

Decision No. 3 5 5 7 1

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. 31 of the City Council of the CITY OF TEHAMA, County of Tehama, State of California.
(Electric)

ORIGINAL

Application No. 24930

R. W. DuVal, Attorney, for Applicant
H. E. Kerr, Mayor, for City of Tehama

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 Tehama, permitting the maintenance of electric facilities upon the streets of said City.

As the franchise referred to is one granted by the City in accordance with the Franchise Act of 1937, it is provided therein that it shall be of indeterminate duration. A fee is payable annually to the City equivalent to two per cent of the gross receipts arising from the use of the franchise, but not less than one-half 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 \$24.00.

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

ORDER

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 Tehama by Ordinance No. 31, adopted August 2, 1941, subject to the condition, however, that no claim of value for said 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 7th day of July, 1942.

Justin J. Coe
W. H. K. K. K.
H. B. K.

(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.

Francis D. Haven
Richard Jackson
Commissioners