

ORIGINAL

Decision No. 45607

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 Com-
 mission of the State of California
 issuing applicant a certificate of
 public convenience and necessity to
 exercise the rights, privileges and
 franchise granted to applicant by
 Ordinance No. 232 of the Council of the
 City of Oakland, County of Alameda,
 State of California, as amended by
 Ordinance No. 3576 C.M.S., of said
 Council, adopted March 1, 1951.
 (Gas)

Application No. 32227

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, Chap. 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. 232 of the Council of the City of Oakland, County of Alameda, State of California, as amended by Ordinance No. 3576 C.M.S. of said Council adopted March 1, 1951, relating to distribution of gas in the City of Oakland. The application was unopposed and was submitted at a public hearing held before Examiner Gregory at Oakland on April 12, 1951.

Ordinance No. 232 (the original franchise), adopted December 18, 1865, granted to applicant's predecessors, for an indeterminate period, the privilege of erecting gas works and laying

down pipes in the City of Oakland for the manufacture and distribution of illuminating gas. The amendatory ordinance removes the ambiguity of the original franchise by defining gas to be distributed thereunder to mean "any form of commercial gas in general use by the public for producing light, heat, power or when applied to any lawful purpose," thereby eliminating threatened litigation to determine the application of the original franchise for the distribution of gas for purposes other than lighting.

Under the amended ordinance, the grantee will pay annually to the City of Oakland a sum equivalent to 2% of the gross annual receipts of the grantee, arising from the use, operation or possession of the franchise, provided that such payment shall in no event be less than a sum equivalent to 1% of the gross annual receipts derived by grantee from the sale of gas within the limits of the City of Oakland.

The amended franchise further provides that grantee shall, within 10 days after the effective date of the amendatory ordinance, file with the City Clerk a written acceptance of the terms and conditions thereof, and at the same time pay to the City of Oakland the sum of \$115,000, and also a sum equivalent to 1% of the gross annual receipts derived by grantee from the sale of gas within the limits of the City of Oakland from September 8, 1949, to the effective date of the amendatory ordinance (April 30, 1951), as the consideration to be paid for the enactment thereof.^{1/}

^{1/} The record shows that on or about September 8, 1949, in the course of negotiations between applicant and the City of Oakland respecting gas and electric franchises, applicant assured the city that the latter would not be prejudiced by delay in the negotiations, and gave to the city a written statement to the effect that the company would include in the consideration to be paid for enactment of the amended gas franchise ordinance a sum equivalent to that which the city would have received had the amended franchise been in effect since September 8, 1949.

Applicant estimates the cost of obtaining the amended franchise as follows, exclusive of the fee of \$50 paid to the Commission for filing the application:

Publication of Notice of Intention	
to grant amendment	\$ 57.54
Publication of Ordinance No. 3576 C.M.S. . .	110.11
Consideration to be paid for enactment	
of amendatory ordinance and franchise . .	<u>238,600.00</u>
Total . .	<u>\$238,767.65</u>

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

Applicant and its predecessors have for many years rendered gas service in the City of Oakland without competition. If the authority herein sought is granted, applicant will thereafter conduct its gas business in the City of Oakland under and pursuant to the constitutional franchise it claims to have acquired through acceptance by it and 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, and under and pursuant to the original franchise granted by Ordinance No. 232, as amended by Ordinance No. 3576 C.M.S.

The record establishes that possession of the amended franchise by applicant will more definitely establish its gas 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. 232 of the Council of the City of Oakland, County of Alameda, State of California, as amended by Ordinance No. 3576 C.M.S. of said Council 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 hereby is 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. 232 of the Council of the City of Oakland, County of Alameda,

State of California, as amended by Ordinance No. 3576 C.M.S. of said Council 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.

R. F. [Signature]
James F. [Signature]
Harold F. Kula

[Signature]
[Signature]
Commissioners.