

Decision No. 3 5 5 7 0

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. 197 of the Board of Supervisors of the COUNTY OF GLENN, State of California.

(Electric)

ORIGINAL

Application No. 24819

R. W. DuVal, Attorney, for Applicant

BY THE COMMISSION:

O P I N I O N

Pacific Gas and Electric Company has applied for authority under Section 50(b) of the Public Utilities Act to exercise rights and privileges pertaining to electric service expressed in a franchise granted it by the County of Glenn.

This franchise is for a term of fifty (50) years and provides that during said term the grantee shall pay to the County of Glenn two per cent (2%) of its gross receipts arising from the use, operation, or possession thereof.

A hearing in this matter was held and from the testimony received it appears that Applicant or its predecessors for many years have rendered electric service and that it is the only distributor of electric energy within the county except in the unincorporated town of Hamilton, which is served by Sacramento River Farms, Ltd., a small utility that obtains its supply of electric energy from Applicant.

The application and the evidence introduced by Applicant indicate that, while possessing valid franchise rights under which to continue this service, it had obtained the present franchise primarily for the purpose of extending its franchise rights for a period commensurate with the life of its mortgage bonds.

Applicant has stipulated that, if the requested authority be given, it will not without an order of this Commission, exercise any of the rights and privileges granted by said franchise for the purpose of competing with Sacramento River Farms, Ltd. in the town of Hamilton.

Applicant also has stipulated that it will never claim before this Commission, or any court, or other public body, a value for said franchise in excess of the actual cost thereof, which cost, exclusive of the fee of fifty dollars (\$50) paid this Commission at the time of filing this application, consists of one hundred eighty-five and 70/100 dollars (\$185.70) paid the county for the franchise and for publication.

The Commission is of the opinion that the requested authority should be granted with appropriate restrictions concerning the service in the town of Hamilton.

O R D E R

A public hearing having been had upon the above-entitled application of Pacific Gas and Electric Company, and the matter considered, and

It appearing and being found as a fact that public convenience and necessity so require,

IT IS ORDERED that Pacific Gas and Electric Company be and it is hereby granted a certificate to exercise the rights and privileges granted by the County of Glenn, by Ordinance No. 197, adopted May 19, 1941, 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, further, that this certificate shall be subject to the following conditions:

1. That extensions of Applicant's electric distribution lines in said County of Glenn may be made only in accordance with such applicable rule or rules as may be prescribed or approved by the Commission and in effect at the time covering such extensions, or in accordance with any general or special authority granted by the Commission;
2. That, except upon further certificate of this Commission first obtained, Applicant shall not exercise such franchise for the purpose of supplying electricity in those parts or portions of said county now being served by Sacramento River Farms, Ltd.
3. That the Commission may hereafter, by appropriate proceeding and order, limit the authority herein granted to Applicant as to any territory within said county not then being served by it; and
4. 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 at San Francisco, California, this 7th day of July,

1942.

Justin J. Gassner
Paul L. Pacey
H. H. Hall

Commissioners.

DISSENTING OPINION

We dissent from the majority decisions in the following five (5) Section 50 certificate applications filed by Pacific Gas and Electric Company, viz:

<u>Decision No.</u>	<u>Application No.</u>	
35567	24640	(Gas service in City of Colusa, Colusa County)
35568	24641	(Electric service in City of Colusa, Colusa County)
35569	24806	(Gas service in City of Redding, Shasta County)
35570	24819	(Electric service in Glenn County)
35571	24930	(Electric service in City of Tehama, Tehama County),

on the grounds generally stated in Decisions Nos. 34488, et seq. The facts and issues in the five proceedings before us are not in all respects similar to those presented in previous Section 50 applications by this applicant. The majority decisions granting certificates of public convenience and necessity in the present five (5) proceedings are, however, written in the same ambiguous and uncertain language as previous grants and fail to specify whether operating and service certificates are granted, or whether the Commission's grants are confined to the mere certification of a county or city franchise permitting the occupancy of roads and streets, without conveying any operating or service rights and privileges. The majority has not, as we think it should, made the grant of new certificates contingent upon the cancellation of existing and outstanding prior grants, conflicting in terms and conditions, and overlapping in space and time. The majority made no finding, as we think it should, that the so-called franchise tax to be paid by applicant to the political subdivisions granting the franchises is a payment for the use and occupancy of streets, roads and other public thoroughfares, and not a payment for operating and service rights.

Four (4) of the certificates here granted by the majority (Electric service in City of Colusa - Application No. 24641 - and City of Tehama -

Application No. 24930; gas service in City of Colusa - Application No. 24640 - and City of Redding - Application No. 24806) are for an indeterminate period and not for a fixed term of years, while the certificate granted Glenn County (electric service - Application No. 24819) is for a term of fifty (50) years. Nothing is in the record to explain or justify this important difference in the respective grants by this Commission. We have heretofore (in Decision No. 34723) expressed our view that this Commission should make its grants of operating and service certificates for an indeterminate period and not for a fixed term of years. The fifty (50) year grant in Application No. 24819 is, we believe, a departure from sound public policy.

Frank R. Havens

Richard H. Hulse
Commissioners