

Decision No. 43207

ORIGINAL

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. 266 of the Board of  
 Supervisors of the COUNTY OF STANISLAUS,  
 State of California.

(Gas)

Application No. 30280

R. W. DuVal, F. T. Searls, by  
F. T. Searls, for applicant;  
George D. Macomber, for Board of  
 Supervisors, County of Stanislaus.

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. 266, effective March 25, 1948, of the Board of Supervisors of the County of Stanislaus, granting a franchise to construct, install, maintain and use gas 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 \$508.60,

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 the gas system in Stanislaus County and engaged in the business of furnishing and supplying gas service therein under one or more of the following authorizations: (1) The power and rights conferred by their charters; (2) The franchises granted to applicant or its predecessors by the Board of Supervisors of the County of Stanislaus; (3) Certificates of public convenience and necessity granted to applicant by the Commission in Decision No. 21690, dated October 18, 1929, Application No. 15676, and Decision No. 23964, dated August 17, 1931, Application No. 16004.

Applicant's statement shows four franchises, effective in Stanislaus County, under which applicant was operating at the time of adoption of Ordinance No. 266. Those franchises are identified as follows:

| <u>Ordinance No.</u> | <u>Adopted</u>    | <u>Expiring</u>    | <u>Granting Franchise to:</u>    |
|----------------------|-------------------|--------------------|----------------------------------|
| 88                   | April 13, 1914    | April 18, 1964     | Oakdale Gas Company              |
| 123                  | November 16, 1922 | November 16, 1972  | Modesto Gas Company              |
| 145                  | August 13, 1929   | September 13, 1979 | Pacific Gas and Electric Company |
| 146                  | January 7, 1930   | January 7, 1970    | Turlock Gas Company              |

In the future, applicant plans to conduct its business in the county under Ordinance No. 266. 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 on July 12, 1949, at Modesto, California. 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 gas within the County of Stanislaus, although its existing transmission and distribution facilities do not extend to all portions of the county. From the testimony received, it appears that the only public utility other than Pacific Gas and Electric Company now engaged in the business of furnishing, distributing, and selling gas in Stanislaus County is Thomas E. Cooper at Waterford, California. Mr. Cooper serves a limited number of customers in Waterford, in accordance with permission obtained from this Commission in Decision No. 30902, dated May 23, 1938, Application No. 20125. The larger part of Waterford is not supplied with public utility gas service.

The applicant has been urged to extend its gas system to Waterford but the witness stated there are no present plans for this construction.

It is the practice of the Commission in granting a certificate of public convenience and necessity to exercise a franchise right to condition such certificate against the exercise of the franchise for the purpose of rendering service in any area being supplied by other public or private agencies except upon further certificate being first obtained from the Commission. It is believed appropriate to include such a condition for the exercise of the franchise granted by the County of Stanislaus relative to the gas service rendered by Mr. Cooper.

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. 266 of the Board of Supervisors of Stanislaus County, subject to appropriate restrictions concerning the territory now served by Thomas E. Cooper and the territory not now served by applicant, 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 Commissioner 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. 266, 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 certificate of this Commission is first obtained, applicant shall not exercise such franchise for the purpose of supplying gas in those parts or portions of said county now being served by Thomas E. Cooper.

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 16<sup>th</sup> day of August, 1949.

R. Z. [Signature]

[Signature]

[Signature]

Commissioners.