

Decision No. 45606**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)
 issuing to applicant a certificate of)
 public convenience and necessity to)
 exercise the rights, privileges and)
 franchise granted to applicant by)
 Ordinance No. 3577 C.M.S. of the)
 Council of the CITY OF OAKLAND,)
 County of Alameda, State of California.)
 (Electric))

Application No. 32228

Ralph W. DuVal and Paul E. Sloane, for applicant;
John W. Collier and Loren W. East, for City of
 Oakland.

O P I N I O N

Pacific Gas and Electric Company seeks an order from this Commission under Section 50(b) of the Public Utilities Act (California Statutes 1915, Chapter 91, as amended), issuing to applicant a certificate declaring that public convenience and necessity require and will require the exercise by applicant of the rights, privileges, and franchise granted to it by Ordinance No. 3577 C.M.S. of the Council of the City of Oakland, County of Alameda, State of California, relating to the use of electric facilities within said city. The application was unopposed and was submitted at a public hearing held before Examiner Gregory at Oakland on April 12, 1951.

Ordinance No. 3577 C.M.S., enacted March 1, 1951, grants to applicant, its successors and assigns, for a term of 50 years from and after the effective date thereof, which is April 30, 1951, a nonexclusive franchise (1) to use, for transmitting and . . .

distributing electricity suitable for lighting, for use by consumers for any and all lawful purposes other than lighting, all electric facilities which are now or may hereafter be lawfully placed and maintained in the streets within the City of Oakland under the "constitutional franchise" applicant claims to have acquired through acceptance by it or its predecessors of the offer contained in the provisions of Section 19 of Article XI of the Constitution of the State of California, as said section existed prior to its amendment on October 10, 1911; (2) to construct, maintain, and use in said streets electric facilities, whenever and wherever said constitutional franchise shall not be available therefor, necessary to transmit and distribute electricity suited for, and for use by consumers for, any or all lawful purposes; and (3) to utilize all of the aforesaid electric facilities in said streets for transmitting electric energy for use outside of the boundaries of said city for any and all lawful purposes.

Under Ordinance No. 3577 C.M.S. the grantee will pay annually to the City of Oakland during the term of the franchise a sum equivalent to 2% of the gross annual receipts of the grantee, arising from the use, operation or possession of the franchise, but in no event less than a sum equivalent to one-half per cent of the gross annual receipts derived by grantee from the sale of electricity within the limits of said city. The ordinance further provides, in substance, that for the period from April 30, 1951, to December 31, 1959, the grantee shall make payments on the same basis as provided for in the franchise expiring October 25, 1959, granted to applicant's predecessor, Great Western Power Company, by Ordinance No. 2962 of the City of Oakland, and as set forth in an agreement between applicant and said city dated January 9, 1936; provided further that after December 31, 1959, the annual franchise payments to

said city shall never be less than the maximum payment made under Ordinance No. 3577 C.M.S. for any one year prior to 1960, except that in the event 2% of the gross receipts of grantee from the sale of electricity for heat and power purposes within the limits of said city for any calendar year after 1959 shall fall below the amount of such maximum, due to competition in any form, then the franchise payment for such year or years shall be made in the amount of 2% of such gross receipts.

Under the provisions of said franchise applicant is required, on or prior to May 10, 1951, to file written acceptance of the terms and conditions thereof, and at the same time pay to the City of Oakland the sum of \$100,000 as the purchase price for said franchise. The franchise payments and purchase price, to be paid by applicant to the City of Oakland as the consideration for the privilege granted, were arrived at through negotiations between applicant and the city which included the settlement, by way of compromise, of threatened litigation between applicant and the city in respect to applicant's use of the city's streets for distribution of both gas and electricity under its previous franchises.

Applicant states that the cost of obtaining the franchise granted by Ordinance No. 3577 C.M.S. will be as follows, exclusive of the fee of \$50 paid to the Commission for filing the application:

Publication of Notice of Intention to grant Ordinance No. 3577 C.M.S.	\$ 52.66
Publication of Ordinance No. 3577 C.M.S.	139.55
Purchase price of franchise	<u>100,000.00</u>
Total	100,192.21

Applicant has stipulated that it, its successors and assigns, will never claim before the Commission, or before any court or public body, a value for said franchise in excess of the actual cost thereof.

Applicant and its predecessors have for many years rendered electric service in the City of Oakland without competition. If the authority herein sought is granted applicant will thereafter conduct its electric business in the City of Oakland under its afore-mentioned "constitutional franchise" and the franchise granted by Ordinance No. 3577 C.M.S.

The record establishes that possession of the franchise granted by said Ordinance No. 3577 C.M.S. will more definitely establish and extend the term of applicant's electric franchise rights in the City of Oakland, and will also facilitate the qualification of applicant's bonds, from time to time outstanding, as legal investments for savings bank and trust funds.

We find from the evidence of record in this proceeding that the present and future public convenience and necessity require and will require the exercise by applicant of the rights, privileges and franchise granted by said Ordinance No. 3577 C.M.S. of the Council of the City of Oakland, County of Alameda, State of California, adopted March 1, 1951. The requested certificate, therefore, will be granted, subject, however, 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

Public hearing having been held in the above-entitled and numbered application, evidence having been received and considered, the matter having been submitted for decision, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that Pacific Gas and Electric Company be and it is hereby granted a certificate that the present and future public convenience and necessity require and will require the exercise by it of the rights, privileges and franchise granted by Ordinance No. 3577 C.M.S. of the Council of the City of Oakland, County of Alameda, State of California, adopted March 1, 1951.

The effective date of this order shall be ten (10) days after the date hereof.

Dated at San Francisco, California, this 24th day of April, 1951.

A. J. [Signature]
Justin F. [Signature]
Harold A. [Signature]
[Signature]
[Signature]
 Commissioners.