

Decision No. 26087

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of
 COAST COUNTIES GAS AND ELECTRIC COMPANY,
 a corporation, for a certificate that
 public convenience and necessity require
 the exercise of a right, privilege and
 franchise to sell and distribute gas for
 light, heat, power, and other purposes
 in the County of Santa Cruz.

Application No. 25299

Bert B. Snyder, for Applicant

BY THE COMMISSION:

O P I N I O N

Coast Counties Gas and Electric Company seeks authority under Section 50(b) of the Public Utilities Act to exercise a franchise granted by the County of Santa Cruz permitting the construction and maintenance of gas transmission and distribution facilities upon the public streets, highways, alleys, and ways of said County.

The franchise referred to is one permitted by the Broughton Act, and is for a term of fifty (50) years. A fee is payable annually to the County equivalent to two (2) per cent of the gross annual receipts arising from the use, operation, or possession of said franchise. The direct cost to Applicant in obtaining this franchise is stated to have been ninety five and 50/100 dollars (\$95.50).

Applicant has for many years served gas within the County without competition under two franchises previously granted by the County. One of these will expire in 1943 and the other in 1946, and it is evident that its request for a certificate to exercise this franchise should be granted.

O R D E R

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

IT IS HEREBY ORDERED that Coast Counties Gas and Electric Company be and hereby is granted a certificate to exercise the right, privilege, and franchise granted it by the County of Santa Cruz by Ordinance No. 351, adopted August 27, 1942, 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 date hereof.

Dated at San Francisco, California, this 29th day of December, 1942.

Justin F. Green
W. H. Riley
M. J. Baker

(Commissioners)

Application No. 25299 - Coast Counties Gas and Electric Company -
Gas Service in the County of Santa Cruz

DISSENT

We dissent on the following grounds:

(a) The order of the Commission grants the utility "a certificate to exercise the rights, privileges, and franchise" granted by the County of Santa Cruz. The language and effect of the Commission's order is uncertain and ambiguous and fails to make definite whether an operating and service certificate is granted or whether the Commission's grant is confined to the mere certification of the franchise permitting the occupancy of streets, roads, and highways without conveying any operating or service rights and privileges.

(b) The franchise granted by the political subdivision purports to grant to the utility operating and service rights for a specified number of years (fifty (50) years in Ordinance No. 351). We think the authority to make such grants of operating rights is exclusively vested in this Commission and the Commission should not, by implication, approve or certify any such unlawful franchise provision or a provision pertaining to operation and contrary to the public interest. It has been the Commission's consistent policy, we understand, to make its grants of operating certificates of public convenience and necessity for an indeterminate period and not for a fixed term of years and this, we think, is sound policy. If the order in this decision is construed, and we think it may be thus construed, as a grant of an operating certificate for a period of fifty (50) years, the Commission's policy is departed from.

These points and others have been discussed at some length in our dissents in Decisions No. 34488 et seq, to which dissents reference is made.

Francis R. Haverner
Francis R. Haverner
Richard L. Sachs
Richard L. Sachs

(Commissioners)

~~Commissioners of the Public Utilities Commission~~

~~State of California~~