

ORIGINAL

Decision No. 45058

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION OF CALIFORNIA ELECTRIC POWER COMPANY, A CORPORATION, FOR A CERTIFICATE OF CONVENIENCE AND NECES- SITY TO EXERCISE RIGHTS UNDER FRANCHISE IN THE CITY OF BARSTOW, STATE OF CALIFORNIA.)
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Application No. 31646

H. M. Hammack, attorney, for applicant.

O P I N I O N

California Electric Power Company, a California corporation, in this proceeding asks for a certificate of public convenience and necessity to exercise the rights and privileges of a franchise granted by the City of Barstow, San Bernardino County, California, permitting the construction, maintenance, operation, and use of an electric distribution and transmission system upon the streets of said city.

Franchise Ordinance No. 57 of the City of Barstow, a certified copy of which was submitted at the hearing as Exhibit No. 2, was granted by the city on June 5, 1950, and became effective 30 days thereafter. The franchise is in accordance with the Franchise Act of 1937 and is of indeterminate duration.

A fee is payable annually to the city, equivalent to 2% of the gross receipts arising from the use, operation, or possession of the franchise, but not less than 1% of all the sales of electricity within the limits of said city under said franchise, applicant not possessing a constitutional franchise in the territory covered by the franchise.

Since September 1, 1916, applicant has been operating under County of San Bernardino Franchise Ordinance No. 172, of that date, which was granted by the county in accordance with the Broughton Act and was of a 50-year term. Computations of payment were determined according to the Dinuba Formula, payments being made to the City of Barstow subsequent to its incorporation as a city in September, 1947, on a proportionate basis. That portion of County Franchise Ordinance No. 172 covering territory now included within the city limits of the City of Barstow is superseded by City Ordinance No. 57 herein being considered.

The costs incurred by applicant in obtaining the franchise granted by City Ordinance No. 57 are stated to have been \$193.97, including \$137.67, cost of publishing notice of intention and of publishing the ordinance itself, the \$50 filing fee, and the \$6.30 cost of publishing of notice of hearing in this matter. A \$5,000 bond, as required by the franchise, was filed by applicant with the city on June 5, 1950, and acceptance of the franchise was filed by applicant with the city on June 7, 1950.

A public hearing on this application was held before Examiner Warner at Barstow, California, on November 10, 1950. No objection to the granting of the certificate was entered by any party at the hearing.

Under the terms of County Ordinance No. 172, payments to the city for the year ending December 31, 1949, under the Dinuba Formula, amounted to \$294.60. Under City Ordinance No. 57, it is estimated that the computed payment under the Franchise Act. of 1937 would have been \$2,491.03, applicant's gross annual receipts in the City of Barstow for the year ending December 31, 1949, being \$249,103.03,

total kilowatt-hours sold being 11,428,526, and there being 18.25 miles of distribution and transmission lines within the City of Barstow, of which 7.80 miles were on public streets and 10.45 miles on private rights of way. There were 1,658 meter connections as of December 31, 1949.

Applicant's witness stated that the reasons for securing a new franchise were as follows:

1. That County Ordinance No. 172 would expire in 1967, and that City Ordinance No. 57 was of an indeterminate term;
2. That the possession of indeterminate franchises was advantageous in the issuance of bonds; and
3. That applicant was attempting to establish a uniform franchise policy applicable to its entire system.

As applicant has served electricity in the City of Barstow since the incorporation of the city in September, 1947, and for many years prior thereto in the same territory under a County of San Bernardino franchise, without competition, it is evident that the certificate applied for should be granted.

The certificate of public convenience and necessity herein granted 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 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.

O R D E R

Application as above entitled having been filed, a public hearing having been held thereon, the matter having been submitted, the Commission being fully advised in the premises and hereby finding that public convenience and necessity so require,

IT IS HEREBY ORDERED that a certificate of public convenience and necessity is granted to California Electric Power Company to exercise the rights and privileges granted by the City of Barstow by Ordinance No. 57, adopted June 5, 1950.

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

Dated at San Francisco, California, this 28th day of November, 1950.

A. E. Anderson
Justus J. Caswell
Geoff. Powell
Harold Hula
Remond P. Potter
 Commissioners.