

ORIGINAL

Decision No. 57874

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
CALIFORNIA ELECTRIC POWER COMPANY
under Section 1002 of the Public
Utilities Code for a certificate of
public convenience and necessity to
exercise rights under franchise in
the City of San Bernardino, California.

Application No. 40513

Donald J. Carman, H. M. Hammack, Kenneth M. Lemon,
and W. W. Miller, by Kenneth M. Lemon, for applicant.
Rollin E. Woodbury, Harry W. Sturges, Jr., and H. Clinton
Tinker, by H. Clinton Tinker, for Southern California
Edison Company, interested party.
Leonard S. Patterson for the Commission staff.

O P I N I O N

California Electric Power Company, a corporation, by the
above-entitled application, filed on October 17, 1958, requests a
certificate of public convenience and necessity to exercise the
rights and privileges of Franchise Ordinance No. 2205 granted by the
City of San Bernardino, San Bernardino County, California, to use
and to construct and use, for transmitting and distributing elec-
tricity to the public for any and all purposes, poles, wires,
conduits and appurtenances necessary and proper therefor, in, along,
across, upon, over, and under the state highways, public streets,
ways, alleys and places within the City of San Bernardino.

Application No. 40571, of the Southern California Edison
Company, heard on the same day but not consolidated with the herein
application, also seeks a certificate to exercise the rights and

privileges of a similar franchise (Franchise Ordinance No. 2206) to exercise practically identical rights throughout the same city.

A public hearing on the application was held before Examiner Kent C. Rogers on December 16, 1958, in Los Angeles. Prior to the hearing, notice thereof was published as required by this Commission. There were no protests.

The franchise referred to, a copy of which is attached to the application and designated Exhibit "A", was granted by the city in accordance with the Franchise Act of 1937 (Division 3, Chapter 2, California Public Utilities Code), was effective 30 days after its adoption on January 13, 1958, and is of indeterminate duration. Applicant claims a constitutional franchise in the City of San Bernardino (Section 19, Article XI, California Constitution as it existed prior to October 10, 1911), and the instant franchise replaces a 50-year franchise granted by the city in 1911 by Franchise Ordinance No. 462. Under the terms of the franchise here involved applicant, during the life thereof, shall pay to the city a sum annually which shall be equivalent to two percent (2%) of the gross annual receipts of the applicant arising from the use, operation or possession of said franchise; provided, however, that said payment shall in no event be less than one-half percent of the gross annual receipts derived by the grantee from the sale of electricity within the limits of said city under both the constitutional franchise and the franchise here involved.

The applicant's witness stated that the costs incurred in obtaining the franchise were \$162.61, exclusive of the costs incident to this application which amount to \$56.19 and include \$50.00

for filing the application with the Commission and \$6.19 for publication of the notice of hearing thereon. Since 1911 applicant or its predecessors in interest have been serving the city pursuant to a franchise which will expire in 1961, and the new franchise herein referred to is of indeterminate duration. This old franchise was a Broughton Act franchise and the rights and duties of the parties are more clearly spelled out in the new franchise. In addition, applicant's witness said applicant is seeking franchises under the 1937 Act wherever possible because of the indeterminate nature of this type of franchise which is desirable from the financing angle in that in many eastern states, which are applicant's principal long term bond markets, it is either necessary or very advantageous to have franchises which continue beyond the maturity date of bonds in order to qualify such bonds as legal investments.

Both applicant herein and Southern California Edison Company serve customers in portions of the City of San Bernardino as shown on Exhibit "D" attached to the application. Said parties stipulated that California Electric Power Company will not, without prior approval of the Commission, provide electric service to any inhabitants of those areas shown on Exhibit "D" to Application No. 40513 and identical Exhibit "D" to Application No. 40571 as being served solely by Southern California Edison Company, and that Southern California Edison Company, in turn, will not without prior approval of the Commission, provide electrical service to any inhabitants of those areas shown on the aforesaid Exhibits "D" as being served solely by California Electric Power Company. As indicated on the aforesaid Exhibits "D" a considerable portion of the city is designated as territory within which both utilities serve. Applicant's witness testified that the agreement which exists between the utilities operates to preclude active competition in those areas.

The witness further testified that a definitive service area boundary between the two utilities in the City of San Bernardino is being negotiated and that when agreement has been reached a joint filing will be made before this Commission for certification of the boundary.

As of December 1, 1958, applicant served approximately 8,830 customers in the City of San Bernardino and had a gross revenue from all services in the city during the year 1957 of \$1,185,383. It will pay annually to the city approximately \$5,926.92 under the terms of the franchise based on its 1957 income from, and consumers in, the city.

Upon the record herein the Commission finds that public convenience and necessity require the exercise by applicant of the rights, privileges and franchise granted to the applicant by the City of San Bernardino Franchise Ordinance No. 2205. The certificate of public convenience and necessity herein granted is subject to the following provisions of law and the restriction in the order herein:

1. 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 for any amount of money 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. 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

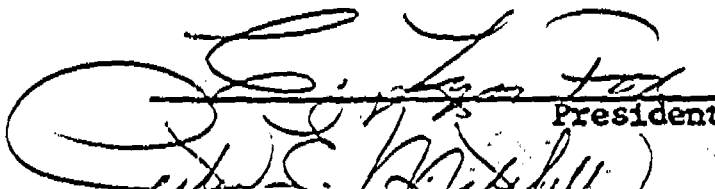
The above-entitled application having been filed, a public hearing having been held thereon, the matter having been

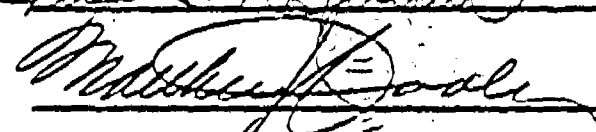
submitted and the Commission having made the foregoing findings, and based on said findings,

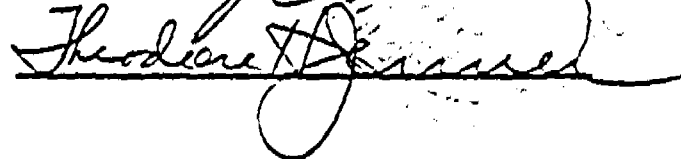
IT IS HEREBY ORDERED that California Electric Power Company, a corporation, be and it hereby is granted a certificate that public convenience and necessity require the exercise by it of the rights, privileges and franchise granted to it by Ordinance No. 2205 of the City of San Bernardino, State of California, which ordinance was adopted on the 13th day of January, 1958, by the City Council of said city; provided: (1) That the exercise of said franchise rights shall be subject to the terms of the stipulation between applicant and Southern California Edison Company hereinbefore referred to; and (2) that the Commission may hereafter by appropriate proceeding and order limit the authority herein granted.

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

Dated at San Francisco, California, this 20th day of January, 1959.



President




Commissioners