

#22

ORDINANCE NO. 4.29

ORDINANCE GRANTING TO PACIFIC GAS AND ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE OF INSTALLING, MAINTAINING AND USING PIPES AND APPURTENANCES IN SO MANY AND IN SUCH PARTS OF THE PUBLIC ROADS WITHIN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AS THE GRANTEE OF SAID FRANCHISE MAY FROM TIME TO TIME ELECT TO USE FOR THE PURPOSE OF CONVEYING AND DISTRIBUTING GAS TO THE PUBLIC FOR ANY AND ALL PURPOSES.

THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA 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, and its lawful successors or assigns in respect to the franchise hereby granted;
- (b) The word "County" shall mean the County of Santa Clara, a political subdivision of the State of California, in its present form or in any later reorganized, consolidated or enlarged form;
- (c) The word "franchise" shall mean the right, privilege and franchise hereinafter more particularly described;
- (d) The phrase "public roads" shall mean the public highways, streets, roads, ways and places as the same now or may hereafter exist within County, including State highways and/or freeways now or hereafter established within County;
- (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 public roads within County, and used or useful in conveying and/or distributing gas;

(m)  
sl/ Sy. adopted  
1-13-64

(f) The phrase "installing, maintaining and using" shall mean to lay, construct, erect, install, operate, maintain, use, repair or replace.

Section 2. The franchise of installing, maintaining and using pipes and appurtenances in so many and in such parts of the public roads as Grantee of said franchise may from time to time elect to use, for the purpose of conveying and distributing gas to the public for any and all purposes, is hereby granted by County to Grantee.

Section 3. The term of said franchise shall commence with the effective date hereof, and continue and remain in full force and effect until such time as Grantee shall surrender or abandon same or said franchise shall be forfeited for noncompliance by the possessor thereof with its terms, or the State of California, County or other public corporation thereunto duly authorized, shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain in accordance with then existing law all property actually used and useful in the exercise of said franchise situate within the unincorporated area of County. Said franchise shall never be considered or taken into account, in fixing the value of said property, in excess of the actual cost to Grantee hereof in procuring the same.

Section 4. All pipes and appurtenances which shall be laid and used under and pursuant to the provisions of this ordinance, and in the exercise of said franchise, shall be installed, constructed and maintained in a good and workmanlike manner under the direction of the Director of Public Works of County, and in compliance with all valid laws and ordinances from time to time in force. Whenever it is proposed by Grantee to open any public road within County, Grantee shall obtain a permit from the Director of Public Works prior to commencing any work, except in emergencies.

Section 5. Grantee of this franchise shall relocate, without expense to County, any pipes and appurtenances theretofore installed, and then maintained or used under this franchise, if and when made necessary by any lawful change of grade, alignment or width of any public road by County, including the construction of any subway or viaduct, provided, however, that the cost of any such relocation made necessary by the construction or any lawful change of grade, alignment or width of any freeway constructed by the State of California shall be divided equally between Grantee and the State of California.

Section 6. Grantee shall, immediately upon installing, maintaining and using said pipes and appurtenances, or any part thereof, at its own cost and expense, place said public roads, or so much thereof as may have been damaged thereby, in as good order and condition as that in which they were before being disturbed or excavated for the purpose of installing, maintaining and using said pipes and appurtenances, or any part thereof. Grantee shall hold County harmless for any claim, suit or action arising out of Grantee's performance of any work of excavation, backfilling or paving, or installation, maintenance or use hereunder.

Section 7. Grantee shall have the right of installing, maintaining and using any or all of such pipes and appurtenances from time to time as may be necessary and proper.

Section 8. Grantee shall, during the term for which this franchise is granted, pay to County two per cent (2%) of the gross annual receipts of Grantee arising from the use, operation or possession of said franchise, payable annually on or before April 15 of each year, the provisions of any other County ordinance respecting time of payment notwithstanding; provided, however, that no percentage shall be paid for the first five (5) years succeeding the date of the grant of said franchise, but thereafter such percentage

shall be payable annually, and if such payment shall not be made, such franchise shall be forfeited; provided, however, that if said franchise be a renewal of a right already in existence, the payment of said percentage of gross receipts shall begin as of July 1, 1963. The method of computing said payment shall be in accordance with that laid down by the Supreme Court of the State of California in its construction of the foregoing language, and any future modification of such method set forth in any decision of the Supreme Court hereafter rendered shall supersede the method employed prior to such decision. A report of such computation shall be submitted annually pursuant to Title 9 of the Santa Clara County Ordinance Code, except that for the purposes of this franchise, the provisions of Section 9.1.1-10 relative to the reporting of new pipelines may be omitted.

Section 9. The measure or amount of annual payment hereunder may be changed at the end of any fifty (50) year period of this franchise in accordance with the following procedure and subject to the following conditions:

- (a) At least one (1) year prior to the end of any fifty (50) year period of this franchise, one party may give written notice to the other party that it desires to change the measure or amount of annual payment hereunder; such written notice shall specify the proposed new measure or amount of annual payment.
- (b) This franchise shall be subject to a change in measure or amount of annual payment only if a change has occurred in the compensation formula currently contained in Section 6006 of the California Public Utilities Code.
- (c) If the parties cannot agree as to the proposed change in the measure or amount of annual payment, the matter or matters shall be submitted to a board of arbitration for determination.

Such determination by said board shall be in writing and 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 County, one to be selected by Grantee, and one to be selected by the two so named by the parties.

Section 10. This franchise is granted under and pursuant to the provisions of the laws of the State of California which relate to the granting of franchises by counties.

Section 11. This franchise shall not be exclusive.

Section 12. This ordinance shall take effect and be in force upon the expiration of thirty (30) days after its passage, unless suspended from going into operation by a referendum petition filed as provided by law, and shall, before the expiration of fifteen (15) days after the passage thereof, be published once, with the names of the members of said Board of Supervisors voting for and against the same, in Santa Clara News, a newspaper published in County.

PASSED this JAN 13 1964, by the following vote:

AYES: Supervisors Levin Della Maggiore Spangler Mehrkens Sanchez

NOES: Supervisors None

ABSENT: Supervisors None

MJ Spangler  
Chairman of the Board of Supervisors  
of the County of Santa Clara

ATTEST: JEAN PULLAN, Clerk of  
the Board of Supervisors

Jean Pullan

January 29, 1964

Mr. John Sproul  
Attorney at Law  
245 Market Street  
San Francisco, California

Subject: Gas Franchise, Santa Clara County

Dear Mr. Sproul:

Enclosed you will find a duplicate copy of an affidavit of publication from the Santa Clara News certifying that Gas Franchise Ordinance NS-4.29 was published by that paper on January 17, 1964. We are also enclosing a tear sheet copy from that edition, as well as a bill in the amount of \$46.00 from the paper for these services.

It is our understanding that after approval by your office, this bill will be forwarded to the Comptroller Department of the Pacific Gas and Electric Company for payment. I believe this now completes the processing of this Ordinance according to your instructions.

If we can be of further service to you, please feel free to contact us.

Very truly yours,

BOARD OF SUPERVISORS

Mrs. Jean Pullan  
Clerk of the Board

JP:DMR:gc  
Encl  
cc: County Counsel

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- (f) The phrase "installing, maintaining and using" shall mean to lay, construct, erect, install, operate, main-

tain, use repair or replace.

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Section 3. The term of said franchise shall commence with the effective date hereof, and continue and remain in full force and effect until such time as Grantee shall surrender or abandon same or said franchise shall be forfeited for noncompliance by the possessor thereof with its terms, or the State of California, County or other public corporation thereunto duly authorized, shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain in accordance with then existing law all property actually used and useful in the exercise of said franchise situate within the unincorporated area of County. Said franchise shall never be considered or taken into account, in fixing the value of said property, in excess of the actual cost to Grantee hereof in procuring the same.

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PASSED this 13th day of January, 1964 by the following vote:

AYES: Supervisors: Levin, Della Maggione, Spangler, Mehrens, Sanchez.

NOES: Supervisors: None.

ABSENT: Supervisors: None.

M. J. SPANGLER,

Chairman of the Board of Supervisors of the County of Santa Clara.

ATTEST:

JEAN PULLAN,

Clerk of the Board of Supervisors.  
(January 17, 1964—100)