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Decision No. 35125

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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. 589 New Series of the Council of the City of Bakersfield, County of Kern, State of California. (Electric)	Application No. 24591

R. W. DuVal, Attorney, for Applicant.

R. Y. Burum, for City of Bakersfield.

BY THE COMMISSION:

O P I N I O N

Pacific Gas and Electric Company seeks authority to exercise a franchise granted by the City of Bakersfield permitting the maintenance of electric facilities upon the streets of said City.

The franchise referred to is one granted by the City in accordance with the Franchise Act of 1937 and is for a term of not to exceed fifty (50) years. A fee is payable annually to the City equivalent to 2 per cent of the gross receipts arising from the use of the franchise, but not less than 1/2 per cent of all sales of electricity by applicant within the City. The direct cost to applicant in obtaining the franchise is stated to have been $5,039.20.

As this utility has for many years served electricity within and about the City of Bakersfield, Kern County, without competition, it is evident that its request for a certificate to exercise this franchise should be granted.

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O R D E R

A public hearing having been held upon the application of Pacific Gas and Electric Company, the matter considered, and it appearing to the Commission and it being found as a fact that public convenience and necessity so require, therefore

IT IS ORDERED that Pacific Gas and Electric Company be and hereby is granted a certificate to exercise the rights and privileges granted by the City of Bakersfield by Ordinance No. 589 New Series, adopted July 14, 1941, subject to the condition, however, 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 effective date of this Order shall be the twentieth day from and after the date hereof.

Dated, San Francisco, California, this 17th day of March, 1942.

Commissioners

DISSENT IN DECISIONS NO. 35124 AND NO. 35125 IN

APPLICATIONS NO. 24590 (Pacific Gas and Electric Company, gas service in the City of Bakersfield)

AND

NO. 24591 (Pacific Gas and Electric Company, electric service in the City of Bakersfield)

We dissent from the majority decisions in applications No. 24590 and No. 24591 on the grounds and for the reasons stated by us in our dissents in the seventeen (17) Pacific Gas and Electric Company applications No. 22216 et seq., C. R. C. decisions No. 34488 et seq.

A further reason for dissent arises from the fact that the record in these proceedings shows that applicant, in addition to the provisions for payment of the specified so-called annual franchise tax, paid the City of Bakersfield the sum of $13,600 for the two franchises ($8,600 for the gas franchise, Ord. No. 588 N. S., and $5,000 for the electric franchise, Ord. No. 589 N. S.). The reason and the necessity for these abnormally large payments are not clear; nor was an allocation made by the Commission of this expenditure between proper charges to applicant's surplus, capital and operating expenses. The proceedings, we believe, should be re-opened to determine this matter.

Similar questions were before the Commission in previous proceedings (applications Nos. 22432, 22665, 23583 and 23584). Our dissent here with reference to this item is on grounds substantially similar to those stated by Commissioner Wakefield in his decision No. 33902, to which reference is made.

In addition, Commissioner Havenner desires to make the following statement:

In several previous orders, authorizing the issuance of certificates of public convenience and necessity for the exercise of franchise rights, I have dissented because I believed the Commission should determine whether the terms upon which the franchise was acquired were either necessary or proper. Although more than a year has elapsed since the date of my first dissent on this ground, which was in application No. 22432, the Commission has made no determination of policy with respect to unusually large payments by utility corporations for franchises. I therefore dissent from the majority opinion and order in this case.

Certain utilities which are subject to regulation by this Commission have apparently construed the failure of the Commission to establish a policy with respect to such unusual payments as an indication that the Commission will not object to the inclusion of the amount of such payments in the capital accounts of the utilities for future rate-making purposes. I am informed that, as a result of the Commission's failure to inquire into the propriety of payments for franchises the applicant utility has, in every instance, included the total amount of such payments in its capital accounts.

It is obvious that unusually large payments for franchises made by utility corporations to certain cities in this state, and then included in the fixed capital account of these utilities, place an inequitable burden upon the ratepayers in other communities of the state where no such large payments for franchises have been made.

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It is significant that every franchise certificated by this Commission during the past year, for which an unusual payment was made, contains a provision discharging the utility from liability for damages for illegal use of the streets and public highways in the past. However, the records show that certain utility corporations have persistently refused to admit that they were ever liable for such damages, or that the possibility of such a liability entered into the unusual price paid for franchises. The policy by a regulatory body of refusing to inquire into the propriety of such payments is damaging to the whole theory of public utility rate-making and constitutes an injustice to a large majority of rate-payers in California, who derive no benefit from these payments, but who are compelled, by the policy of ignoring them, to pay increased rates for all time in the future.

In the instant case, the record shows that the applicant utility corporation and the City of Bakersfieldboth insisted that the amount paid for the franchise was "a negotiated price," but the record does not disclose that either party to the transaction gave any testimony as to how this "negotiated price" was arrived at. There is nothing to indicate whether the cost of holding a special charter amendment election, for the purpose of authorizing the kind of a franchise which applicant desired (and we are satisfied that no charter amendment was necessary to satisfy applicant's necessary legal franchise requirements), entered into the negotiations that resulted in the fixing of the purchase price.

The inequities to rate-payers throughout the Pacific Gas and Electric Company's system brought about by unusually large payments for franchises in certain communities may be

illustrated by the fact that Pacific Gas and Electric Company paid the City and County of San Francisco $200,000 in 1939 for an electric franchise, while the City of Fresno received only $19.47 from Pacific Gas and Electric Company for the electric franchise granted by that city.

It is true that the annual revenue received by Pacific Gas and Electric Company from the sale of electricity in San Francisco is nearly twelve times as great as the annual revenue which it receives in Fresno but, even so, if the San Francisco franchise had been "purchased" at the same rate as the Fresno franchise it would have cost only a little over $200 instead of the $200,000 which was actually paid to San Francisco. Just why the unit cost of a franchise should be approximately one thousand times as great in San Francisco as in Fresno has never been explained by the company beyond the statement that the price paid in San Francisco was "negotiated." Other comparisons are equally baffling.

Pacific Gas and Electric Company "purchased" electric franchises from thirty counties in California for $7,994.59. The annual revenue received by Pacific Gas and Electric Company from the sale of electricity in these thirty counties - Calaveras, Nevada, Solano, Yuba, Santa Clara, Alameda, Shasta, Amador, Placer, El Dorado, Tuolumne, Lake, San Mateo, Sonoma, Trinity, Mendocino, Butte, Plumas, Yolo, Napa, Sutter, Fresno, Merced, Santa Barbara, Madera, Kings, Tehama, Kern, San Luis Obispo and Mariposa - was $19,050,782.49.

In San Francisco the annual revenue from the sale of electricity was $16,490,097.10. But San Francisco received $200,000 for the electric franchise which it granted, or more

than twenty-five times as much as the total "purchase price" of the electric franchises granted by the thirty counties enumerated above.

In the instant case the City of Bakersfield, which yielded Pacific Gas and Electric Company an annual revenue of $848,886.71 for electricity, was paid $5,039.20 for a fifty-year electric franchise. The City of Richmond, where Pacific Gas and Electric Company's annual revenue from electricity was $688,437.35, received only $379.78 for a fifty-year electric franchise. The City of Monterey, where Pacific Gas and Electric Company's annual revenue was only $194,591.41, received $4,105.57 for a fifty-year electric franchise. The City of Piedmont, yielding Pacific Gas and Electric Company an annual revenue of $169,934.12, was paid $4,296.25 for a fifty-year electric franchise. The City of San Jose, yielding Pacific Gas and Electric Company an annual revenue of $1,070,842.80, was paid $12,604.40 for a fifty-year electric franchise. The City of San Mateo, where Pacific Gas and Electric Company received an annual revenue of $315,129.28, was paid $7,354.60 for a fifty-year electric franchise, while Salinas, which yielded a greater annual revenue for electricity than San Mateo, was paid only $2,330.80. On the other hand, the City of South San Francisco, yielding an annual revenue of $384,404.78 for electricity, was paid only $40.50 for an electric franchise. All of the payments referred to are in addition to the regular annual so-called local franchise tax payments.

Many other similar inequities between payments made by applicant for electric franchises in various communities, and also for gas franchises, could be cited.

In the instant case Pacific Gas and Electric Company paid the City of Bakersfield $8,638.30 for a gas franchise, in addition to the amount paid for the electric franchise.

These payments, it must be remembered, are made by applicant for the sole right to use and occupy the public streets and highways within the police power of the cities or counties. Operating and service rights are outside such police authority and wholly within the jurisdiction of this Commission.

If the Commission, by continued refusal to adopt a policy, permits these widely varying "purchase prices" for franchises to be included in the over-all rate base of applicant utility as legitimate capital expenditures, the rate-payers thoughout the company's system will be perpetually penalized.

Even in those communities where the largest payments were made for franchises the rate-payers will be obliged to foot their share of the bill, because the amounts paid for franchises in every instance went into the public treasury for tax relief purposes and the rate-payers received no benefits as such. If these amounts are allowed to be capitalized, the rate-payers will not only be compelled to make an involuntary contribution to the various city and county treasuries equal to the widely differing amounts of these "franchise costs," but after the franchise payments have been fully amortized out of rates, the rate-payers will continue for all time in the future to pay an annual return to the company on the total amount of the franchise payments. Such a requirement would be so manifestly unjust to the rate-payers that it should not be tolerated by any regulatory authority.

Commissioners.