

Decision No. 43796

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. 172 N.S. of the City
Council of the CITY of PACIFIC GROVE,
County of Monterey, State of California.
(Gas)

Application No. 30882

Ralph W. DuVal by Frederick T. Searls for
applicant; Alfred Coons, City Manager and
John J. Redhead, Deputy City Attorney, for
the City of Pacific Grove.

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. 172 N.S., adopted September 21, 1949, by the City Council of the City of Pacific Grove, granting a franchise to construct, install, maintain and use gas conveying and distribution facilities in the public streets, ways and places within the City of Pacific Grove. This franchise was granted under the provisions of the Franchise Act of 1937.

The term of the franchise is indeterminate, running until its voluntary surrender or abandonment by the grantee, or forfeiture for noncompliance, or purchase by the state, municipal, or other public corporation either voluntarily or by condemnation. Under

the ordinance, a fee is payable by the grantee to the city equivalent to two per cent of the gross annual receipts of said grantee arising from the use, operation or possession of the franchise, but in no event will payment be less than one per cent of the gross annual receipts from the sale of gas within the city. Grantee is also required to pay the city a sum of money sufficient to reimburse it for all publication expenses in connection with the granting of the franchise. The costs incurred by applicant in obtaining the franchise are stated to have been \$72.18, exclusive of the \$50 filing fee required by Section 57½ of the Public Utilities Act, 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.

Mr. R. W. Joyce, witness for the applicant, testified that gas service was first provided in the community in 1903 by the Monterey Gas and Electric Company, a predecessor company of applicant herein.

Gas service to this community is provided from the applicant's Bay transmission main. This main is tapped in the vicinity of Hollister and the tap line runs to Salinas where gas is routed to several points in Monterey County. An eight-inch main connects Pacific Grove and Monterey with the Salinas tap line. The applicant's present local system comprises approximately 40 miles of distribution mains.

The witness for the applicant testified that heretofore the company has been furnishing gas service within the present city boundary under its constitutional franchise and under a franchise granted by Ordinance No. 330 on October 15, 1936, for a period of 35 years; and under a certificate of public convenience and necessity granted by the Commission to applicant in Decision No. 30072, dated August 28, 1937, in Application No. 21056.

A hearing on the instant application was held before Examiner Kimball on February 3, 1950, at Pacific Grove. At this hearing, no one entered any objection to the granting of the certificate, and a representative of the City of Pacific Grove urged that the certificate be granted. From the testimony received, it appears that no person, firm, public or private corporation other than Pacific Gas and Electric Company is now engaged in the business of furnishing, distributing, and selling gas in the City of Pacific Grove, but that it or its predecessors for many years have so served the territory now comprising said city.

From the evidence of record, the Commission finds that public convenience and necessity require the exercise by applicant of the right, privilege, and franchise granted to Pacific Gas and Electric Company by Ordinance No. 172 N.S. of the City Council of the City of Pacific Grove.

This certificate of public convenience and necessity granted herein is subject to the following provisions of law:

- (a) 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.
- (b) That the franchise involved herein shall never be given any value before any court or other 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.

O R D E R

Public hearing having been held on the above-entitled 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. 172 N.S., adopted September 21, 1949, by the City Council of the City of Pacific Grove, County of Monterey, State of California.

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

Dated at San Francisco, California, this 14th day of February, 1950.

R. E. Zimmerman
Justice F. Cramer
James H. Kull
Harold Kull
James H. Kull
Commissioners: