Decision No. 37192

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

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 privileges 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, E. W. Cunningham and R. E. Woodbury, for Applicant.
M. Tellefson, City Attorney, for the City of Culver City.

SACHSE AND HAVENNER, COMMISSIONERS:

OPINION ON REHEARING

The applicant, Southern California Edison Company Ltd., seeks authority from this Commission under the provisions of Section 50(b) of the Public Utilities Act to exercise the rights and privileges accruing to it under a franchise granted to said applicant by the City of Culver City.

The Commission heretofore rendered its decision in this case(1), the operation of which was suspended by virtue of a rehearing having been granted. That decision authorized the exercise by applicant of the rights and privileges under said franchise but inserted in said decision the following condition:

> "(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."

(1) Application No. 25632, Decision No. 36587, rendered September 1, 1943, (44 CRC Adv. Ops. 797).

The franchise in question was granted to applicant by the City of Culver City under the provisions of the Franchise Act of 1937[2], pursuant to Ordinance No. 563 under date of April 26, 1943. This franchise is of indeterminate term. Applicant at the time of applying for said franchise enjoyed a franchise granted by the City of Culver City to it under the provisions of the Broughton Act[3], pursuant to Ordinance No. 170. This latter franchise was for a fixed term of years expiring on October 25, 1975, the term of years being fifty, it having been granted on October 25, 1925.

Decision No. 36587 was preliminary and required applicant, as a condition to the granting of its application by the Commission, to file a stipulation within thirty days after the effective date of said decision and order agreeing to the condition heretofore referred to. Said order provided that if such stipulation were filed in compliance with the terms and conditions of said order, a supplemental order would be made by the Commission finding that public convenience and necessity required the exercise by applicant of the rights and privileges granted to it by said Ordinance.

Thereafter, applicant filed its petition for rehearing in this proceeding, which petition was granted on September 21, 1943, and the matter was heard at Los Angeles on January 19, 1944. At this hearing the City of Culver City appeared through its Mayor and City Attorney and participated in the proceeding. Considerable testimony was presented and applicant was given full opportunity to develop its position, to-wit, that it acted fully within its legal rights and wisely and to the interest of its customers and stockholders in replacing its old Broughton Act franchise with one issued under the 1937 Act. It was applicant's further contention that the Commission should make its final order granting the necessary certificate without requiring the stipulation heretofore set forth. After submission of the case, applicant in due course filed an able brief, which has been helpful to the Commission in arriving at a decision in this matter.

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(2) Stats. 1937, p. 1781.
(3) Stats. 1905, p. 777, as amended.

The Commission might discuss some of the many legal questions raised in respect to the jurisdiction of municipalities and itself over utilities through franchises and certifications. However, the statutes speak for themselves and we shall address ourselves to the more factual issues in this case.

The Commission now finds before it a more extensive and complete record dealing with the relative merits of franchises issued under the Broughton Act and the 1937 Franchise Act. In this respect it appears that municipalities generally seem to prefer to grant franchises under the provisions of the Franchise Act of 1937 rather than under the provisions of the Broughton Act. The record in this case contains claims made by the applicant and, to some extent, by the City of Culver City that a franchise granted under the Franchise Act of 1937 is more desirable from the standpoint of the municipality, the general public and the utilities than is a franchise granted under the provisions of the Broughton Act. Without attempting to reconcile all of these claims and without passing upon the merits of one type of franchise over the other, it is apparent that the Franchise Act of 1937 is a later expression of legislative policy with regard to franchises in so far as municipalities are concerned than is the policy laid down in the Broughton Act. The record in this case also shows that the Franchise Act of 1937 resulted from dissatisfaction arising from the operation of the Broughton Act and particularly with regard to the interpretation of that Act by the Supreme Court of this State in the case of _County of Tulare_ v. _City of Dinuba_(4). It is obvious too, from a reading of both of these Acts, that the Franchise Act of 1937 is clearer and more explicit in its terms than is the Broughton Act.

The annual charge payable by a utility under a franchise granted to it pursuant to the provisions of the Broughton Act has been construed by the Supreme Court of this State in the _Dinuba_ decision, heretofore referred to, to be a toll or rental and that the obligation of the utility to pay the same rests upon contract. Such annual charge appears to be neither a tax nor a license.

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(4) 188 Cal. 664, 670, 674.

The same is true of the annual charge paid by a utility under the Franchise Act of 1937. The amount of such charge has been set by the Legislature in the statute referred to and is not fixed by the parties to the franchise.

A person may, with propriety from a legal standpoint, avail himself of the rights and privileges granted him under the authority of law. It is true that under the Broughton Act franchise the applicant paid an annual charge to the City of Culver City of only $493.21 for the year 1942, whereas, under the franchise granted it under the provisions of the 1937 Franchise Act, the applicant would be required to pay to the City of Culver City for the same period an annual charge of $4,158. It is also true that the Broughton Act franchise ran until October 25, 1975. Therefore, it can be seen that, if we permit the annual charge to be paid by applicant under the franchise granted to it pursuant to the Franchise Act of 1937 to be charged to operating expenses, the rate payers will be paying many times what they have been paying for franchise charges under the Broughton Act franchise. It was with this feature of the case in mind that the Commission attached the condition previously quoted to its decision and order in this proceeding. In other words, the prior order of this Commission required the utility to charge no more to operating expenses for its annual franchise payments during the remaining unexpired term of the Broughton Act franchise than it would have had to pay if it continued to operate under said Brought Act franchise and had not secured a franchise under the Franchise Act of 1937.

We know, and the record shows, that this applicant is securing franchises from various municipalities under the provisions of the Franchise Act of 1937. The record shows that the municipalities themselves have requested the applicant to take out franchises under this particular statute. The franchises under the 1937 Act, as a rule, result in larger payments to the municipalities than do those granted under the Broughton Act. Also, it is here pointed out that applicant, under the provisions of the Franchise Act of

1937, has very probably abandoned the franchise which it held under the Broughton Act.(5)

In view of all the facts and circumstances developed in the present record, it is our conclusion that applicant has the right to avail itself of the provisions of the Franchise Act of 1937, particularly when as in this case, there is no showing made that the utility has taken any undue advantage of the municipality nor that the public interest is adversely affected to any serious degree. Since it is our conclusion that the present record does establish the right and the desirability of applicant to replace its Broughton Act franchise with the one issued by the City of Culver City under the Franchise Act of 1937, it follows that the annual costs incident to maintaining that franchise in rendering the public utility service are an expense properly chargeable to operation.

We find that public convenience and necessity require that the applicant be granted authority to exercise the rights and privileges granted to it under the franchise created by Ordinance No. 563, adopted by the City Council of Culver City on April 26, 1943, without attaching the condition concerning the manner in which the annual charge under said franchise shall be disposed of by said utility in its accounts as contained in our preliminary decision and order in this case.

The record shows that applicant has paid a total of $96.06 as the cost of acquiring the new franchise and the certificate herein sought.

The Commission can not, by law, authorize the capitalization of the franchise involved herein or this certificate of public convenience and

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(5) Section 7 of the Act provides that: "acceptance of any such franchise (i.e. the 1937 franchise) shall operate as an abandonment of all such franchises * * * * *." (Parenthesis ours.)

This situation raises the question as to the wisdom of this section of the Act for the reason that both the municipality and the utility involved would be placed in an uncertain and undesirable position, if this Commission should deny the application of applicant to exercise the rights and privileges under the franchise granted pursuant to the Franchise Act of 1937. Because of this, consideration might be given to an appropriate amendment to the Franchise Act of 1937.

necessity or the right to own, operate or enjoy such franchise or certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, certificate of public convenience and necessity or right.

Likewise, by law, the franchise involved herein shall never be given any value before any court or other public authority in any proceeding of any character in excess of the cost to the grantee of the necessary publication and any other sum paid by it to the municipality therefor at the time of the acquisition thereof.

We submit the following form of Order:

## ORDER

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 pursuant to Ordinance No. 563, adopted April 26, 1943, and it being found that public convenience and necessity so require,

IT IS HEREBY ORDERED that Southern California Edison Company Ltd. be and it is hereby granted a certificate of public convenience and necessity to exercise the rights and privileges granted by the City of Culver City pursuant to Ordinance No. 563, adopted on April 26, 1943.

The preliminary decision and order heretofore rendered in this proceeding are hereby set aside and vacated.

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

The effective date of this order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 11th day of July, 1944.

Richard Sachse
Justus F. Craemer
Franck R. Havenner

[illegible] Powell

Commissioners