

ORDINANCE NO. 357

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, 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 TOWN OF SAN ANSELMO 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, INCLUDING COMMUNICATION CIRCUITS, WHENEVER AND WHEREVER SAID CONSTITUTIONAL FRANCHISE SHALL NOT BE AVAILABLE THEREFOR, NECESSARY TO TRANSMIT AND DISTRIBUTE ELECTRICITY SUITED FOR, AND FOR USE BY CONSUMERS FOR, ANY OR ALL LAWFUL PURPOSES.

The City Council of the Town of San Anselmo 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 (unless, in the given instance, the context wherein they are used shall clearly import a different meaning):

- (a) The word "grantee" shall mean Pacific Gas and Electric Company, its lawful successors or assigns;
- (b) The word "city" shall mean the Town of San Anselmo, a municipal corporation of the sixth class of the State of California or as said city shall at any later time be reorganized, consolidated, enlarged, or reincorporated;
- (c) The word "streets" shall mean the public streets, ways, alleys and places as the same now or may hereafter exist within said city, including state highways, now or hereafter established within said city, and freeways hereafter established within said 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 any other property located or to be located in, upon, along, across, under or over the streets of the city, and used or useful in the transmitting and/or distributing of 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 said 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, 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 said city 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, including communication circuits, whenever and wherever said constitutional franchise shall not be available therefor, necessary to transmit and distribute electricity 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.

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 the 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 the grantee.

Section 4. The grantee of this franchise shall:

(a) Construct, maintain and use all poles, wires, conduits, and appurtenances in accordance with and in conformity with all of the ordinances, rules and lawful regulations heretofore or hereafter adopted by the legislative body of the Town of San Anselmo in the exercise of its police powers and not in conflict with the paramount authority of the State of California, and, as to state highways, except freeways, within city, subject to the provisions of general laws or local ordinances or lawful regulations relating to the location and maintenance of such facilities;

(b) Indemnify and hold harmless city and its officers from any and all liability for damages proximately resulting from any operations under this franchise;

(c) Remove or relocate, without expense to city any facilities installed; used and maintained under this franchise if and when made necessary by any lawful change of grade, alignment or width of any streets by the city, including the construction of any subway or viaduct, provided that this provision shall remain in effect only so long as such street, subway or viaduct shall remain under the jurisdiction of the city as a city street, but shall cease to be applicable to any such street if and when the same shall become a state freeway, nor shall it constitute a contractual obligation in respect to such freeway within the purview of Section 703

of the Streets and Highways Code of the State of California;

(d) File with the legislative body of city within thirty (30) days after any sale, transfer, assignment or lease of this franchise, or any part thereof, or of any of the rights or privileges granted hereby, written evidence of the same, certified thereto by the grantee or its duly authorized officers.

Section 5. All streets disturbed or excavated by grantee, its successors or assigns, hereunder, shall at its or their own cost and expense immediately be placed in as good order and condition as same were in before being so disturbed or excavated.

Section 6. Upon the expiration of this franchise, city, at its election and upon the payment of a fair valuation therefor, as determined in a legal proceeding before the Public Utilities Commission of the State of California or in a condemnation proceeding in a court of proper jurisdiction, may purchase and take over to itself the property and plant of the grantee in its entirety; but in no case shall the value of this franchise be considered or taken into consideration in fixing such valuation. Upon the payment by city of said valuation, said plant and property of grantee of this franchise shall become the property of city by virtue of the grant and payment hereunder, and without the execution of any instrument or conveyance.

Section 7. City shall have the right to make all lawful regulations which shall be necessary to secure in the most ample manner and safety, welfare and accommodation of the public, including among other things the right to pass and enforce ordinances to protect the public from danger or inconveniences in the operation of any work or business authorized by the grant of this franchise and to make and enforce all such lawful regulations as shall be reasonably necessary to secure adequate, sufficient and proper service and accommodations for the people and insure their comfort and convenience.

Section 8. The grantee of said franchise shall during the term thereof pay to said city a sum annually which shall be equivalent to two per cent of the gross annual receipts of said grantee arising from the use, operation or possession of said franchise; provided, however, that such payment shall in no event be less than a sum which shall be equivalent to one-half per cent of the gross annual receipts derived by grantee from the sale of electricity within the limits of such city under said franchise and said constitutional franchise.

Section 9. The grantee shall file with the clerk of said city, within three months after the expiration of the calendar year, or fractional calendar year, following the date of the granting hereof, and within three months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the total gross receipts of such grantee during the preceding calendar year, or such fractional calendar year, from the sale of electricity within said city. Such grantee shall pay to said city within fifteen 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 calendar year, covered by such statement. Any neglect, omission or refusal by said 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 10. This franchise is granted pursuant to the power and authority granted to municipal corporations of the sixth class under and by virtue of the Constitution of the State of California, and of Section 39732 of the Government Code of the State of California.

Section 11. The grantee of said franchise shall pay to the 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 such grantee with a written statement of such expenses

Section 12. The franchise granted hereby shall not become effective until written acceptance thereof shall have been filed by the grantee with the City Clerk.

Section 13. Subject to the provisions of Section 12 hereof, this ordinance shall become effective thirty days after its final passage unless within said period there shall be filed with the City Clerk a referendum petition signed by qualified electors equal in number to ten per cent of the entire vote cast at the preceding general municipal election requesting that such ordinance be submitted to the electors at the next occurring general or special municipal election as provided by law. In case such referendum petition is duly filed such ordinance shall not go into effect until approved by a majority of the voters voting at such referendum election but when so approved it shall go into effect immediately thereafter.

Section 14. All ordinances and/or parts of ordinances in conflict with this ordinance, or any part thereof, are hereby repealed.

Section 15. The foregoing ordinance shall, within fifteen (15) days of its final passage and adoption, be published once in the San Anselmo Times, a weekly newspaper of general circulation, published and circulated in the Town of San Anselmo, and hereby designated for that purpose, and shall be in full force and effect thirty (30) days after its final passage and adoption.

The foregoing ordinance was duly and regularly introduced at a regular meeting of the City Council of the Town of San Anselmo held in said town on the 13th day of ~~September~~ ^{October}, 1953, and was

thereafter at a regular meeting of said City Council held in said Town of San Anselmo on the 10th day of November, 1953, duly passed and adopted by the following vote:

AYES: Councilmen Smith, Skinner,
Wadlewski, Cudworth

NOES: Councilmen none

ABSENT: Councilmen Hannigan

Signed and approved this 10th day of November, 1953.

Fraser M. Cudworth (sg.)
FRASER CUDWORTH
MAYOR of the Town of San Anselmo

ATTEST:

Anita Gannon
ANITA GANNON, City Clerk