

Decision No. 55910**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 issuing a certificate of
 public convenience and necessity to
 exercise the right, privilege and
 franchise granted to applicant by
 Ordinance No. 551 of the Common
 Council of the City of Gilroy, County
 of Santa Clara, State of California.
 (Electric)

Application No. 39357

F. T. Searls, Malcolm A. MacKillop and David R. Fuller,
 by John S. Cooper, for applicant.

O P I N I O N

Pacific Gas and Electric Company, 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 Gilroy, permitting the installation, maintenance and use of an electric distribution and transmission system upon the streets of said city. A public hearing was held before Examiner Thomas E. Daly on November 7, 1957, at San Francisco.

The franchise referred to, a copy of which is attached to the application and designated as Exhibit A, was granted by the city in accordance with the Franchise Act of 1937 and is of indeterminate duration.

Applicant is presently serving the City of Gilroy pursuant to an electric franchise acquired from its predecessor, Coast Counties Gas and Electric Company by Ordinance No. 454. The franchise was granted for a 25-year term. Said franchise provides for an annual payment of 2 per cent of the gross annual receipts derived by applicant from the sale of electricity within the city. Since the Coast Counties Gas and Electric Company was merged with applicant

on August 31, 1954, applicant has not complied with the 2 per cent provision, but has paid the city an amount equal to the highest yearly payment ever made by Coast Counties, with the understanding that it would increase the payment whenever a payment under the Franchise Act of 1937 would exceed such amount. Applicant followed this procedure for the years 1954, 1955 and 1956. As consideration for the new franchise applicant agreed to pay to the city the difference between the pegged price paid for the years 1954, 1955 and 1956 and the 2 per cent amount provided for in the old franchise, plus interest at 5 per cent per annum as well as the full 2 per cent of the sales from January 1, 1957 to and including June 12, 1957, the effective date of the new franchise. The cost of acquiring the new franchise, including publication costs, amounted to \$3,752.02.

Under the terms of the new franchise applicant has agreed to pay an annual fee in accordance with the 2 per cent provision of the old franchise. Such amount will be paid until June 17, 1972, the expiration date of the old franchise. Thereafter a fee will be payable annually to the city equivalent to 2 per cent of the gross receipts arising from the use, operation, or possession of the franchise, but not less than 1 per cent of the gross annual receipts arising from the sale of electricity within the limits of the city under said franchise.

No objection to the granting of the requested certificate has been entered. Furthermore, this utility or its predecessors have, for many years, served electricity in and about the City of Gilroy without competition. As of December 31, 1956, it served 2,175 electric customers within the city.

After consideration it is found as a fact that public convenience and necessity require the exercise by applicant of the right, privilege and franchise granted to applicant by Ordinance

No. 551 of the City of Gilroy.

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

1. 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.
2. 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

The above-entitled application having been filed, a public hearing having been held, the matter having been submitted and now being ready for decision,

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and it is granted to Pacific Gas and Electric Company to exercise the rights and privileges granted by the City of Gilroy, by Ordinance No. 551 adopted May 13, 1957.

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

Dated at San Francisco, California, this 10th day of December 1957.

[Signature]
[Signature] President
[Signature]
[Signature]
[Signature]
[Signature] Commissioners