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Decision No. 52931

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HAROLD F. JOHNSON, O. E. JOHNSON, JOHN MARGHERIOS, ARTHUR HUNGERFORD, BERTHA J. HAND, RAY L. JOHNSON, SR., and HARRY HOLLAND, Complainants,	)	
vs.	)	Case No. 5665
SOUTHERN CALIFORNIA EDISON COMPANY, a corporation, Defendant.	)	

O P I N I O N

Complainants herein are residents and property owners in the following described area:

> The North 880 ft. of the East 990 ft. of the Southwest Quarter of Section 1, Township 2 North, Range 17 West, S.B.B. & M., Los Angeles County, California.

This property is within the service area of the Southern California Edison Company. The stated cause of action is that the defendant has refused during the past four years and does now refuse to furnish electrical service to complainants, and therefore an order is requested requiring the defendant to furnish such service.

The Southern California Edison Company, by its answer, admits that the property is within its certificated area and alleges that "it has been ready, willing and able" to provide electrical service to the complainants and each of them in accordance with the provisions of its regularly filed rate schedules and rules and regulations, but that the complainants and each of them have not complied and have refused to comply with the required conditions precedent to service under such regularly filed rate schedules and rules and

regulations. Additionally the answer alleges that the complaint does not show that the action of the defendant utility is in violation of its regularly filed tariff schedules.

A public hearing was held on November 22, 1955, in Los Angeles before Examiner Grant E. Syphers. At the conclusion of the complainants' direct case the defendant moved to dismiss on the grounds that there had been no showing that service could be furnished by the defendant company under the terms of its existing rules and regulations. The complainants and defendant were granted leave to file briefs, and a property owner in the area involved, who was not a complainant, was granted leave to file a petition in intervention for the determination of the Commission as to whether or not the intervention would be permitted. The briefs and petition now have been filed and the matter is ready for ruling upon the motion to dismiss.

At the hearing various complainants and property owners presented testimony as to the number of residents in the area and their needs for electrical service. It was pointed out that none of them now has electrical service except such as is supplied by their own private generators.

On the southwest of the property in question there is a tract of land which is used as a residence and game preserve. The owner of this property has not agreed to permit the defendant electrical company to install poles and overhead wires since he is interested in maintaining the rustic appearance of the area. On the southeast of the property in question is another tract which the owners rent for the taking of motion pictures. They are opposed to overhead wires and poles since allegedly such installations would destroy the scenery for movie purposes. Both of these property

owners would permit underground cable to be laid through their property. However, such installation would cost approximately $13,000. There is electric service to each of these properties.

It should be noted that there is a road connecting the property of complainants with a public street, which road runs in a north-south direction along the boundary between the two properties above mentioned. This road is approximately 1,750 feet in length and is used by complainants as their only practical means of ingress and egress. While there was testimony to the effect that poles and overhead wires could be installed along this road, there was no showing of any easement for that purpose. Furthermore, the two property owners concerned have the same objections to such installation as they have to poles and wires at any other location on their properties.

To the north of the property in question the area is undeveloped mountainous country, and the testimony suggested that it would be extremely difficult to install poles and wires through this territory. Evidence was inconclusive as to the cost of such construction, or as to whether or not it would be feasible.

Exhibit No. 1 is a map of the area, and Exhibit No. 2 consists of six applications for electric service filed by various residents of the territory here in question. Exhibit No. 3 is a general topographic map of the entire area.

The principal contentions of the complainants are (1) the Public Utilities Commission has the power to order the defendant to furnish electric service; (2) the defendant can obtain a satisfactory right of way without cost to the defendant inasmuch as the complainants have offered to reimburse the defendant for any costs involved in a condemnation proceeding; and (3) the complainants have no other remedy for obtaining service. The principal contentions of the defendant are (1) that the landlocked situation arose because of the actions of complainants' predecessors in interest in conveying portions

of their land without reserving specified easements for utility services; (2) the evidence does not show that a satisfactory right of way may be obtained without cost to the defendant; (3) the evidence does not show enough existing electric load to provide free extensions within the provisions of Rule and Regulation No. 20 of the company's rules; (4) there is no showing to justify impositions of costs upon defendant in addition to those contemplated by its Rule No. 20, which is its extension rule; and (5) the applications for service contained in Exhibit No. 2 were filed after the filing of the complaint.

It was also contended by the company that if a right of way for electric facilities is to be obtained, such action should be taken by the complainants. In support of this position the defendant company cited Section 1001 of the Civil Code which reads as follows:

> "S 1001. Any person may, without further legislative action, acquire private property for any use specified in section twelve hundred and thirty-eight of the Code of Civil Procedure either by consent of the owner or by proceedings had under the provisions of title seven, part three, of the Code of Civil Procedure; and any person seeking to acquire property for any of the uses mentioned in such title is 'an agent of the state,' or a 'person in charge of such use,' within the meaning of those terms as used in such title. This section shall be in force from and after the fourth day of April, eighteen hundred and seventy-two."

In the construction of this section defendant relies upon the case of Linggi v. Garovotti, (1955, 45 AC 21.) In that case the plaintiff attempted to condemn an easement over adjoining land for the purpose of installing a sewer connection from his property to a public sewer. At the trial a demurrer to the complaint was sustained, but on appeal the Supreme Court of California overruled the demurrer, holding that under Section 1001 of the Civil Code the plaintiff did have a right to bring an action of condemnation and thereby permitted the condemnation action to be tried. The Court stated, at page 28:

> "Upon a trial of the action, it will be necessary for Linggi to prove, by a preponderance of the evidence, his right and justification for the proposed condemnation. A somewhat stronger showing of those requirements is necessary than if the condemnor were a public or quasi public entity."

However, the case at issue presents a somewhat different situation. There are several property owners involved, and any electrical facilities which are installed will become the property and the responsibility of the defendant company which is a public utility. In such a situation we believe the defendant utility should bring any condemnation action which may be necessary to provide electric service to the complainants.

Defendant emphasizes the general provisions of its Rule and Regulation No. 20, which read as follows:

> "Under this rule the company will build lines only along public roads and highways and upon private property across which satisfactory rights-of-way may be obtained without cost to the company.
>
> "The length of line required for an extension will be considered as the distance along the shortest practical route as determined by the company from the company's nearest distribution pole to the pole from which the service connection is to be installed."

However, we point out that these provisions need not be a bar to the furnishing of service in this matter. Here is a situation where some action must be taken to secure a right of way for the electrical facilities. The defendant company is the one which should take such action. It is not practical or just to permit complainants to be deprived of electrical service because of such technical contentions. Furthermore, Rule and Regulation No. 20 Section E, exceptional cases, contemplates deviations from the foregoing provisions in proper cases when it states: "In unusual circumstances, when the application of these rules appears impractical or unjust to either party, the company and the applicant may agree upon terms mutually satisfactory, and in case of failure to such agreement

either the applicant or the company may refer the matter to the Public Utilities Commission for special ruling."

A consideration of all of the evidence in this matter and the briefs filed in connection therewith leads us to the conclusion and we now find that the property of complainants herein concerned is within the service area of the defendant company. We further find that the complainants have a need for electric service and that the defendant company should make all reasonable efforts to furnish such service within a reasonable time even to the extent of bringing an action to condemn a right of way, if necessary.

The defendant will be ordered to make a reasonable proposal for providing electric service to the complainants.

The motion to dismiss will be denied.

As to the petition in intervention filed by one Edward Blincoe, who is a property owner in the area in question but not one of the complainants herein, we find that the intervention should be permitted.

O R D E R

Complaint as above entitled having been filed herein, defendant having filed an answer thereto, a petition in intervention having been filed, public hearing having been held, a motion to dismiss having been made and the Commission being fully advised in the premises and having made findings as heretofore indicated,

IT IS ORDERED:

(1) That the motion to dismiss, made by the Southern California Edison Company, be and it hereby is denied.

(2) That the petition in intervention, filed by Edward Blincoe, be and it hereby is granted.

(3) Southern California Edison Company shall study the subject of furnishing electric service to the complainants and, within thirty

days after the effective date hereof, shall file with the Commission for its review a report of its proposal to furnish said electric service, together with the date service may be made available. A copy of the report shall be sent to the complainants.

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

Dated at San Francisco, California, this 24th day of April, 1956.

President

Commissioners