

ORIGINAL

Decision No. 57875

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SOUTHERN CALIFORNIA EDISON COMPANY,
a corporation, for certificate that
public convenience and necessity should
require and will require the exercise
by applicant of the rights, privileges
and franchise granted by Ordinance
No. 2206 of the City of San Bernardino,
County of San Bernardino, State of
California, in accordance with
Franchise Ordinance No. 2206 of said
City.

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} Application No. 40571
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Rollin E. Woodbury, Harry W. Sturges, Jr., and
H. Clinton Tinker, by H. Clinton Tinker,
for applicant.
Donald J. Carman, H. M. Hammack, Kenneth M. Lemon,
and W. W. Miller, by Kenneth M. Lemon, for
California Electric Power Company, interested
party.
Leonard Patterson, for the Commission staff.

O P I N I O N

Southern California Edison Company, a corporation, by the
above-entitled application, filed on November 5, 1958, requests a
certificate of public convenience and necessity to exercise the
rights and privileges of Franchise No. 2206 granted by the City
of San Bernardino, San Bernardino County, California, to use and
to construct and use, for transmitting and distributing electricity,
poles, wires, conduits and appurtenances, including communication
circuits necessary and proper therefor, in, along, across, upon, over
and under the public streets, ways, alleys and places within the
City of San Bernardino.

Application No. 40513 of the California Electric Power Company, heard on the same day but not consolidated with the herein application, also seeks a certificate to cover the rights and privileges of a similar franchise (Franchise Ordinance No. 2205) to exercise practically identical rights throughout the same city.

A public hearing on the application herein 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 the 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 term Broughton Act franchise (Franchise Ordinance No. 1537, adopted October 31, 1934). 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 2 percent of the gross annual receipts of the grantee arising from the use, operation or possession of said franchise, provided, however, that such payment shall in no event be less than 1/2 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 are \$178.03, exclusive of the costs incident to this application which amount to \$56.60 and include \$50 for filing the application with the Commission and \$6.60 for publication of the notice of the hearing thereon. Since 1934 applicant has been serving the city pursuant to a Broughton Act franchise which will expire in 1984, and the new franchise herein referred to is of indeterminate duration. The franchise granted by Ordinance No. 2206 more definitely establishes and extends applicant's franchise rights in the city, and the possession, ownership and exercise of said franchise by applicant will be of value to the applicant in rendering service to the public within the City of San Bernardino and in connection with continuing to qualify the outstanding bonds of the applicant and effecting qualification of future issues of bonds as legal investments in states having laws relating to the qualification of bonds of public utility companies.

Both applicant herein and California Electric Power Company serve customers in portions of the City of San Bernardino as shown on Exhibit "D" attached to the application. Said parties stipulated "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. Southern California Edison Company, will not, without prior approval of the Commission, provide electric service to any inhabitants of those areas shown on the aforesaid Exhibit '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 October 31, 1957, applicant served approximately 22,700 customers in the City of San Bernardino, and had a gross revenue from all services in the city during the year 1957 of \$2,630,000. It will pay annually to the city approximately \$13,149 under the terms of its franchise based on its 1957 revenues from, and consumers in, the city.

Upon the record herein the Commission finds that public convenience and necessity require the exercise by the applicant of the rights, privileges and franchise granted to the applicant by the City of San Bernardino Ordinance No. 2206. The certificate of public convenience and necessity herein granted is subject to the following provisions of law and to 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 finding and based upon said finding,

IT IS HEREBY ORDERED that Southern California Edison Company, a corporation, be and it is hereby 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. 2206 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 California Electric Power Company hereinabove 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.

[Signature]
President
[Signature]
[Signature]
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Commissioners