

Decision No. 43185

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
 PACIFIC GAS AND ELECTRIC COMPANY for
 an order of the Public Utilities
 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. 265 of the Board of
 Supervisors of the COUNTY OF STANISLAUS,
 State of California.
 (Electric)

Application No. 30281

R. W. DuVal, F. T. Searls, by
F. T. Searls, for applicant;
George D. Macomber, for Board of
 Supervisors, County of Stanislaus;
C. E. Plummer for Modesto Irrigation
 District.

O P I N I O N

Pacific Gas and Electric Company, by the above-entitled application, requests a certificate of public convenience and necessity authorizing it to exercise the rights and privileges conferred by Ordinance No. 265, effective March 25, 1948, of the Board of Supervisors of the County of Stanislaus, granting a franchise to construct, install, maintain and use electric transmission and distribution facilities in the public streets of the county.

The term of the franchise is indeterminate, running until its surrender or abandonment or forfeiture for noncompliance or purchase by the state, county, or other public corporation either voluntarily or by condemnation. Under the ordinance a fee is payable by the grantee to the county equivalent to 2% of the gross annual receipts arising from the use, operation or possession of the franchise. The costs incurred

by applicant in obtaining the franchise are stated to have been \$534.70, which is exclusive of the \$50 filing fee paid to the state in connection with this application, and the applicant has stipulated that it, its successors or assigns will never claim before the Commission or before any court or public body any value for the aforesaid franchise in excess of the actual cost thereof.

In its application, Pacific Gas and Electric Company alleges that it and its predecessors originally constructed and subsequently extended electric systems in Stanislaus County and engaged in the business of furnishing and supplying electric service therein under one or more of the following authorizations: (1) The grant of power and rights conferred by their charters; (2) pursuant to the franchises granted to applicant or its predecessors by the Board of Supervisors of the County of Stanislaus.

Applicant's statement shows four franchises, effective in Stanislaus County, under which applicant was operating at the time of adoption of the newest such ordinance. Those franchises are identified as follows:

<u>Ordinance No.</u>	<u>Adopted</u>	<u>Expiring</u>	<u>Granting Franchise to:</u>
Unnumbered	December 17, 1903	Indeterminate	Stanislaus Milling Company
70	July 21, 1908	July 21, 1958	La Grange Water and Power Company
133	June 8, 1925	June 8, 1975	Great Western Power Company of California
155	March 27, 1933	April 26, 1983	San Joaquin Light and Power Corporation

In the future, applicant plans to conduct, under Ordinance No. 265, its electric business in the unincorporated territory in the county lying outside of the established service areas of Modesto Irrigation District and Turlock Irrigation District. While the previous franchises are still effective for a time, there is more advantage in having an

indeterminate term. In particular, it will assist in the qualification of applicant's securities as legal investments for savings banks and trust funds, under the laws of various states.

A hearing on the instant application was held before Examiner Edwards at Modesto on July 12, 1949. No opposition to the granting of a certificate of public convenience and necessity was manifested. Pacific Gas and Electric Company, and its predecessors for many years have served electricity within the County of Stanislaus, although its existing transmission and distribution facilities do not extend to all portions of the county. From the evidence received, it appears that the only persons, firms, or public or private corporations other than Pacific Gas and Electric Company now engaged in the business of furnishing, distributing, and selling electricity in Stanislaus County are the Modesto Irrigation District and the Turlock Irrigation District.

The Modesto Irrigation District serves electricity over a portion of the north half of Stanislaus County. Agreements have been entered into between the applicant and the Modesto Irrigation District, under date of August 15, 1940, pursuant to authorization granted by the Commission in Decision No. 33415, Application No. 23553, regarding a segregation of service area. A similar type of agreement was entered into with the Turlock Irrigation District, which operates in the south half of the county, under date of January 7, 1942, pursuant to the authorization granted by the Commission in Decision No. 34796, Application No. 24545. Mr. C. E. Plummer, Chief Engineer for the Modesto Irrigation District, testified that this contract with the Modesto District has been followed and the district is now satisfied with the manner in which operations are conducted by the applicant within the county. Applicant alleges that in its public utility business of furnishing and supplying electricity in Stanislaus County, it is not competing with said Modesto or Turlock Districts, within their respective areas.

In the instant case, the franchise granted by Ordinance No. 265 is limited to that area of the county outside of the service areas of Modesto Irrigation District and Turlock Irrigation District as now established by agreements between the applicant and said districts. The certificate granted herein shall not be construed to prohibit applicant, Modesto Irrigation District, and Turlock Irrigation District from carrying out the provisions of the above-mentioned agreements. At the hearing applicant's counsel requested that the certificate be broadened to include the operation of transmission lines within the territory of the districts, as covered by these agreements, which by inadvertence had been left out of the county franchise. The Commission cannot accommodate applicant in this request because this certificate is requested under Section 50(b) of the Public Utilities Act to exercise a franchise which does not grant rights within the districts. Applicant must rely on its prior franchises and agreements in so far as such present lines within the districts are concerned.

From the evidence of record, the Commission finds that public convenience and necessity require the exercise by Pacific Gas and Electric Company of the right, privilege, and franchise granted to it by Ordinance No. 265 of the Board of Supervisors of Stanislaus County, subject to appropriate restrictions concerning the territory now served by Modesto and Turlock Irrigation Districts and the territory not now served, and to the following provisions of law:

That the Commission shall have no power to authorize the capitalization of the franchise involved herein or this certificate of public convenience and 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.

O R D E R

A public hearing having been held in the above-entitled and numbered application, the matter having been submitted and the Commission being fully advised,

IT IS HEREBY ORDERED that Pacific Gas and Electric Company be and it is granted a certificate that public convenience and necessity require the exercise by it of the right, privilege and franchise granted to it by Ordinance No. 265, effective March 25, 1948, of the Board of Supervisors of the County of Stanislaus, within such parts or portions of said county as are now served by it or as hereafter may be served by it through extensions of its existing system made in the ordinary course of business, as contemplated by Section 50(a) of the Public Utilities Act; provided further, that this certificate shall be subject to the following conditions:

1. That, unless a further certificate of this Commission is first obtained, applicant shall not exercise such franchise for the purpose of supplying electricity in those parts or portions of said county now being served by Modesto and Turlock Irrigation Districts.
2. That the Commission may hereafter by appropriate proceeding and order limit the authority herein granted to applicant as to any territory within said county not then being served by it.

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

Dated at San Francisco, California, this 9th day of August, 1949.

R. E. Johnson

James H. [unclear]

James H. [unclear]
Commissioners.