pacific Gas and Electric Company, its successors and assigns."

Applicant now serves electricity in Mendocino County. Its operations are confined to approximately the southerly one-third of the county. Its most northerly point of operation is the Potter Valley powerhouse west of Willits, from which a 60,000 volt transmission line runs southerly near the easterly line of the county through Hopland and into Sonoma County on the south. Various distribution lines lead from this transmission line confined mostly to the easterly part of the southerly one-third of the county, except one line which extends from near Ukiah westerly through or near Booneville to Navarro. The areas operated are around Potter Valley, Ukiah, Hopland, Booneville and Navarro, including the first and the latter three unincorporated towns. The instant franchise would not apply to the service within the City of Ukiah, which is incorporated. The City of Ukiah has a municipal system which serves that community, but the applicant has resale customers therein, including the City of Ukiah.

Other privately owned utilities operating in the county are Central Mendocino County Power Company, operating in and around Willits (since the hearing in this matter this operation has been acquired by California Public Service Company); Point Arena Electric Light and Power Company, operating in the area

in and around Point Arena on the coast near the southerly boundary of the county and the area in and around Covelo in the northeastern part of the county; California Public Service Company operating in the area in and around Fort Bragg and the town of Mendocino, both on the coast; Long Valley Light and Power Company, serving the area in and around Laytonville; the Benbow Power Company in the extreme northerly portion of the county and whose operations also extend into Humboldt County on the north.

Applicant holds various Mendocino County franchises at the present time. The first covers the area formerly known as the town of Potter Valley which has since been disincorporated. This franchise known as Ordinance No. 40 expires on July 20, 1957.

The second franchise, known as Ordinance No. 151, was granted to Snow Mountain Water and Power Company and expires on June 21, 1956.

The third franchise is a general county franchise (Ordinance No. 183 of the Board of Supervisors of Mendocino County) and runs until October 6, 1961.

The fourth was granted originally to California Telephone and Light Company, is known as Ordinance No. 200 and expires March 30, 1964.

The fifth was originally granted to Snow Mountain Water and Power Company, is known as Ordinance No. 224, and expires September 14, 1977.

All of these franchises except that granted by Ordinance No. 183 cover less territory than the entire county. The record is not clear as to what portion of the county each covers, other than that granted by the former town of Potter Valley. There

is nothing in the record to indicate and applicant does not contend it does not have ample authority to maintain its present operations in the county and any presently contemplated extensions thereof. Applicant does allege that it is desirable to extend the term of its franchise rights in this county to a date past 1961, the date of the franchise granted under Ordinance 183. In this connection, it states in its application herein:

> "That while applicant is in possession and ownership of valid franchises of erecting, constructing and maintaining electric lines in the public highways, streets, roads and places of said County of Mendocino, and of using such electric lines for the purpose of transmitting, conveying, distributing and supplying electricity to the public for light, heat, power and all lawful purposes it applied for and obtained the franchise granted by said Ordinance No. 258 of the Board of Supervisors of the County of Mendocino primarily to enable applicant to continue to qualify its First and Refunding Mortgage Bonds as legal investments for savings banks and trust funds; that the laws of a number of the states of the United States permit, under definite restrictions, the investment of savings banks and trust funds in public utility securities; that the laws of the State of New York, as an example, permit investments by savings banks in the bonds of gas and electric corporations provided, among other things, that 'such corporation shall have all franchises necessary to operate in territory in which at least seventy-five (75) per centum of its gross income is earned, which franchise shall either be indeterminate permits or agreements with, or subject to the jurisdiction of a public service commission or other duly constituted regulatory body, or shall extend at least five years beyond the maturity of such bonds * * *' that the statutes of other states, such as Pennsylvania, Connecticut, and Minnesota, contain substantially the same provision as that of the law of the State of New York, above quoted; that the Massachusetts Banking Act contains like provision, excepting that a three year period instead of a five year period, beyond the maturity of bonds is specified; that the most recent issue of applicant's First and Refunding Mortgage Bonds matures in the year 1966; that it is desirable that said issue of bonds, together with other issues of applicant's First and Refunding Mortgage Bonds previously sold and those which may hereafter be sold, should qualify as legal investments for savings banks and trust funds in as many states of the United States as is possible; that by effecting such purpose, the market for applicant's bonds is definitely broadened and applicant is enabled to dispose of its said bonds at higher prices than would otherwise be obtainable; in other words, the matter of the legalization of applicant's bonds as savings banks investments has a definite bearing upon the cost of money to your applicant; that in order to qualify applicant's said last mentioned First and Refunding Mortgage Bonds as savings banks investments in the State of New York

and certain other states of the United States, it is essential that your applicant possess the requisite franchises and franchise rights extending to the year 1971; and that the exercise by your applicant of the right, privilege, and franchise granted by the aforementioned Ordinance No. 258 of the Board of Supervisors of the County of Mendocino (which said franchise expires on or about January 15, 1987) together with other rights, privileges, and franchises now possessed and exercised by your applicant and those obtained and hereafter to be obtained, is essential to enable applicant to so qualify its said bonds."

I think it is not necessary for this Commission to interpret the New York or other statutes referred to or to decide whether the word "franchise" in the New York statute embraces certificates of public convenience and necessity such as are issued by this Commission. We should make our action clear, so that officials of the other states who have the duty of interpreting and administering their statutes can know what we are doing. They can then determine whether the action we take meets the requirements of their statutes.

It must be noted that the franchises which are required are "all franchises necessary to operate in territory in which at least seventy-five (75) per centum of its gross income is earned," and that franchises for the use of roads only would not meet this requirement. Since applicant's principal reason for seeking this franchise is to qualify its bonds, as disclosed by testimony presented by it, it may be considered that it seeks in this proceeding authority "to operate" as opposed to mere permission to use the roads where it operates under other authority. This was the interpretation I placed on its application in concurring in Decision 32751. To operate it must "maintain" and if it increases the territorial scope of its operations it must "construct." (1)

(1) It must either construct new lines or purchase existing ones. The purchase of the existing lines of other public utilities involves other questions of statutory construction which it is not necessary to discuss here.

At least if the order is dealing with operations, the Commission can by controlling construction control the territorial extent of operations.

The prayer at the end of the original application in this proceeding is as follows:

> "WHEREFORE, applicant, PACIFIC GAS AND ELECTRIC COMPANY, prays that this Honorable Commission duly give and make its order and decision granting to applicant a certificate declaring that the present and future public convenience and necessity require, and will require, the exercise by it of the right, privilege and franchise granted by said Ordinance No. 258 of the Board of Supervisors of the County of Mendocino, State of California, all as provided for in Section 50(b) of the Public Utilities Act of the State of California."

The order contained in Decision No. 32751 of which amendment or modification is sought is as follows:

> "IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and hereby is made and granted to Pacific Gas and Electric Company to exercise in part the rights and privileges granted to it by the County of Mendocino, State of California, by Ordinance No. 258 adopted December 16, 1936, namely, for the construction, maintenance and operation of electrical lines, plant, or system within such portion or portions of said county as are now served by Pacific Gas and Electric Company and which hereafter may be served by it through extensions of its existing system when made in the ordinary course of business as permitted by any applicable rule or rules prescribed by or approved by the Commission governing the making of such extensions, or in accordance with any general or special authority granted, provided, however, that no such extension of line, plant or system shall be made into any territory in said county at the time receiving electric service through the facilities of another utility or political body unless express authority of the Commission first be obtained, and provided, further, that no claim of value for such franchise or the authority hereby granted in excess of the actual cost thereof shall ever be made before the Commission or before any court or other public body."

The petition for modification or amendment alleges:

> "1. The order evidences a failure to take into account the distinction between a petition under Section 50(a) of the Public Utilities Act and a petition under Section 50(b) of said Act with the result the Commission has undertaken to pass upon and decide matters not at issue or involved in Application

No. 21744, namely, the right of petitioner to hereafter begin the construction of an electric line, plant or system, or any extension of an electric line, plant or system in the County of Mendocino.

"2. Although the Order does not grant petitioner a certificate authorizing it to construct any electric line, plant or system, or any extension of electric line, plant or system in the County of Mendocino, it undertakes to place a prohibition upon the right of petitioner respecting the making of certain extensions, namely: any extension of line, plant or system into any territory in said County at the time receiving electric service through the facilities of another utility or political body; and

"3. The order undertakes to impose conditions upon the right of petitioner to make extensions of its existing electric system in the County of Mendocino not contemplated or warranted by the Public Utilities Act, namely that applicant shall not, unless express authority of the Commission be first obtained, make any extension of line, plant or system into any territory in the County of Mendocino at the time receiving electric service through the facilities of a 'political body.'" (Italics supplied)

By the portion of said petition italicized above, the applicant disclaims that Decision 32751 authorizes it to construct any line, plant or system. What then does it or the supplemental order grant?

The foregoing allegations refer to Sections 50(a) and 50(b) of the Public Utilities Act. The essential portions of these sections are as follows:

"SEC. 50(a) No * * * electrical corporation * * * shall henceforth begin the construction * * * of a line, plant, or system, or of any extension of such * * * line, plant, or system, without having first obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such construction; provided, that this section shall not be construed to require any such corporation to secure such certificate for an extension * * * into territory either within or without a city and county, or city or town, contiguous to its * * * line, plant, or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business; and provided, further, that if any public utility, in constructing or extending its line, plant, or system, shall interfere or be about to interfere with the operation of the line, plant, or system of any other public utility, already constructed, the commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants, or systems affected as to it may seem just and reasonable.

"(b) No public utility of a class specified in subsection (a) hereof shall henceforth exercise any right or privilege under any franchise or permit hereafter granted, or under any franchise or permit heretofore granted but not heretofore actually exercised, or the exercise of which has been suspended for more than one year, without first having obtained from the commission a certificate that public convenience and necessity require the exercise of such right or privilege; * * *"

Subsection (b) of Section 50 of the Public Utilities Act is ambiguous. The legislature may have enacted it in order to authorize the Commission to grant certificates to exercise franchises to operate granted by counties. If this is its purpose and meaning, it has no application here because it would appear from the decision of the Supreme Court in Oro Electric Corporation vs. Railroad Commission (169 Cal. 466) that in the absence of statutory or constitutional authority which has not come to my attention, California counties do not have authority to grant franchises "to engage in the business of furnishing electric current", i. e. to operate, and that their authority is limited to the narrower grant of a right to use the roads, etc., in carrying on that business or in operating. Therefore, no authority to operate could have been granted legally by the Mendocino County franchise which the Commission could certificate, in spite of the fact that by its terms the franchise ordinance purports to grant the right to erect, construct and maintain electric lines in the streets and to use such electric lines for the purposes set forth. The grant of the right to use or to operate is beyond the power of the county under the Oro Electric decision, and there is no operative right granted by the county for the Commission to certificate.

A second possible interpretation is that the legislature by this subsection intended that the Commission should only certificate the rights granted by counties to use the roads; that consideration of operative rights was not contemplated as within the purview of the subsection, but that the utility should seek and obtain rights to operate under other appropriate laws.

If this is the meaning intended to be adopted by the majority of the Commission, I could concur in the supplemental order, but I believe the order or opinion should make it clear what the Commission is doing. Operative rights would not be involved under this interpretation of the statute, and no limitations on the right to operate under the order would be involved.

A third interpretation of the section would be that when a utility has obtained a county franchise to use the roads, the Commission under the authority of subsection (b) of Section 50 could authorize the utility to operate (distinguished from approving a county's grant of a right to operate). Under this interpretation operative rights are involved, and I believe that in the instant case limitations on that right greater than provided for in the supplemental order should be provided. Amendment of applicant's petition to include a request for a right to operate might be necessary in order to grant this authority. I could concur in a grant of a certificate to operate in Mendocino County under this interpretation if proper territorial and other limitations were included in the order.

The foregoing supplemental order in this matter does not make it clear whether the Commission is granting a certificate to operate, or only a certificate approving applicant's use of roads where it now has or hereafter obtains rights to operate. In language, it only authorizes use of the roads since it only authorizes applicant to exercise the "right and privilege granted by the County of Mendocino" and the only right or privilege which the county can grant is the right to use the roads. This does not give the applicant what it appears to need and seek, and which it may think and represent it has obtained unless the order is clarified.

If by the ambiguous language used in the supplemental order, it is intended to grant rights to operate, then the fundamental question in this proceeding appears to me to be whether the Commission can or should find that the public convenience and necessity require that applicant have a certificate to operate in all parts of a county when it now operates in less than one-third of the territory of the county, in a proceeding in which no showing was made of any plan to extensively enlarge its operations and where the evidence shows that substantial parts of the county not served by applicant are being served by other utilities and one municipal operation. I do not see how the Commission can make such a finding or wherein it would be desirable if the Commission had the authority.

It seems to be wise and proper and within the scope of the regulatory function if the Commission is issuing a certificate for this applicant to operate electric lines in the County of Mendocino, to make it clear that permission is not thereby granted to applicant to operate wherever in the county it may desire to do so without securing further authority from the Commission. The wording of the original order in this matter (Decision No. 32751) was directed to that end.

Applicant has pointed out that following its past practices it would, even though granted a certificate unlimited in its terms, apply under subsection (a) of Section 50 for a certificate before undertaking any major construction project in Mendocino County involving any considerable outlay of money. But extensions of considerable magnitude may ultimately be made in the course of what might be termed ordinary extensions a little at a time and with perhaps small financial outlay at any one time, and I feel that the Commission should not by

granting a certificate in this matter unlimited as to territory except by the boundaries of Mendocino County inadvertently authorize the applicant to make unlimited extensions to the extent that it "infringes" on territory being served at the time such extension is made by another agency (publicly or privately owned).

Ample provision may be contained in the Public Utilities Act for the continuous regulation of the operation and maintenance of electrical lines and plant which may be exercised from time to time and as new situations arise. Similar authority may exist as to construction, but it would be unfortunate if the sensible use of that authority should require the Commission to order the utility to cease and desist from completing the construction of lines which it had commenced under the mistaken assumption that it had authority (in spite of its disclaimer) to construct such lines or perhaps even to forbid it to use electric lines or other plant which it had constructed under such mistaken authority. Under either of these circumstances investment theretofore made would be rendered useless.

To attempt to regulate construction ex post facto if it resulted in the necessity of abandoning completed lines, would result in definite economic loss, even though worse results might follow from not forbidding their use. It seems entirely advisable, therefore, that the Commission retain control in the first instance over the construction of new lines to the end that no such economic loss shall hereafter occur.

Subsection (c) of Section 50 provides:

> "(c) Before any certificate may issue, under this section, a certified copy of its articles of incorporation or charter, if the applicant be a corporation, shall be filed in the office of the commission. Every applicant for a certificate shall file in the office of the commission such evidence as shall be required by the

commission to show that such applicant has received the required consent, franchise or permit of the proper county, city and county, municipal or other public authority. When a complaint has been filed with the commission alleging that a public utility of the class specified in subsection (a) of this section is engaged or is about to engage in construction work without having secured from the commission a certificate of public convenience and necessity as required by the provisions of this section, the commission shall have power, with or without notice, to make its order requiring the public utility complained of to cease and desist from such construction until the commission makes and files its decision on said complaint or until the further order of the commission. The commission shall have power, after hearing, to issue said certificate, as prayed for, or to refuse to issue the same, or to issue it for the construction of a portion only of the contemplated * * * line, plant or system, or extension thereof, or for the partial exercise only of said right or privilege, and may attach to the exercise of the rights granted by said certificate such terms and conditions, including provisions for the acquisition by the public of such franchise or permit and all rights acquired thereunder and all works constructed or maintained by authority thereof, as in its judgment the public convenience and necessity may require."(2)

It is obvious that under this subsection the Commission "may attach to the exercise of the rights granted by said certificate such terms and conditions * * * as in its judgment the public convenience and necessity may require."

The problem presented here, if rights to operate are being granted, is one of giving to the applicant the authority to continue to operate and maintain its lines in territory where it is now serving, where it is the only agency distributing electricity to the general public and where obviously the continuance of such service is required by public convenience and necessity. There is the further problem of giving the

(2) It has been contended that the last sentence of the foregoing quotation refers only to subsection (a) of Section 50, and in support of this it is pointed out that in the next preceding sentence subsection (a) is specifically referred to. However, subsection (c) is introduced with the phrase "Before any certificate may issue under this section" and the later reference to subsection (a) is obviously only for the purpose of a short description of the type of utilities being dealt with, in the same manner that the phrase "No public utility of the class specified in subsection (a)" is used at the beginning of subsection (b).

applicant such authority as it may require from day to day or week to week to make such extensions as are made in the ordinary course of business to serve new customers in the same or contiguous territory, or to give better or more extensive service to existing customers without having to come to the Commission for a special order for each such extension. Opposed to the problem of giving the applicant what it needs is the problem of retaining in the Commission the authority to regulate its competition with other distributors of electricity and particularly of retaining control, in the public interest, over the development of electrical service in portions of the county not now served. When this service is required and can be rendered on a sound economic basis it may be that it can be done best by this applicant, by one of the other companies now serving or by the City of Ukiah, or by some other agency, publicly or privately owned, not now known or contemplated. I think Decision No. 32751 gives the applicant all the authority it now requires and all that can be given it now without authorizing it in advance to engage in competition with others lawfully serving, and to extend into territory in which the prospective consumers might better be served by some one else. These questions should be decided as they arise. It is impossible to contemplate all such future situations and provide for them in advance, other than by retaining considerable authority in the Commission to retain general control over the extension of applicant's operations and the construction of new lines.

The solution of this complex problem found in Decision 32751 is not the only possible one. Applicant has suggested that jurisdiction of the Commission would be fully retained under a certificate unlimited territorially but containing a condition that the Commission might at any time in the future revoke it as to any part of this county where applicant had not extended its opera-

tions. To make this effective, however, it might be necessary for the Commission to make the revocation after construction work had been commenced or even completed, which as hereinbefore stated would be economically unsound.

The certificate could be limited to areas where applicant now actually serves but this appears to be too restrictive and might require applicant to come to this Commission for each extension no matter how minor. Customers desiring new services near existing operations under circumstances which the rules of the applicant permit should have that service as soon as it can be provided physically and time should not be lost while the applicant applies to the Commission and the Commission investigates and decides.

Another method of meeting the situation might be in some manner to allocate the territory of the county among the various existing utilities serving therein. There is no evidence in the record of this proceeding upon which such an allocation could be made, and furthermore it would be based upon the fallacious assumption that all parts of the county as developed would or should be served by one of the existing utilities.

Applicant has contended that it is being treated unfairly in the order, modification of which is sought, in that its future certificated rights are limited by the Commission whereas some of the other utilities operating in the county may have county-wide operating rights which are at present unrestricted. Decision 32751 does not purport in any way to affect any existing certificated rights which applicant has through its various franchises and certificates obtained prior to that being dealt with in this proceeding. If the other utilities operating in the county seek new certificates to operate, I believe they should be subject to the same restrictions which should be placed on applicant in this

proceeding. It may be, further, that the Commission on its own motion or on complaint will at sometime need to investigate and limit existing rights to the extent it has authority to do so. That question, however, is in no way embraced within the scope of this proceeding.

"Political body" was used in the original order apparently as a comprehensive term to embrace all the various types of agencies which might distribute electricity other than through privately owned public utility systems, and it so should have been construed to embrace municipal and district operations or operations by any other political subdivision or public agency. The phrase "political body" may not be broad enough to cover all such organizations, and I therefore believe there should be substituted for it the phrase "political body or other organization lawfully rendering service."

It should be pointed out in this connection that Decision No. 32751 expressly refrains from deciding for all future time the franchise rights and operating rights of applicant in Mendocino County, and the purpose of it is to retain in the Commission authority to meet any problems of extension of service, construction and competition which may arise in the future as they arise, rather than to attempt to prejudge them when the facts are not before the Commission because they do not exist. It seems to me that the same reasoning which requires that authority be retained in the Commission to regulate possible future competition between privately owned utilities applies equally to the retention in the Commission of such authority as it may have over regulating competition between the applicant and public agencies in the future. The fact that the Commission does not under existing law have the authority to regulate the activities of public agencies does not seem to me to indicate

the applicant should therefore be given blanket authority to compete as it sees fit with such agencies or associations. This does not necessarily mean that under a given set of facts in the future the Commission might not properly decide to permit competition. The decision should be made upon the facts as they exist, however, at the time the competition is proposed.

In this connection applicant has stated that under a strict interpretation of Decision 32751 as drawn, applicant would not be permitted to reconnect a service which had been disconnected if a public agency or association had started to render service in a community in competition with it, or would not be permitted to extend its service to a new customer within the area which it might at the time be serving. I do not believe this was the intention of the order. It was intended to deal with areas rather than individual services, and any bona fide development within territory being served by the applicant should not, I believe, have been construed as a violation of the order contained in Decision 32751 had it remained in effect.

To conclude:

(1) The Commission should decide and state what rights it is granting before issuing this order. Instead, a majority of the Commission has signed an order "in the language of the statute." That might be proper were the statute not ambiguous, as is the case here.

(2) If a right to operate is being granted, limitations at least equal to those in Decision 32751 should be retained.

Ray E. Untereiner
Commissioner.

I concur in the foregoing dissenting opinion insofar as it deals with the need for limitations on the granting of operating rights.

Frank R. Havenner
Commissioner.