

ORIGINALDecision No. 55916

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 to applicant a cer-)
 tificate of public convenience and)
 necessity to exercise the right,)
 privilege and franchise granted to)
 applicant by Ordinance No. 550 of the)
 Common Council of the City of Gilroy,)
 County of Santa Clara, State of)
 California.)

Application No. 39358

(Gas)

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 a gas distribution and transmission system in 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 a gas franchise acquired from its predecessor, Coast Counties Gas and Electric Company, by Ordinance No. 453. The franchise was granted for a 25-year term. Said franchise provides for an annual payment of 2 percent of the gross annual receipts derived by applicant from the sale of gas 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 percent 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 percent amount provided for in the old franchise, plus interest at 5 percent per annum as well as the full 2 percent 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 \$4,035.01.

Under the terms of the new franchise applicant has agreed to pay an annual fee in accordance with the 2 percent provision of the old franchise. Such amount will be paid until June 17, 1972, the expiration date of the old franchise. Thereafter an annual fee will be payable to the city equivalent to 2 percent of the gross receipts arising from the use, operation, or possession of the franchise, but not less than 1 percent of the gross annual receipts arising from the sale of gas 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 gas in and about the City of Gilroy without competition. As of December 31, 1956, it served 1,984 customers within the city from approximately 23.52 miles of gas mains therein.

After consideration it is hereby 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. 550 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 hereby granted to Pacific Gas and

Electric Company to exercise the rights and privileges granted by the City of Gilroy by Ordinance No. 550 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]
President
[Signature]
[Signature]
[Signature]
[Signature]
Commissioners