

Decision No. 37147

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
PACIFIC GAS AND ELECTRIC COMPANY for
an order granting to applicant a
certificate of public convenience and
necessity to exercise the rights, priv-
ileges and franchise granted to applicant
by Ordinance No. 248 New Series of the
Council of the CITY OF SAN LUIS OBISPO,
County of San Luis Obispo, State of
California. (Electric)

ORIGINAL

Application No. 26082

R. W. DuVal for Applicant

HAVENNER, COMMISSIONER:

O P I N I O N

Pacific Gas and Electric Company asks the Commission to make its order that public convenience and necessity require and will require the exercise by Applicant of the rights, privileges and franchise related to electric service granted to it by the city of San Luis Obispo by Ordinance No. 248 (N.S.), adopted August 16, 1943.

A hearing on the matter was held in San Francisco on May 25, 1944, at which time evidence was received and the matter submitted.

The record shows that limited electric lighting service was established in San Luis Obispo by the Sperry Flour Company in 1883. In April, 1903, the San Luis Obispo Gas and Electric Company was organized and took over the Sperry Flour Company plant with approximately one hundred customers, enlarging the plant to take care of increasing business. In March, 1912, the Midland Counties Gas Company was organized and acquired the San Luis Obispo Gas and Electric Company about the same time. Subsequently, in October, ¹⁹¹³ ~~1912~~, the name of this company was changed to Midland Counties Public Service Corporation,

under which it operated as a subsidiary of San Joaquin Light and Power Corporation until control of both companies was acquired by Pacific Gas and Electric Company on June 12, 1930. On June 18, 1939, the properties of Midland Counties Public Service Corporation were transferred to Pacific Gas and Electric Company and since then have been and now are operated by the latter company.

In 1939 Pacific Gas and Electric Company applied to the city of San Luis Obispo for a franchise under the Franchise Act of 1937 and negotiations for this purpose continued intermittently until April 5, 1943, when the question was submitted to the voters of the city at a general municipal election and voted upon favorably. Thereafter, on August 16, 1943, Ordinance No. 248 (N.S.) was adopted and the franchise became effective upon acceptance by Applicant.

At the time application was made for this franchise Applicant possessed no franchise other than the constitutional franchise obtained through acceptance, by its predecessors, of the offer contained in Section 19 of Article XI of the California Constitution as it existed prior to amendment on October 10, 1911.

The franchise is one granted under the Franchise Act of 1937 for a term of thirty-five (35) years and the record shows that the following amounts were paid to the city in obtaining it:

1. Payment required by the Ordinance	\$5,000.00
2. One-half per cent of grantee's gross electric revenue within the city from January 1, 1943, until the effective date of franchise	983.26
3. To reimburse city for cost of advertising franchise	<u>194.25</u>
Total	\$6,177.51

The record further shows that the \$5,000 payment was an amount demanded by the city as a consideration for the granting of franchise Ordinance No. 248 (N.S.) and the franchise expressly provides that should the city subsequently purchase and take over Applicant's properties and plant within the city's limits, no value shall be given the franchise in excess of a pro-rata of this initial payment based upon the ratio of the unexpired portion of the term

to the full term thereof plus publication costs incurred at the time the franchise was granted. There is nothing in the record to indicate that it was a payment in the way of a settlement for past use of city streets. However, this Commission has authority to direct Applicant to dispose of this payment in its financial records in such a manner that it will not impose an inequitable burden upon rate payers who reside outside the city of San Luis Obispo, and when Applicant's rates are again reviewed by the Commission appropriate consideration will be given to said \$5,000 franchise payment.

The franchise requires Applicant to pay annually to the city a sum equivalent to 2% of the gross annual receipts of Applicant arising from the use, operation, or possession of the franchise; provided, however, that such payment shall in no event be less than $\frac{1}{2}$ of 1% of the gross annual receipts of Applicant derived from the sale of electricity within the limits of the city of San Luis Obispo. In this connection the franchise contains a special provision to the effect that should the legislature at any future date during the life of the franchise, by act or amendment, provide for a minimum payment to municipalities greater than $\frac{1}{2}$ of 1% of the gross annual receipts derived from the sale of electricity within the limits thereof by grantees, then said franchise shall be deemed to have been amended thereby, and thereafter the minimum payment made to the city of San Luis Obispo shall be the minimum so established, provided that in no event shall such payment exceed 1% of the basic gross revenue.

Except for the \$5,000 payment and the special provision governing minimum payment described in the preceding paragraph, the franchise contains no unusual provisions.

No one appeared at the hearing to oppose the granting of the application.

The following form of order is recommended,

O R D E R

A public hearing having been held upon the above entitled application, the Commission having considered the evidence submitted at this hearing

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 it hereby is, granted a certificate of public convenience and necessity to exercise the rights, privileges and franchise granted to it by the city of San Luis Obispo by Ordinance No. 248 (New Series) adopted August 16, 1943, subject to the condition, however, that no claim of value for such franchise or for the authority herein granted in excess of the actual cost thereof shall be made by Pacific Gas and Electric Company, 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.

The foregoing Opinion and Order is hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco California, this 27th day of June, 1944.

Justus F. Cravens
Francis D. Havens
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Justus F. Cravens
Commissioners