

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA

FILED

FEB 16 1960

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. 1579 of the Council of
the City of RICHMOND, County of Contra
Costa, State of California.
(Electric)

APPLICATION

NO. 41948

A P P L I C A T I O N

TO THE HONORABLE, THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA:

PACIFIC GAS AND ELECTRIC COMPANY, a California
corporation (herein sometimes called applicant) seeks an
order of the Commission under Section 1002 of the Public
Utilities Code of the State of California (California
Statutes 1951, Ch. 764) issuing to applicant a certificate
declaring that public convenience and necessity require the
exercise by applicant of the right, privilege and franchise
granted to it by Ordinance No. 1579 of the Council of
the City of Richmond, County of Contra Costa, State of
California.

In support of its within petition, applicant
avers as follows:

I

APPLICANT

Applicant now is, and ever since the 10th day of
October 1905 has been, an operating public utility corpora-
tion, duly organized and existing under and by virtue of the
laws of the State of California, engaged principally in the

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7 public convenience and necessity to
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10 Ordinance No. 1579 of the Council of
11 the City of RICHMOND, County of Contra
12 Costa, State of California.
13 (Electric)

APPLICATION

NO. 41948 A

10 A P P L I C A T I O N

11 TO THE HONORABLE, THE PUBLIC UTILITIES COMMISSION

12 OF THE STATE OF CALIFORNIA:

13 PACIFIC GAS AND ELECTRIC COMPANY, a California
14 corporation (herein sometimes called applicant) seeks an
15 order of the Commission under Section 1002 of the Public
16 Utilities Code of the State of California (California
17 Statutes 1951, Ch. 764) issuing to applicant a certificate
18 declaring that public convenience and necessity require the
19 exercise by applicant of the right, privilege and franchise
20 granted to it by Ordinance No. 1579 of the Council of
21 the City of Richmond, County of Contra Costa, State of
22 California.

23 In support of its within petition, applicant
24 avers as follows:

25 I

26 APPLICANT

27 Applicant now is, and ever since the 10th day of
28 October 1905 has been, an operating public utility corpora-
29 tion, duly organized and existing under and by virtue of the
30 laws of the State of California, engaged principally in the

1 business of furnishing electric and gas service in
2 California. It also distributes and sells water in a number
3 of cities and towns and certain rural areas, and produces
4 and sells steam heat in certain parts of the cities of
5 San Francisco and Oakland.

6 Applicant's principal place of business is in the
7 City and County of San Francisco, State of California. Its
8 Post Office address is 245 Market Street, San Francisco 6,
9 California, and its attorneys in this matter are F. T. Searls,
10 John C. Morrissey and John S. Cooper.

11 Communications regarding applicant in connection
12 with this application should be addressed to F. T. Searls,
13 General Attorney of applicant, at the above mentioned address.

14 A certified copy of applicant's Articles of
15 Incorporation, as amended to the date of this petition, is
16 of record before the Commission in connection with appli-
17 cant's Application No. 39179 (Exhibit A) filed on June 25,
18 1957, and said Articles are incorporated herein by
19 reference.

20 II

21 ORDINANCE NO. 1579

22 On or about the 21st day of April, 1958,
23 the Council of the City of Richmond, County of Contra
24 Costa, State of California, adopted an ordinance designated
25 as Ordinance No. 1579, a true and correct copy whereof is
26 annexed hereto, marked Exhibit A, and made a part hereof.

27 Ordinance No. 1579 grants to applicant, its
28 successors and assigns, the franchise (1) to use, for
29 transmitting and distributing electricity suited for
30 lighting but for use by consumers for any and all lawful

1 purposes other than lighting, all poles, wires, conduits
2 and appurtenances which are now or may hereafter be law-
3 fully placed and maintained in the streets within the City
4 of Richmond, in its present incorporated form and in any
5 later reorganized, consolidated, enlarged, or reincorporated
6 form, under that certain franchise of grantee acquired pur-
7 suant to Section 19 of Article XI of the Constitution of
8 the State of California, as said section existed prior to
9 its amendment on October 10, 1911, and (2) to construct,
10 maintain and use in said streets all poles, wires, conduits
11 and appurtenances whenever and wherever the constitutional
12 franchise of grantee is not now nor shall hereafter be
13 available therefor, necessary to transmit and distribute
14 electricity suited for, and for use by consumers for, any
15 or all lawful purposes, and (3) to utilize said poles,
16 wires, conduits and appurtenances in said public streets
17 and places for transmitting electricity for use outside the
18 boundaries of said city for any and all lawful purposes.

19 The franchise is by its terms indeterminate,
20 that is to say, it will endure in full force and effect
21 until the same shall, with the consent of the Public
22 Utilities Commission of the State of California, be
23 voluntarily surrendered or abandoned by grantee, or until
24 the state or some municipal or public corporation there-
25 unto duly authorized by law shall purchase by voluntary
26 agreement or shall condemn and take under the power of
27 eminent domain, all property actually used and useful in
28 the exercise of said franchise and situate in the terri-
29 torial limits of the state, municipal or public corpora-
30 tion purchasing or condemning such property or until said

1 franchise shall be forfeited for noncompliance with its
2 terms by the grantee.

3 Section 4 of Ordinance No. 1579 provides that
4 the grantee of said franchise shall pay to the City of
5 Richmond annually, either two per cent (2%) of the gross
6 annual receipts of the grantee arising from the use,
7 operation or possession of the franchise, or a sum which
8 shall be equivalent to one-half per cent (1/2%) of the
9 gross annual receipts derived by grantee from the sale of
10 electricity within the limits of said city, under said
11 franchise and under said constitutional franchise, which-
12 ever is greater; provided that the measure or amount of
13 annual payments may be changed at the end of any twenty
14 (20) year period of said franchise as set forth under
15 Section 5 of the ordinance.

16 Section 18 of Ordinance No. 1579 provides that
17 the franchise shall at all times be held and exercised by
18 grantee subject to the right of the City of Richmond to
19 purchase by voluntary agreement with grantee, or by con-
20 demnation, so much of the electric properties of grantee
21 located within the limits of the City of Richmond as City
22 may elect.

23 Ordinance No. 1579 provides that it shall become
24 effective thirty days after its final passage, unless sus-
25 pended by a referendum petition filed as provided by law,
26 and upon written acceptance of the franchise thereunder by
27 the grantee thereof. Ordinance No. 1579 was finally adopted
28 and ordered published at a regular meeting of the Council
29 held on the 21st day of April, 1958. The City Clerk of
30 the City of Richmond caused the ordinance to be published

1 in the manner and within the time specified therein; the
2 ordinance was not suspended by a referendum petition filed
3 as provided by law, or otherwise, or at all; the applicant,
4 on or about the 21st day of May, 1958, accepted the fran-
5 chise granted by said ordinance; and the franchise became
6 effective on the 21st day of May, 1958.

7 The cost to applicant of acquiring the franchise
8 granted by Ordinance No. 1579 was the sum of Nine thousand
9 three hundred fifty-three and 07/100 Dollars (\$9,353.07),
10 exclusive of the fee which must be paid to the Public
11 Utilities Commission of the State of California under and
12 pursuant to the provisions of Section 1904 (b) of the
13 Public Utilities Code, namely, Fifty and 00/100 Dollars
14 (\$50.00). This cost comprises:

| | | |
|----|--|---------------|
| 15 | Payment to the City of Richmond as | |
| 16 | consideration for the grant of | |
| | the franchise..... | \$ 9,205.24 |
| 17 | Publication of Notice of Intention to | |
| 18 | grant franchise..... | 20.21 |
| 19 | Publication of Ordinance No. 1579..... | <u>127.62</u> |
| 20 | | \$ 9,353.07 |

21 Applicant hereby stipulates and agrees that it, its
22 successors or assigns, will never claim before the
23 Commission or before any court or public body, a value for
24 said franchise in excess of the actual cost thereof.

25 III

26 PUBLIC CONVENIENCE AND NECESSITY

27 The facts showing that public convenience and
28 necessity require and will require, that applicant exercise
29 the right, privilege and franchise granted to it by
30 Ordinance No. 1579 of the Council of the City of Richmond

1 are as follows:

2 The City of Richmond is located in the County of
3 Contra Costa, State of California. It was incorporated on
4 August 16, 1905, and, according to the 1959 California
5 Roster has a population of approximately 99,545. A map of
6 the City of Richmond is annexed, marked Exhibit B, and made
7 a part hereof.

8 Applicant now is, and it and its predecessors in
9 interest for more than 50 years last past have been fur-
10 nishing and supplying electricity to persons, firms and
11 corporations situate in the City of Richmond for light, heat,
12 power and all other lawful purposes and uses. A statement
13 giving a brief history of this electric service, the source
14 of electric supply, the miles of electric lines in the City
15 of Richmond, the number of customers served, and other
16 data pertinent to this application, is annexed, marked
17 Exhibit C, and made a part hereof.

18 Applicant, upon obtaining a certificate of public
19 convenience and necessity from the Commission to exercise
20 the right, privilege and franchise granted by Ordinance No.
21 1579 of the Council of the City of Richmond, will there-
22 after in the conduct of its electric business in the City
23 of Richmond, in its present incorporated form or in any
24 later reorganized, consolidated, enlarged or reincorporated
25 form, exercise the rights and privileges under the consti-
26 tutional franchise and the franchise granted by Ordinance
27 No. 1579.

28 Applicant believes and therefore alleges that
29 it will be for its best interests and the interests of its
30 present and future electric customers in the City of

1 Richmond that in the conduct of its electric business it
2 exercise the rights and privileges of its perpetual
3 constitutional franchise and the indeterminate franchise
4 granted by Ordinance No. 1579 for the reason that its
5 electric franchise rights in said city will thereby be
6 definitely established for as long a time as applicant or
7 its successors or assigns shall furnish electric service in
8 said city; further, applicant, in continuing qualified its
9 outstanding bonds and effecting qualification of future
10 issues of bonds as legal investments for savings banks and
11 trust funds, will not be under the necessity of applying for
12 or obtaining from the City of Richmond any new or addi-
13 tional electric franchises or franchise rights.

14 Applicant has issued and outstanding in the
15 hands of the public a large amount of First and Refunding
16 Mortgage Bonds, all of which are now qualified as legal
17 investments for savings banks in a number of the states
18 of the United States. It is desirable that said bonds,
19 together with future issues of applicant's bonds, should
20 qualify as legal investments for savings banks and trust
21 funds in as many states of the United States as is possible
22 to broaden the market for applicant's bonds and to enable
23 applicant to obtain higher prices for its bonds. In other
24 words, the matter of the legalization of applicant's bonds
25 as savings bank and trust fund investments has a definite
26 bearing upon the cost of money to applicant which in turn
27 ultimately has an effect upon the rates charged for public
28 utility services supplied. The exercise by applicant of
29 the right, privilege and franchise granted by said Ordinance
30 No. 1579, together with other rights, privileges and

1 franchises now possessed and exercised by applicant, and
2 those obtained and hereafter to be obtained, is essential
3 to enable applicant to qualify and/or continue so qualified
4 its said bonds.

5
6 IV

7 PUBLIC UTILITY SERVICE

8 No person, firm or public or private corporation,
9 other than applicant, is now engaged in the public utility
10 business of furnishing, distributing or selling electricity
11 for light, heat, power or other lawful purposes in or to
12 the City of Richmond, or to the residents or inhabitants
13 thereof or business enterprises situate therein and said
14 city and its residents, inhabitants and business enter-
15 prises are dependent upon applicant and the properties
16 owned, operated and maintained by it for electric service
17 to meet their respective needs and requirements, present
18 and prospective.

19 WHEREFORE, PACIFIC GAS AND ELECTRIC COMPANY
20 prays that the Public Utilities Commission of the State
21 of California duly give and make its order and decision
22 granting and issuing to applicant a certificate declaring
23 that the present and future public convenience and
24 necessity require and will require, the exercise by it of
25 the right, privilege and franchise granted by said
26 Ordinance No. 1579 of the Council of the City of Richmond,
27 County of Contra Costa, State of California, all as pro-
28 vided for in Section 1002 of the Public Utilities Code
29
30

1 of the State of California.

2 Dated at San Francisco, California, this
3 12th day of February, 1960.

4

5

PACIFIC GAS AND ELECTRIC COMPANY

6

7

L. HAROLD ANDERSON

8

Vice President and Assistant
General Manager

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11

F. T. SEARLS

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JOHN C. MORRISSEY

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JOHN S. COOPER

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Attorneys for Pacific Gas and
Electric Company, 245 Market Street,
San Francisco 6, California

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D E C L A R A T I O N

I, the undersigned, say:

I am an officer of PACIFIC GAS AND ELECTRIC COMPANY, the applicant herein, and I make this declaration as such on behalf of said applicant. I have read the foregoing application and know its contents. It is true of my own knowledge, except as to those matters which are stated therein on information and belief and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California, on February 12, 1960.

L. HAROLD ANDERSON

Vice President and Assistant
General Manager

PACIFIC GAS AND ELECTRIC COMPANY

ORDINANCE NO. 1579

ORDINANCE GRANTING TO PACIFIC GAS AND ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE (1) TO USE, FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY SUITED FOR LIGHTING BUT FOR USE BY CONSUMERS FOR ANY AND ALL LAWFUL PURPOSES OTHER THAN LIGHTING, ALL POLES, WIRES, CONDUITS AND APPURTENANCES WHICH ARE NOW OR MAY HEREAFTER BE LAWFULLY PLACED AND MAINTAINED IN THE PUBLIC STREETS AND PLACES WITHIN THE CITY OF RICHMOND UNDER THAT CERTAIN FRANCHISE OF GRANTEE ACQUIRED PURSUANT TO 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 (2) TO CONSTRUCT, MAINTAIN AND USE IN SAID PUBLIC STREETS AND PLACES ALL POLES, WIRES, CONDUITS AND APPURTENANCES WHENEVER AND WHEREVER SAID CONSTITUTIONAL FRANCHISE IS NOT NOW NOR SHALL HEREAFTER BE AVAILABLE THEREFOR, NECESSARY TO TRANSMIT AND DISTRIBUTE ELECTRICITY SUITED FOR, AND FOR USE BY CONSUMERS FOR, ANY OR ALL LAWFUL PURPOSES, AND (3) TO UTILIZE SAID POLES, WIRES, CONDUITS AND APPURTENANCES IN SAID PUBLIC STREETS AND PLACES FOR TRANSMITTING ELECTRICITY FOR USE OUTSIDE THE BOUNDARIES OF THE CITY FOR ANY AND ALL LAWFUL PURPOSES, AND PROVIDING THE TERMS AND CONDITIONS OF THE FRANCHISE SO GRANTED.

The City Council of the CITY OF RICHMOND does ordain as follows:

Section 1. Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions:

- (a) The word "grantee" shall mean Pacific Gas and Electric Company, its lawful successors or assigns;
- (b) The word "city" shall mean the City of Richmond, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form;
- (c) The word "streets" shall mean the public streets, ways, alleys and places as the same now or may hereafter exist within city, including state highways, now or hereafter established within city, and freeways hereafter established within city;
- (d) The phrase "poles, wires, conduits and appurtenances" shall mean poles, towers, supports, wires, conductors, cables, guys, stubs, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-outs, switches,

communication circuits, appliances, attachments, appurtenances and, without limitation to the foregoing, any other property located or to be located in, upon, along, across, under or over the streets of city, and used or useful in transmitting and/or distributing electricity.

- (e) The phrase "construct, maintain and use" shall mean to construct erect, install, operate, maintain, use, repair or replace;
- (f) The phrase "constitutional franchise" shall mean the right acquired through acceptance by grantee or its predecessor in estate 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.

Section 2. The franchise (1) to use, for transmitting and distributing electricity suited for lighting but for use by consumers for any and all lawful purposes other than lighting, all poles, wires, conduits and appurtenances which are now or may hereafter be lawfully placed and maintained in the streets within city under the constitutional franchise of grantee, and (2) to construct, maintain and use in said streets all poles, wires, conduits and appurtenances whenever and wherever the constitutional franchise of grantee is not now nor shall hereafter be available therefor, necessary to transmit and distribute electricity suited for, and for use by consumers for, any or all lawful purposes, and (3) to utilize said poles, wires, conduits and appurtenances in said public streets and places for transmitting electricity for use outside the boundaries of the city for any and all lawful purposes, and providing the terms and conditions of the franchise so granted, is hereby granted to Pacific Gas and Electric Company, its successors and assigns. Nothing contained in this franchise shall be deemed or construed as an acknowledgment, acceptance, agreement, or acquiescence by city that Grantee has the claimed constitutional franchise. This franchise is granted subject to the express proviso that although grantee claims said constitutional

franchise city does not recognize or accept the validity of said claim.

Section 3. Said franchise shall be indeterminate, that is to say, said franchise shall endure in full force and effect until the same shall, with the consent of the Public Utilities Commission of the State of California, be voluntarily surrendered or abandoned by grantee, or until the state or some municipal or public corporation thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of said franchise and situate in the territorial limits of the state, municipal or public corporation purchasing or condemning such property, or until said franchise shall be forfeited for noncompliance with its terms by grantee.

Section 4. Grantee shall pay to City at the time of the grant of this franchise the sum of \$9205.24 and shall thereafter pay to city annually, either two per cent (2%) of the gross annual receipts of grantee arising from the use, operation or possession of the franchise granted hereby, or a sum which shall be equivalent to one-half per cent (1/2%) of the gross annual receipts derived by grantee from the sale of electricity within the limits of city under both the franchise granted hereby and said constitutional franchise, if any, whichever is the greater; provided that the measure or amount of annual payments may be changed as provided in Section 5 hereof.

Section 5. The measure or amount of annual payments hereunder may be changed at the end of any twenty (20) year period of this franchise in accordance with the following procedure and subject to the following conditions:

At least one (1) year prior to the end of any twenty (20) year period, one party may give written notice to the other party that it desires to change the measure or amount of annual payments hereunder; such written notice shall specify the proposed new measure or amount of annual payments.

This franchise shall be subject to such change in measure or amount of annual payments only if there has occurred one or more of the following:

a. A substantial change in economic conditions affecting franchise payments hereunder.

b. A method of distribution of electricity other than that used at the time of the grant of this franchise, which changed method of distribution substantially increases or decreases the burden on the streets of City or substantially increases or decreases costs and expenses to city.

c. A revised method of franchise payment in a substantial number of other cities served by grantee.

If the parties cannot agree as to the proposed change in the measure or amount of annual payments, or cannot agree as to whether or not any of the things set forth in subdivisions a to c, inclusive, have occurred or both, the matter or matters shall be submitted to a board of arbitration for determination thereon. Such determination shall be in writing supported by a detailed written statement of the facts upon which the occurrence of the conditions a, b or c are found to exist. Such determination by the board shall be final and conclusive and binding on both parties. Such board of arbitration shall consist of three (3) members; one to be selected by city, one to be selected by grantee, and one to be selected by the two so named by the parties.

Section 6. Grantee shall file with the Clerk of City within four (4) months after the expiration of the first calendar year or fractional part thereof following the effective date hereof, and within four (4) months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the total gross receipts of grantee during the preceding calendar year or such fractional calendar year from the sale of electricity within the limits of city. Grantee shall pay to city within fifteen (15) days after the time for filing such statement, in lawful money of the

United States, the aforesaid percentage of its gross receipts for such calendar year or such fractional year covered by such statement. The City Manager of city or any person designated by him, at any reasonable time during business hours may make examination at grantee's office or offices of its books and records germane to and for the purpose of verifying the data set forth in said statement. Any neglect, omission or refusal by grantee to file such verified statement or to pay such percentage at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and of all rights of grantee hereunder.

Section 7. Grantee shall construct, maintain and use all electric facilities in accordance and in conformity with all of the laws, ordinances, rules and regulations heretofore or hereafter adopted by city in the exercise of its police powers, and, as to State Highways, subject to the provisions of general laws relating to the construction, maintenance or use of electric facilities therein. All work undertaken or performed and all electric facilities constructed, maintained or used under this franchise shall be of the standard and performed as required by law, by the lawful order of the Public Utilities Commission, and of any other governmental authority having jurisdiction in the premises.

Section 8. In respect to any underground district established by city pursuant to its police powers, applicable alike to telephone, telegraph and electric poles or wires within such district, (other than for street illumination, traffic control, overhead trolley wire guys and feeders for actual use of street railways or buses in lawful operation upon the streets, or for any pedestal for the official use of the fire or police department of city for its traffic, alarm, or communication system within such district) owned or operated by any person, firm, or private or public corporation doing business within city, grantee shall at its own expense conform to all lawful requirements for placing grantee's electric facilities underground imposed in the establishment of such underground district and made

in the exercise of the police powers of city.

Section 9. Grantee shall not construct, maintain or use any electric facilities under this franchise at any location until and unless such location shall have been approved therefor by the City Engineer in the reasonable exercise of the police powers of city, and all work performed under this franchise shall be performed with the least possible hindrance to the use of the street for the purpose of travel or other public street purposes. All such work shall be prosecuted in good faith and with due diligence until completed.

Section 10. When any opening or excavation is made, or work done by grantee in, upon, along, across, under or over any street pursuant to this franchise, any portion of said street, or of any public property of city lawfully located therein, affected or damaged thereby shall be restored as promptly as practicable by grantee, without cost to city, to as useful, safe, durable and good condition as existed prior to the making of such opening, or such excavation, or the doing of such work, and the same shall be performed in conformity with the provisions of all lawful ordinances of city, enacted under the police powers of city in force and effect at the time of the performance thereof, and shall be to the reasonable satisfaction of the City Engineer. By the acceptance of this franchise grantee agrees that after the work of restoring such portion of said street has been completed as provided in this paragraph, it will keep such portion of said street so restored in as useful, safe, durable and good condition as existed prior to making of such opening or excavation or the doing of such work, ordinary wear, tear and use excepted, as long as the City Engineer shall reasonably determine that such portion of said street is affected or damaged by such opening or excavation made, or such work done in, upon, along, across, under or over said street by grantee.

Section 11. Upon abandonment of any of the electric facilities constructed, maintained or used hereunder, grantee shall notify the City Engineer in writing of such abandonment within not less than

twenty (20) days after the date upon which grantee shall have determined that the same is abandoned, and in the event grantee shall thereupon fail to remove such electric facilities at once, and the City Engineer shall determine that said electric facilities, if overhead or on the surface of the street, should be removed, or if underground cables in ducts and conduits should be disconnected or sealed off, grantee shall, within twenty (20) days after receipt of notice from the City Engineer so to do, commence and prosecute with diligence to completion the removal of such overhead or surface electric facilities, or the disconnection of such underground cables and the sealing off of such ducts and conduits, to the reasonable satisfaction of, and within a reasonable time as set by, the City Engineer, all at grantee's own cost and expense; provided that said grantee shall remove at its own cost and expense all abandoned underground electric facilities which by reason of deterioration cause a failure or subsidence of any street.

Section 12. If grantee shall fail, neglect or refuse to perform any of the work required by this franchise; and such failure, neglect or refusal results in a dangerous or defective condition of public property in the opinion of the City Engineer of City, and grantee shall not within twenty-four (24) hours after written or oral demand from city for the performance of the work begin such work, or if such failure, neglect or refusal does not result in a dangerous or defective condition of public property in the opinion of the City Engineer of city, and grantee shall not within thirty (30) days after written demand from city for the performance of the work begin such work, and in either case after such beginning shall not prosecute the same with due diligence to completion, city may perform or cause to have performed such work and the entire cost thereof shall be paid to city by grantee upon demand.

Section 13. In the event during the term of this franchise city shall provide by any lawful ordinance enacted pursuant to its police powers, and applicable alike to all privately owned public

utilities and publicly owned public utilities if lawfully possible, using and occupying the streets of city, that all or any part of the work of restoring the portion of any street affected or damaged by any opening or excavation made, or work done by grantee in, upon, along, across, under or over said street pursuant to this franchise, shall be done and performed by city, and in the event city shall have done and performed said work pursuant to the provisions of said ordinance, grantee, by the acceptance of this franchise, agrees to pay city the actual cost of said work prescribed in said ordinance. Said charges shall be paid by grantee to city at the time and in the manner provided in said ordinance.

Section 14. By its acceptance of this franchise, grantee agrees that in any proceeding of any character before any court or other public authority no greater value shall be placed upon this franchise than the actual cash paid to city therefor by grantee and the cost of necessary publication in procuring the same.

Section 15. This franchise is granted in lieu of all other franchises now owned by grantee for furnishing the same particular utility and service granted hereby within the limits of city as they now or may hereafter exist, and by its acceptance of this franchise grantee shall be deemed to have waived and abandoned all other such franchises then owned by grantee for furnishing the particular utility and services within the limits of city as they now or may hereafter exist, provided that this Section shall not apply to any franchise that grantee may have by direct authority of the Constitution of the State of California or of the United States.

Section 16. By its acceptance of this franchise, grantee does hereby covenant and agree to perform and be bound by each and all of the terms and conditions of the Charter of City and the provisions of all applicable ordinances as now in effect or as may hereafter be enacted or amended, insofar as the obligations imposed by such ordinances constitute a reasonable exercise of police powers,

provided that this provision shall not constitute a contractual obligation to comply with any terms of such ordinances in excess of such police powers.

Section 17. Grantee shall indemnify, save and hold harmless, city and all officers and employees thereof against and from all damages, judgments, decrees, costs and expenditures which city or such officer or employee may suffer, or which may be recovered from, or obtained against city or such officer or employee, for or by reason of or growing out of or resulting from the exercising by grantee of any or all rights or privileges granted by this franchise, or by reason of any act or acts of grantee or its servants or agents, in exercising this franchise, or by failure of grantee or its servants or agents to perform the obligations of this franchise; provided, however, that grantee shall, with the consent of the insurance carrier, if any, covering city as to such liability, have the right at its option to defend any suit that may be instituted against city or any officer or employee thereof, by reason of, or growing out of, or resulting from the exercise by grantee of any or all of the rights or privileges granted by this franchise, or by reason of any act or acts of grantee or its servants or agents in the exercise of this franchise.

Section 18. This franchise shall at all times be held and exercised by grantee subject to the right of city to purchase by voluntary agreement with grantee or by condemnation, so much of the electric properties of grantee located within the limits of city as city may elect.

Section 19. If grantee shall fail, neglect or refuse to comply with any of the provisions or conditions of this franchise and shall not within ten (10) days after written demand from city for compliance begin the work of compliance, or after such beginning shall not prosecute the same with due diligence to completion, then city may declare said franchise forfeited and/or may sue grantee for damages for such non-compliance and/or may exercise any other rights

or remedies provided by law. In the event of non-compliance by grantee with any of the conditions of this franchise, city may sue in its own name for forfeiture, damages, or other right or remedy provided by law.

Section 20. No transfer, assignment or lease of this franchise shall have any validity unless and until:

(a) Grantee shall have duly executed a good and sufficient instrument making such transfer, assignment or lease, and a duplicate original thereof shall have been filed in the office of the City Clerk of city.

(b) An ordinance of city consenting to such transfer, assignment or lease shall have been duly adopted and become effective.

(c) The transferee, assignee, lessee or vendee shall duly execute and file in the office of the City Clerk of city a good and sufficient instrument accepting such transfer, assignment or lease, assuming all the obligations of grantee under this franchise.

(d) The transferee, assignee, lessee, or vendee shall duly execute and file in the office of such City Clerk a good and sufficient instrument surrendering to city all franchises, rights and privileges, which the transferee, assignee, lessee, or vendee would have been required to surrender under the provisions of this franchise, if such transferee, assignee, lessee, or vendee had been the original grantee of this franchise.

Provided, however, that the terms of the foregoing clauses (a), (b), (c) and (d) of this section shall not apply to any mortgage or deed of trust made in good faith by grantee, or by any person, firm or corporation under a transfer, assignment or lease made in full accordance with the provisions of this section; but the terms of said clauses (a), (c) and (d) shall apply and the terms of said clause (b) shall not apply to any buyer at a sale under any mortgage or deed of trust.

Section 21. This franchise is granted pursuant to the Charter of the City of Richmond and in accordance with the terms of

the Franchise Act of 1937 as it now exists.

Section 22. This ordinance shall become effective thirty (30) days after its final passage, unless suspended by a referendum petition filed as provided by law.

Section 23. Grantee of said franchise shall pay to city a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting thereof; such payment to be made within thirty (30) days after city shall have furnished grantee with a written statement of such expenses.

Section 24. The franchise granted hereby shall not become effective until written acceptance thereof shall have been filed by grantee with the City Clerk.

Section 25. The City Clerk shall cause this ordinance to be published once within fifteen (15) days after its passage in The Independent, a newspaper of general circulation published and circulated in city.

First read at a regular meeting of the City Council of city held on the 14th day of April, 1958, and finally adopted and ordered published at a regular meeting of said Council held on the 21st day of April, 1958, by the following vote:

| | |
|---------|---|
| AYES: | Councilmen Erickson, Miller, Cannon, Sheridan, Viano and Lyford. |
| NAYS: | Councilmen Vargas and Kenny. |
| ABSENT: | Councilmen Bradley. |

JAMES P. KENNY
Mayor of the City of Richmond

ATTEST:

HARLAN J. HEYDON
Clerk of the City of Richmond

EXHIBIT B

EXHIBIT C

CITY OF RICHMOND

1. History of electric service:

Pacific Gas and Electric Company (PG&E) and its predecessors have supplied all electric utility service in the territory now comprising the City of Richmond since the inception of service from a small steam-electric plant installed by the Richmond Light and Water Company in late 1901 or early 1902. In November, 1902 the properties of the Richmond Light and Water Company were purchased by the then newly organized Richmond Light and Power Company, which arranged in 1903 for the purchase of hydro-electric power from the Colgate-Oakland transmission line of Bay Counties Power Company. The steam plant was then dismantled.

In 1910 the Western States Gas and Electric Company purchased the electric system in Richmond and continued to operate there until 1927, when its properties and business, including those in Richmond, were sold to PG&E.

2. Source of electric supply:

The City of Richmond is served from a 4 kv and 12 kv distribution network which provides the source of supply for Oakland, Berkeley, Richmond and other East Bay cities. This distribution network is energized at a number of substations supplied from PG&E's 60 kv, 110 kv, 165 kv and 220 kv transmission networks, including Golden Gate Substation in El Cerrito, where stepdown transformation is supplied from 165 kv and 110 kv to 12 kv. The principal generating sources supplying the transmission networks are the hydro-electric plants on the Pit, Yuba, Feather, American, Mokelumne and Stanislaus Rivers, and steam plants at Antioch, Pittsburg, Moss Landing, San Francisco and other localities. These transmission networks are so integrated that power can be delivered in the Richmond system from nearly all of the available power sources.

3. Approximate mileage of electric line installed in the City of Richmond as of March 2, 1959:

| | <u>Conductor Miles</u> | <u>Line Miles</u> |
|-----------------|----------------------------|-----------------------|
| Distribution | 1,268.76 | 275.82 |
| Transmission | 25.70 | 5.73 |
| Street Lighting | <u>149.99</u> | <u>149.99</u> |
| Totals | 1,444.45 | 431.54 |

4. Electric sales and revenue of customers served in the City of Richmond:

Sales in kwh - 1959..... 467,833,368

Revenue - 1959..... \$6,279,737.25

Customers served as of December 1959 23,484

5. Franchise payment under Section 4 of Ordinance No. 1579:

Based on the aforementioned 1959 revenue in the amount of \$6,279,737.25, it is estimated that future annual franchise payments under Section 4 of Ordinance No. 1579 should exceed \$62,797.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA

FILED

FEB 16 1960

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. 1580 of the Council of
the CITY OF RICHMOND, County of
Contra Costa, State of California.
(Gas)

APPLICATION

NO. 41949

A P P L I C A T I O N

TO THE HONORABLE, THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA:

PACIFIC GAS AND ELECTRIC COMPANY, a California
corporation (herein sometimes called applicant) seeks an
order of the Commission under Section 1002 of the Public
Utilities Code of the State of California (California
Statutes 1951, Ch. 764) issuing to applicant a certificate
declaring that public convenience and necessity require the
exercise by applicant of the right, privilege and franchise
granted to it by Ordinance No. 1580 of the Council of the
City of Richmond, County of Contra Costa, State of California.

In support of its within petition, applicant avers
as follows:

I

APPLICANT

Applicant now is, and ever since the 10th day of
October 1905 has been, an operating public utility corpora-
tion, duly organized and existing under and by virtue of the
laws of the State of California, engaged principally in the

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA

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granted to it by Ordinance No. 1580 of the Council of the
City of Richmond, County of Contra Costa, State of California.

In support of its within petition, applicant avers
as follows:

I

APPLICANT

Applicant now is, and ever since the 10th day of
October 1905 has been, an operating public utility corpora-
tion, duly organized and existing under and by virtue of the
laws of the State of California, engaged principally in the

1 business of furnishing electric and gas service in
2 California. It also distributes and sells water in a number
3 of cities and towns and certain rural areas, and produces
4 and sells steam heat in certain parts of the cities of
5 San Francisco and Oakland.

6 Applicant's principal place of business is in the
7 City and County of San Francisco, State of California. Its
8 Post Office address is 245 Market Street, San Francisco 6,
9 California, and its attorneys in this matter are F.T. Searls,
10 John C. Morrissey and John S. Cooper.

11 Communications regarding applicant in connection
12 with this application should be addressed to F. T. Searls,
13 General Attorney of applicant, at the above mentioned address.

14 A certified copy of applicant's Articles of
15 Incorporation, as amended to the date of this petition, is
16 of record before the Commission in connection with appli-
17 cant's Application No. 39179 (Exhibit A) filed on June 25,
18 1957, and said Articles are incorporated herein by reference.

19 II

20 ORDINANCE NO. 1580

21 On or about the 21st day of April, 1958, the
22 Council of the City of Richmond, County of Contra Costa,
23 State of California, adopted an ordinance designated as
24 Ordinance No. 1580, a true and correct copy whereof is
25 annexed hereto, marked Exhibit A, and made a part hereof.

26 Ordinance No. 1580, by its terms and provisions,
27 grants to applicant, its successors and assigns, the
28 franchise (1) to use, for transmitting and distributing gas
29 suited for lighting but for use by consumers for any and all
30 lawful purposes other than lighting, all pipes and

1 appurtenances which are now or may hereafter be lawfully
2 placed and maintained in the streets within the City of
3 Richmond, in its present incorporated form and in any later
4 reorganized, consolidated, enlarged, or reincorporated
5 form, under that certain franchise of grantee acquired
6 pursuant to Section 19 of Article XI of the Constitution
7 of the State of California, as said section existed prior to
8 its amendment on October 10, 1911, (2) to install, maintain
9 and use in said streets and places all pipes and appurte-
10 nances, whenever and wherever said constitutional franchise
11 of grantee is not now nor shall hereafter be available
12 therefor, necessary to transmit and distribute gas suited
13 for, and for use by consumers for, any or all lawful
14 purposes, and (3) to utilize said pipes and appurtenances
15 in said public streets and places for transmitting gas for
16 use outside the boundaries of the city for any and all
17 lawful purposes.

18 The franchise is by its terms indeterminate, that
19 is to say, it will endure in full force and effect until
20 the same shall, with the consent of the Public Utilities
21 Commission of the State of California, be voluntarily
22 surrendered or abandoned by grantee, or until the state or
23 some municipal or public corporation thereunto duly
24 authorized by law shall purchase by voluntary agreement or
25 shall condemn and take under the power of eminent domain,
26 all property actually used and useful in the exercise of
27 said franchise and situate in the territorial limits of the
28 state, municipal or public corporation purchasing or
29 condemning such property, or until said franchise shall
30 be forfeited for noncompliance with its terms by the grantee.

1 Section 4 of Ordinance No. 1580 provides that the
2 grantee of said franchise shall pay to the City of Richmond
3 annually, either two per cent (2%) of the gross annual
4 receipts of the grantee arising from the use, operation
5 or possession of the franchise, or a sum which shall be
6 equivalent to one per cent (1%) of the gross annual receipts
7 derived by grantee from the sale of gas within the limits
8 of said city, under said franchise and under said constitu-
9 tional franchise, whichever is greater; provided that the
10 measure or amount of annual payments may be changed at the
11 end of any twenty (20) year period of said franchise as set
12 forth under Section 5 of the ordinance.

13 Section 17 of Ordinance No. 1580 provides that
14 the franchise shall at all times be held and exercised by
15 grantee subject to the right of the City of Richmond to
16 purchase by voluntary agreement with grantee, or by condemna-
17 tion, so much of the gas properties of grantee located
18 within the limits of the City of Richmond as said city may
19 elect.

20 Ordinance No. 1580 provides that it shall become
21 effective thirty days after its final passage, unless
22 suspended by a referendum petition filed as provided by law,
23 and upon written acceptance of the franchise thereunder by the
24 grantee thereof. Ordinance No. 1580 was finally adopted
25 and ordered published at a regular meeting of the Council
26 held on the 21st day of April, 1958. The City Clerk of the
27 City of Richmond caused the ordinance to be published in the
28 manner and within the time specified therein; the ordinance
29 was not suspended by a referendum petition filed as provided
30 by law, or otherwise, or at all; the applicant, on or about

1 the 21st day of May, 1958, accepted the franchise granted
2 by said ordinance; and the franchise became effective on
3 the 21st day of May, 1958.

4 The cost to applicant of acquiring the franchise
5 granted by Ordinance No. 1580 was the sum of Nine thousand
6 three hundred fifty-three and 07/100 Dollars (\$9,353.07),
7 exclusive of the fee which must be paid to the Public
8 Utilities Commission of the State of California under and
9 pursuant to the provisions of Section 1904 (b) of the Public
10 Utilities Code, namely, Fifty and 00/100 Dollars (\$50.00).

11 This cost comprises:

12 Payment to the City of Richmond as
13 consideration for the grant
of the franchise.....\$ 9,205.24

14 Publication of Notice of Intention
15 to grant franchise..... 20.21

16 Publication of Ordinance No. 1580..... 127.62

17 \$ 9,353.07

18 Applicant hereby stipulates and agrees that it, its
19 successors or assigns, will never claim before the
20 Commission or before any court or public body, a value
21 for said franchise in excess of the actual cost thereof.

22 III

23 PUBLIC CONVENIENCE AND NECESSITY

24 The facts showing that public convenience and
25 necessity require and will require, that applicant exercise
26 the right, privilege and franchise granted to it by
27 Ordinance No. 1580 of the Council of the City of Richmond
28 are as follows:

29 The City of Richmond is located in the County of
30 Contra Costa, State of California. It was incorporated on

1 August 16, 1905, and, according to the 1959 California Roster
2 has a population of approximately 99,545. A map of the City
3 of Richmond is annexed, marked Exhibit B, and made a part
4 hereof.

5 Applicant now is, and it and its predecessors in
6 interest for more than 50 years last past have been,
7 furnishing and supplying gas to persons, firms and corpora-
8 tions situate in the City of Richmond for light, heat and
9 all other lawful purposes and uses. A statement giving a
10 brief history of this gas service, the source of gas supply,
11 the miles of gas main in the City of Richmond, the number
12 of customers served, and other data pertinent to this
13 application is annexed, marked Exhibit C, and made a part
14 hereof.

15 Applicant, upon obtaining a certificate of public
16 convenience and necessity from the Commission to exercise
17 the right, privilege and franchise granted by Ordinance No.
18 1580 of the Council of the City of Richmond, will thereafter
19 in the conduct of its gas business in the City of Richmond,
20 in its present incorporated form or in any later reorganized,
21 consolidated, enlarged or reincorporated form, exercise the
22 rights and privileges under the constitutional franchise
23 and the franchise granted by Ordinance No. 1580.

24 Applicant believes and therefore alleges that it
25 will be for its best interest and the interest of its present
26 and future gas customers in the City of Richmond that in
27 the conduct of its gas business it exercise the rights and
28 privileges of the perpetual constitutional franchise and
29 the indeterminate franchise granted by said Ordinance No.
30 1580 for the reason that its gas franchise rights in said

1 city will thereby be definitely established for as long a
2 time as applicant or its successors or assigns shall furnish
3 gas service in said city; further, applicant in continuing
4 to qualify its outstanding bonds and effecting qualification
5 of future issues of bonds as legal investments for savings
6 banks and trust funds will not be under the necessity of
7 applying for or obtaining from the City of Richmond any new
8 or additional gas franchises or franchise rights.

9 Applicant has issued and outstanding in the hands
10 of the public a large amount of First and Refunding Mortgage
11 Bonds, all of which are now qualified as legal investments
12 for savings banks in a number of the states of the United
13 States. It is desirable that said bonds, together with
14 future issues of applicant's bonds, should qualify as legal
15 investments for savings banks and trust funds in as many
16 states of the United States as is possible to broaden the
17 market for applicant's bonds and to enable applicant to
18 obtain higher prices for its bonds. In other words, the
19 matter of the legalization of applicant's bonds as savings
20 bank and trust fund investments has a definite bearing upon
21 the cost of money to applicant which in turn ultimately has
22 an effect upon the rates charged for public utility services
23 supplied. The exercise by applicant of the right, privilege
24 and franchise granted by Ordinance No. 1580, together with
25 other rights, privileges and franchises now possessed and
26 exercised by applicant, and those obtained and hereafter to
27 be obtained, is essential to enable applicant to qualify
28 and/or continue qualification of its said bonds.

IV

PUBLIC UTILITY SERVICE

No person, firm or public or private corporation, other than applicant, is now engaged in the public utility business of furnishing, distributing or selling gas for light, heat, or other lawful purposes in or to the City of Richmond, or to the residents or inhabitants thereof or business enterprises situate therein, and said city and its residents, inhabitants and business enterprises are dependent upon applicant and the properties owned, operated and maintained by it for gas service to meet their respective needs and requirements, present and prospective.

WHEREFORE, PACIFIC GAS AND ELECTRIC COMPANY prays that the Public Utilities Commission of the State of California duly give and make its order and decision granting and issuing to applicant a certificate declaring that the present and future public convenience and necessity require and will require, the exercise by it of the right, privilege and franchise granted by Ordinance No. 1580 of the Council of the City of Richmond, County of Contra Costa, State of California, all as provided for in Section 1002 of the Public Utilities Code of the State of California.

Dated at San Francisco, California, this 12th day of February, 1960.

PACIFIC GAS AND ELECTRIC COMPANY

By L. HAROLD ANDERSON
Vice President and Assistant
General Manager

F. T. SEARLS

JOHN C. MORRISSEY

JOHN S. COOPER

Attorneys for
Pacific Gas and Electric Company
245 Market Street
San Francisco 6, California

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D E C L A R A T I O N

I, the undersigned, say:

I am an officer of PACIFIC GAS AND ELECTRIC COMPANY, the applicant herein, and I make this declaration as such on behalf of said applicant. I have read the foregoing application and know its contents. It is true of my own knowledge, except as to those matters which are stated therein on information and belief and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California, on
February 12, 1960.

L. HAROLD ANDERSON
Vice President and Assistant
General Manager
PACIFIC GAS AND ELECTRIC COMPANY

ORDINANCE NO. 1580

ORDINANCE GRANTING TO PACIFIC GAS AND ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE (1) TO USE, FOR TRANSMITTING AND DISTRIBUTING GAS SUITED FOR LIGHTING BUT FOR USE BY CONSUMERS FOR ANY AND ALL LAWFUL PURPOSES OTHER THAN LIGHTING, ALL PIPES AND APPURTENANCES WHICH ARE NOW OR MAY HEREAFTER BE LAWFULLY PLACED AND MAINTAINED IN THE PUBLIC STREETS AND PLACES WITHIN THE CITY OF RICHMOND UNDER THAT CERTAIN FRANCHISE OF GRANTEE ACQUIRED PURSUANT TO 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 (2) TO INSTALL, MAINTAIN AND USE IN SAID PUBLIC STREETS AND PLACES ALL PIPES AND APPURTENANCES WHENEVER AND WHEREVER SAID CONSTITUTIONAL FRANCHISE IS NOT NOW NOR SHALL HEREAFTER BE AVAILABLE THEREFOR, NECESSARY TO TRANSMIT AND DISTRIBUTE GAS SUITED FOR, AND FOR USE BY CONSUMERS FOR, ANY OR ALL LAWFUL PURPOSES, AND (3) TO UTILIZE SAID PIPES AND APPURTENANCES IN SAID PUBLIC STREETS AND PLACES FOR TRANSMITTING GAS FOR USE OUTSIDE THE BOUNDARIES OF THE CITY FOR ANY AND ALL LAWFUL PURPOSES, AND PROVIDING THE TERMS AND CONDITIONS OF THE FRANCHISE SO GRANTED.

The Council of the CITY OF RICHMOND do ordain as follows:

Section 1. Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions:

- (a) The word "grantee" shall mean Pacific Gas and Electric Company, its lawful successors or assigns;
- (b) The word "city" shall mean the City of Richmond, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form;
- (c) The words "streets" shall mean the public streets, ways, alleys, and places as the same now or may hereafter exist within city, including state highways, now or hereafter established within city, and freeways hereafter established within city;
- (d) The word "gas" shall mean natural or artificial gas, or a mixture of natural and artificial gas;
- (e) The phrase "pipes and appurtenances" shall mean pipes, pipelines, mains, services, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, appliances, attachments, appurtenances, and, without limitation to the foregoing, any other property located or to be located in, upon, along, across, under or over the streets of city, and used or useful in

transmitting and/or distributing gas;

- (f) The phrase "install, maintain and use" shall mean to lay, construct, erect, install, operate, maintain, use, repair or replace.
- (g) The phrase "constitutional franchise" shall mean the right acquired through acceptance by grantee or its predecessor in estate 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.

Section 2. The franchise (1) to use, for transmitting and distributing gas suited for lighting but for use by consumers for any and all lawful purposes other than lighting, all pipes and appurtenances which are now or may hereafter be lawfully placed and maintained in the streets within city under the constitutional franchise of grantee, (2) to install, maintain and use in said streets and places all pipes and appurtenances, whenever and wherever the constitutional franchise of grantee is not now nor shall hereafter be available therefor, necessary to transmit and distribute gas suited for, and for use by consumers for, any or all lawful purposes, is hereby granted to Pacific Gas and Electric Company, its successors and assigns, and (3) to utilize said pipes and appurtenances in said public streets and places for transmitting gas for use outside the boundaries of the city for any and all lawful purposes, and providing the terms and conditions of the franchise so granted. Nothing contained in this franchise shall be deemed or construed as an acknowledgment, acceptance, agreement, or acquiescence by City that Grantee has the claimed constitutional franchise. This franchise is granted subject to the express proviso that although Grantee claims said constitutional franchise, City does not recognize or accept the validity of said claim.

Section 3. Said franchise shall be indeterminate, that is to say, said franchise shall endure in full force and effect until

the same shall, with the consent of the Public Utilities Commission of the State of California, be voluntarily surrendered or abandoned by grantee, or until the state or some municipal or public corporation thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of said franchise and situate in the territorial limits of the state, municipal or public corporation purchasing or condemning such property, or until said franchise shall be forfeited for noncompliance with its terms by grantee. ✓

Section 4. Grantee shall pay to City at the time of the grant of this franchise the sum of \$9205.24 and shall thereafter pay to City annually, either two per cent (2%) of the gross annual receipts of grantee arising from the use, operation or possession of the franchise granted hereby, or a sum which shall be equivalent to one per cent (1%) of the gross annual receipts derived by grantee from the sale of gas within the limits of City, under said franchise and under said constitutional franchise, whichever is the greater, provided that the measure or amount of annual payments may be changed as provided in Section 5 hereof.

Section 5. The measure or amount of annual payments hereunder may be changed at the end of any twenty (20) year period of this franchise in accordance with the following procedure and subject to the following conditions:

At least one (1) year prior to the end of any twenty (20) year period, one party may give written notice to the other party that it desires to change the measure or amount of annual payments hereunder; such written notice shall specify the proposed new measure or amount of annual payments.

This franchise shall be subject to such change in measure or amount of annual payments only if there has occurred one or more of the following:

a. A substantial change in economic conditions affecting franchise payments hereunder.

b. A method of distribution of gas other than that used at the time of the grant of this franchise, which changed method of distribution substantially increases or decreases the burden on the streets of City or substantially increases or decreases the costs and expenses to City.

c. A revised method of franchise payment in a substantial number of other cities served by Grantee.

If the parties cannot agree as to the proposed change in the measure or amount of annual payments, or cannot agree as to whether or not any of the things set forth in subdivisions a to c, inclusive, have occurred or both, the matter or matters shall be submitted to a board of arbitration for determination thereon. Such determination shall be in writing supported by a detailed written statement of the facts upon which the occurrence of the conditions a, b, or c are found to exist. Such determination by the board shall be final and conclusive and binding on both parties. Such board of arbitration shall consist of three (3) members, one to be selected by City, one to be selected by Grantee, and one to be selected by the two so named by the parties.

Section 6. Grantee shall file with the Clerk of City, within four (4) months after the expiration of the first calendar year, or fractional part thereof, following the effective date hereof, and within four (4) months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the total gross receipts of grantee during the preceding calendar year, or such fractional calendar year, from the sale of gas within the limits of City. Grantee shall pay to City within fifteen (15) days after the time for filing such statement, in lawful money of the United States, the aforesaid percentage of its gross receipts for such calendar year, or such fractional year, covered by such statement. The City Manager of City or any person designated by him, at any reasonable time during business hours, may make examination at Grantee's office or offices of its books and

records, germane to and for the purpose of verifying the data set forth in said statement. Any neglect, omission or refusal by grantee to file such verified statement, or to pay said percentage at the time and in the manner specified, shall be grounds for the declaration of a forfeiture of this franchise and of all rights of grantee hereunder.

Section 7. Grantee shall construct, maintain and use all gas facilities in accordance and in conformity with all of the laws, ordinances, rules and regulations heretofore or hereafter adopted by City in the exercise of its police powers, and as to state highways, subject to the provisions of general laws relating to the construction, maintenance or use of gas facilities therein. All work undertaken or performed and all gas facilities constructed, maintained or used under this franchise shall be of the standard and performed as required by law, by the lawful order of the Public Utilities Commission, and of any other governmental authority having jurisdiction in the premises.

Section 8. Grantee shall not construct, maintain or use any gas facilities under this franchise at any location until and unless such location shall have been approved therefor by the City Engineer in the reasonable exercise of the police powers of City, and all work performed under this franchise shall be performed with the least possible hindrance to the use of the street for the purpose of travel or other public street purposes. All such work shall be prosecuted in good faith and with due diligence until completed.

Section 9. When any opening or excavation is made, or work done by grantee in, upon, along, across, under or over any street pursuant to this franchise, any portion of said street, or of any public property of City lawfully located therein, affected or damaged thereby shall be restored as promptly as practicable by grantee, without cost to City, to as useful, safe, durable and good condition as existed prior to the making of such opening, or such excavation, or the doing of such work, and the same shall be performed

in conformity with the provisions of all lawful ordinances of City, enacted under the police powers of City in force and effect at the time of the performance thereof, and shall be to the reasonable satisfaction of the City Engineer. By the acceptance of this franchise grantee agrees that after the work of restoring such portion of said street has been completed as provided in this paragraph, it will keep such portion of said street so restored, in as useful, safe, durable, and good condition as existed prior to making of such opening or excavation or the doing of such work, ordinary wear, tear and use excepted, as long as the City Engineer shall reasonable determine that such portion of said street is affected or damaged by such opening or excavation made, or such work done in, upon, along, across, under or over said street by grantee.

Section 10, Upon abandonment of any of the gas facilities constructed, maintained or used hereunder, grantee shall notify the City Engineer in writing of such abandonment within not less than twenty (20) days after the date upon which grantee shall have determined that the same is abandoned, and in the event grantee shall thereupon fail to remove such gas facilities at once, and the City Engineer shall determine that said gas facilities should be disconnected or sealed off, grantee shall, within twenty (20) days after receipt of notice from the City Engineer so to do, commence and prosecute with diligence to completion the disconnection and the sealing off of such gas facilities to the reasonable satisfaction of, and within a reasonable time as set by, the City Engineer, all at grantee's own cost and expense; provided that said grantee shall remove at its own cost and expense all abandoned gas facilities which by reason of deterioration cause a failure or subsidence of any street.

Section 11. If grantee shall fail, neglect or refuse to perform any of the work required by this franchise, and such failure, neglect or refusal results in a dangerous or defective condition of public property in the opinion of the City Engineer of City, and

grantee shall not within twenty-four (24) hours after written or oral demand from City for the performance of the work begin such work, or if such failure, neglect or refusal does not result in a dangerous or defective condition of public property in the opinion of the City Engineer of City, and Grantee shall not within thirty (30) days after written demand from City for the performance of the work begin such work, and in either case after such beginning shall not prosecute the same with due diligence to completion, City may perform or cause to have performed such work and the entire cost thereof shall be paid to City by Grantee upon demand.

Section 12. In the event during the term of this franchise City shall provide by any lawful ordinance enacted pursuant to its police powers, and applicable alike to all privately owned public utilities and publicly owned public utilities if lawfully possible, using and occupying the streets of City, that all or any part of the work of restoring the portion of any street affected or damaged by any opening or excavation made, or work done by grantee in, upon, along, across, under or over said street pursuant to this franchise, shall be done and performed by City, and in the event City shall have done and performed said work pursuant to the provisions of said ordinance, grantee, by the acceptance of this franchise, agrees to pay City the actual cost of said work prescribed in said ordinance. Said charges shall be paid by Grantee to City at the time and in the manner provided in said ordinance.

Section 13. By its acceptance of this franchise, grantee agrees that in any proceeding of any character before any court or other public authority no greater value shall be placed upon this franchise than the actual cash paid to City therefor by Grantee and the cost of necessary publication in procuring the same.

Section 14. This franchise is granted in lieu of all other franchises now owned by grantee for furnishing the same particular utility and service granted hereby within the limits of City as they now or may hereafter exist, and by its acceptance of this franchise

Grantee shall be deemed to have waived and abandoned all other such franchises then owned by grantee for furnishing the particular utility and services within the limits of City as they now or may hereafter exist, provided, that this section shall not apply to any franchise that grantee may have by direct authority of the Constitution of the State of California or of the United States. As long as the franchise granted hereby shall remain in force and effect all operation of Grantee's gas facilities on the public streets of City shall henceforth be subject hereto and shall be performed in accordance with the terms and conditions hereof and of said constitutional franchise, if any, and all payments shall be made as provided herein in respect to all said operations.

Section 15. By its acceptance of this franchise, grantee does hereby covenant and agree to perform and be bound by each and all of the terms and conditions of the Charter of City and the provisions of all applicable ordinances as now in effect or as may hereafter be enacted or amended insofar as the obligations imposed by such ordinances constitute a reasonable exercise of police powers, provided that this provision shall not constitute a contractual obligation to comply with any terms of such ordinances in excess of such police powers.

Section 16. Grantee shall indemnify, save and hold harmless, City and all officers and Employees thereof against and from all damages, judgments, decrees, costs and expenditures which City or such officer or employee may suffer, or which may be recovered from, or obtained against City or such officer or employee, for or by reason of or growing out of or resulting from the exercising by grantee of any or all rights or privileges granted by this franchise, or by reason of any act or acts of grantee or its servants or agents, in exercising this franchise, or by failure of grantee or its servants or agents to perform the obligations of this franchise; provided, however, that grantee shall, with the consent of the insurance

carrier, if any, covering City as to such liability, have the right at its option to defend any suit that may be instituted against City or any officer or employee thereof, by reason of, or growing out of, or resulting from the exercise by Grantee of any or all of the rights or privileges granted by this franchise, or by reason of any act or acts of grantee or its servants or agents in the exercise of this franchise.

Section 17. This franchise shall at all times be held and exercised by grantee subject to the right of City to purchase by voluntary agreement with grantee, or by condemnation, so much of the gas properties of grantee located within the limits of City as City may elect.

Section 18. If grantee shall fail, neglect or refuse to comply with any of the provisions or conditions of this franchise and shall not within ten (10) days after written demand from City for compliance begin the work of compliance, or after such beginning shall not prosecute the same with due diligence to completion, then City may declare said franchise forfeited and/or may sue grantee for damages for such non-compliance and/or may exercise any other rights or remedies provided by law. In the event of non-compliance by grantee with any of the conditions of this franchise, City may sue in its own name for forfeiture, damages, or other right or remedy provided by law.

Section 19. No transfer, assignment or lease of this franchise shall have any validity unless and until:

(a) Grantee shall have duly executed a good and sufficient instrument making such transfer, assignment or lease, and a duplicate original thereof shall have been filed in the office of the City Clerk of City.

(b) An ordinance of City consenting to such transfer, assignment, or lease shall have been duly adopted and become effective.

(c) The transferee, assignee, lessee or vendee shall duly execute and file in the office of the City Clerk of City a good and

sufficient instrument accepting such transfer, assignment or lease, assuming all the obligations of grantee under this franchise.

(d) The transferee, assignee, lessee, or vendee shall duly execute and file in the office of such City Clerk a good and sufficient instrument surrendering to City all franchises, rights and privileges, which the transferee, assignee, lessee, or vendee would have been required to surrender under the provisions of this franchise, if such transferee, assignee, lessee, or vendee had been the original grantee of this franchise.

Provided, however, that the terms of the foregoing clauses (a), (b), (c) and (d) of this Section shall not apply to any mortgage or deed of trust made in good faith by grantee, or by any person, firm or corporation under a transfer, assignment or lease made in full accordance with the provisions of this section; but the terms of said clauses (a), (c) and (d) shall apply and the terms of said clause (b) shall not apply to any buyer at a sale under any mortgage or deed of trust.

Section 20. This franchise is granted pursuant to the Charter of the City of Richmond and in accordance with the terms of the Franchise Act of 1937 as it now exists. /c

Section 21. This ordinance shall become effective thirty days after its final passage, unless suspended by a referendum petition filed as provided by law.

Section 22. Grantee of said franchise shall pay to City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting thereof; such payment to be made within thirty days after city shall have furnished grantee with a written statement of such expenses.

Section 23. The franchise granted hereby shall not become effective until written acceptance thereof shall have been filed by grantee with the City Clerk.

Section 24. The City Clerk shall cause this ordinance to be

published once within fifteen (15) days after its passage in The Independent, a newspaper of general circulation published and circulated in city.

First read at a regular meeting of the City Council of City held on the 14th day of April, 1958, and finally adopted and ordered published at a regular meeting of said Council held on the 21st day of April, 1958, by the following vote:

AYES: Councilmen Erickson, Miller, Cannon, Sheridan
Viano and Lyford.

NAYS: Councilmen Vargas and Kenny.

ABSENT: Councilmen Bradley.

JAMES P. KENNY
Mayor of the City of Richmond

ATTEST:

HARLAN J. HEYDON
Clerk of the City of Richmond

CITY OF RICHMOND

1. History of gas service:

Gas utility service first became available in the City of Richmond in 1906 when the Oakland Gas Light and Heat Company, a predecessor of Pacific Gas and Electric Company (PG&E), constructed a gas main extension from University and San Pablo Avenues in Berkeley to First Street and MacDonald Avenue in Richmond. The gas supplied was manufactured at the Oakland Gas Plant.

On October 23, 1907, PG&E acquired the gas properties and business in the City of Richmond and since that time has been, and now is, supplying gas service therein.

In February 1930, PG&E introduced natural gas into the Richmond gas system from a main extending from Kettleman Hills to the Bay Area.

PG&E and its predecessors in interest engaged in and subsequently conducted the business of furnishing and supplying gas service in the City of Richmond under (a) the grant of power and rights conferred by their charters obtained under the laws of the State of California from time to time in force and effect; (b) the franchise granted by and under 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; (c) the franchises granted by the Board of Trustees and/or Council of the City of Richmond to C. W. Waller under Ordinance No. 56, adopted June 25, 1906, and Pacific Gas and Electric Company under Ordinance No. 764, adopted August 17, 1936; and (d) the certificates of public convenience and necessity granted to PG&E by the California Public Utilities Commission in Decision No. 23964, dated August 17, 1931 (Application No. 16004 amended and supplemented), and Decision No. 30129, dated September 20, 1937 (Application No. 21051) to exercise the rights and privileges granted by Ordinances No. 56 and No. 764, respectively.

2. Source of gas supply:

The gas distribution system in the City of Richmond is supplied from two sources. Transmission Main 105, which extends from Milpitas Control Station to San Pablo Terminal Station near northern Richmond, supplies PG&E's East Bay Distribution system, including the major portion of Richmond, with 1100 Btu gas from out-of-state and San Joaquin Valley sources. The northern extremities of Richmond are supplied with 1000 Btu gas at San Pablo Terminal Station from a connection with the Stanpac Main, which at that point carries gas from out-of-state and San Joaquin Valley sources, supplemented with gas from Rio Vista and other Central and Northern California gas fields.

3. Approximate mileage of gas main installed in the City of Richmond as of March 2, 1959:

| | | |
|-------------------|---|-------------------|
| Distribution Main | - | 216.66 miles |
| Transmission Main | - | <u>6.13</u> miles |
| Total | - | 222.79 miles |

4. Gas sales revenue and number of customers served in the City of Richmond:

| | | |
|--------------------------------------|---|----------------|
| Sales in Mcf - 1959 | - | 4,125,625.1 |
| Revenue - 1959 | - | \$2,539,127.44 |
| Customers served as of December 1959 | - | 22,383 |

5. Franchise payment under Section 4 of Ordinance No. 1580:

Based on the aforementioned 1959 revenue in the amount of \$2,539,127.44, it is estimated that future annual franchise payments under Section 4 of Ordinance No. 1580 should exceed \$25,391.