

Decision No. 36587

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SOUTHERN CALIFORNIA EDISON COMPANY LTD.,
a corporation, for certificate that
public convenience and necessity require
that it exercise the rights and privi-
leges granted it under franchise to use,
or to construct and use, an electric
distribution and transmission system
within the CITY OF CULVER CITY, County
of Los Angeles, State of California.

Application No. 25632

Gail C. Larkin, B. F. Woodard, and Bruce
Kenwick, by B. F. Woodard for Applicant.

BY THE COMMISSION:

OPINION

Southern California Edison Company Ltd. seeks authority to exercise a franchise granted by the City of Culver City, permitting the maintenance of electric facilities upon the streets of said City.

According to the record Southern California Edison Company Ltd. has rendered electric service to Culver City under a Broughton Act Franchise granted by Ordinance No. 170 on October 25, 1925. This franchise runs for a period of 50 years and would expire in 1975.

The new franchise under which present certification is requested was secured under Ordinance No. 563 adopted by the City Council on April 26, 1943. The franchise is for an indeterminate period and is granted under terms of the Franchise Act of 1937.

The new franchise, when it becomes effective, is to cancel and supersede the previous franchise.

The direct cost of acquiring the new franchise and certificate herein sought is shown as follows:

Publication of Notice of Intention	\$11.25
Publication of Ordinance No. 563	<u>30.75</u>
Subtotal	\$42.00
Railroad Commission Filing Fee	50.00
Publication of Notice of Hearing	<u>4.06</u>
Total	\$96.06

It is of record that payments to the City under the old franchise for the year 1942 amounted to \$493.21, while for the same period under the new franchise an estimated amount of \$4,158 would have been paid. This latter amount has been computed upon the 1% minimum provision in the franchise. It is clear that the substitution of the new franchise for the old will increase the annual payments to the City by many-fold.

The 1925 franchise, Ordinance No. 170, has 32 years to run. Having in mind the certain increase in Applicant's electric business in Culver City over this period of time, the additional franchise tax burden will be not less than \$120,000 and may be much more. Under the Commission's standard classification of accounts, such payments are ordinarily treated as operating expenses and, accordingly, become part of the cost of rendering the service and are thus paid for in customer rates and spread over all rate payers on Applicant's system. The record makes no showing of advantages of the new franchise over the old justifying such greatly increased cost.

Applicant states that an indeterminate franchise is preferred over one of limited duration and we are in accord with that view. The indeterminate franchise is also claimed to be advantageous in the marketing of Applicant's bonds in certain states, such as New York, Massachusetts, etc. That claim is doubtful and unsupported by evidence. Bondholders are primarily interested in continuance of service and in earning capacity; and jurisdiction over service and rates rests exclusively in this Commission. If Applicant is

satisfied that the advantages of the new franchise are sufficient to offset the resulting greatly increased cost, it should be willing, we think, to meet the difference between the franchise charges in the old as compared with the new ordinance for the remaining 32-year life of Ordinance No. 170 out of its surplus, instead of passing this cost to its rate payers.

Section 50(b) of the Public Utilities Act provides that no public utility "shall henceforth exercise any right or privilege under any franchise or permit hereafter granted, without first having obtained from the commission a certificate that public convenience and necessity require the exercise of such right or privilege;" In Section 50(c) the Commission is given power "to issue said certificate, as prayed for, or to refuse to issue the same, 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....."

We are unable to find that public convenience and necessity require the assumption by this utility of an additional annual operating expense burden more than eight times greater than the corresponding present burden and one growing heavier over a period of thirty-two future years, especially if such burden is not borne by the owners of the utility but is passed on to the rate payers of the Applicant's entire system, and when such rate payers can derive no possible benefit from the imposition of such unnecessary expense. This public disadvantage in Ordinance No. 563 would be sufficient, we think, to justify our refusal of the issuance of the requested certificate. Inasmuch, however, as we have power to attach to our certificate conditions protecting the public interest, and the utility is free to accept or reject such certificate, we shall make our grant subject to an appropriate condition.

This utility has for many years served electricity within and about Culver City, and no other agency is rendering like service in that area.

There is no doubt that such service must continue either under our presently outstanding certificate or under a new certificate in order that Applicant may exercise and carry out its franchise obligations.

P R E L I M I N A R Y O R D E R

A public hearing having been held upon the application of Southern California Edison Company Ltd. for authority to exercise the rights and privileges granted by the City of Culver City by Ordinance No. 563, adopted on April 26, 1943, and it being found that public convenience and necessity so require, the Commission hereby declares that upon the filing, within 30 days after the effective date of this order, of a stipulation duly authorized by Applicant's board of directors and containing the following provisions,

- (a) 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, and
- (b) That subsequent to the effective date of Ordinance No. 563 and until October 25, 1975, the date of expiration of Ordinance No. 170, Applicant will charge to operating expenses only such an amount of the franchise tax payable to Culver City as would have accrued under the terms and conditions of Ordinance No. 170, and will charge to surplus any excess over such amount and accruing by reason of the terms and conditions of Ordinance No. 563; and that no claim for such excess shall ever be made by Applicant before this Commission in any rate or other proceeding,

the Commission will declare, by supplemental order, that public convenience and necessity require the exercise by Applicant of the rights and privileges granted to it by such ordinance.

This preliminary order shall become effective on the twentieth day after the date hereof.

Dated at San Francisco, California, this 10th day of September 1943.

Francis P. Havens
[Signature]
Richard [Signature]
[Signature]
Commissioners.