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ORIGINAL

Decision No. 58551

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CITY OF WALNUT CREEK, a Municipal corporation,

Complainant,

vs.

PACIFIC GAS AND ELECTRIC COMPANY,

Defendant.

Case No. 6173

John A. Nejedly and Carl Noecker, for complainant.
F. T. Searls, Malcolm A. MacKillop and John S. Cooper, for defendant.
Arthur S. Kecht, for the Commission staff.

OPINION AND ORDER

Allegations of the Complaint

On August 28, 1958, the City of Walnut Creek filed the above-numbered complaint against Pacific Gas and Electric Company by which the city seeks an order of this Commission requiring the company to provide electrical service and to bear the entire cost of the installation of underground electric facilities within the area of underground districts created by ordinances of the city.

The city alleges, in substance, that:

1. The City Council has adopted certain ordinances which prohibit the erection or maintenance of surface power and telephone poles, wires, conduits or appurtenances and above ground wires and other installations, and requiring the subsurface installation thereof;
2. The company has refused and does now refuse to provide service in conformity with said ordinances unless property owners within the ordinance-created underground districts pay to the company the difference

between the cost of the installation of underground facilities and the cost of overhead facilities which normally would be provided at the expense of the company except for the adoption of said ordinances;

3. The charge proposed by the company is not authorized by any tariff schedule filed by the company with this Commission;
4. The company is required to provide service to all customers in its service area regardless of the expense to be anticipated in providing such service, either in distance or other local conditions;
5. The position of the company is that it would provide underground service if the area were fully developed; and
6. In the event the company is allowed to make the charge for the installation of underground facilities, the cost to property owners within the ordinance-created underground district will be in excess of $39,000 and that such charge is unreasonable and discriminatory against property owners within said district.

Defendant's Answer

Pacific Gas and Electric Company filed its answer to the complaint on September 19, 1958. By it, the company, in substance:

1. Denies that it has refused or refuses to provide service in conformity with the city ordinances, but admits that it has requested an applicant for service within the ordinance-created district to pay

the difference in cost between the installation of underground and the overhead facilities which the company would have provided but for the adoption of the ordinances;

2. Denies generally and specifically all the other allegations of the city except that the company admits that in order to comply with the city's ordinances it can only supply electric service by means of underground facilities within the district except to the extent that overhead facilities have been permitted by city-adopted amendments to the underground ordinances; and
3. Admits that, prior to adoption of an amendment to the city ordinance which permitted installation of certain overhead facilities, the company requested one applicant for service to pay approximately $39,000 as the difference between the costs of underground and overhead facilities, but that since adoption of the amendment, which permits an overhead installation, the company has proceeded to supply the applicant by means of overhead facilities at the company's own cost.

Motion for Dismissal

On November 1, 1958, Pacific Gas and Electric Company filed a written motion to dismiss the complaint of the city on the primary ground that the complaint does not state facts sufficient to constitute a cause of action.

Public Hearing

Public hearing in the matter was held before Examiner F. Everett Emerson on November 24 and December 30, 1958, at San Francisco. Oral argument on the motion to dismiss was undertaken on the first day of hearing. The motion was taken under advisement by the Examiner who then proceeded to receive the evidence of the complainant. The second day of hearing was devoted to receiving the evidence of the defendant and to the concluding arguments of counsel. The matter has been submitted and is now ready for decision.

General Nature of Evidence

The city presented evidence respecting the passage of its ordinances, including amendments thereof, by which it created the underground district and subsequently permitted certain limited overhead facilities therein; the views of its officials respecting city planning and the need therefor as it applies to automobile and pedestrian traffic control; the prospective development, as a commercial and recreational center, of the ordinance-created underground district; the inability of one applicant for electric service to pay the costs associated with providing underground service; and the position of the defendant as set forth in its letter to a city councilman.

The company presented evidence respecting the revenues, expenses and capital costs involved in serving the area in question; the results of a comparative study of the published rules of various electric utilities, both privately and publicly owned, as respects the manner in which underground electric distribution facilities are provided; the electric loads and load densities in Walnut Creek; and the over-all effect on applicant's investment of placing the entire city's existing overhead facilities underground.

Findings and Conclusions

The Commission takes official notice of defendant's tariffs, including the preliminary statement and the utility's rules therein contained. In addition, the Commission takes official notice of Rule 15 of Southern California Edison Company, as referenced in the record.

In discussing the evidence and in making findings and conclusions with respect thereto, the allegations of the complainant will be considered in the order in which they are hereinabove set out.

(1) The city, in developing a master plan for the entire city has included as an integral part of that plan an objective of excluding overhead facilities from particular areas within the city. Prohibition of the erection, maintenance or continuance of overhead facilities, either on public or private property, within a specified area has been declared by the adoption of a city ordinance to such effect. Amendments thereto have permitted limited exceptions. The Commission finds the facts so to be.

Defendant does not challenge the validity of the underground ordinance in this proceeding nor has it yet challenged its lawfulness in any court. The Commission assumes that the city has regularly pursued its authority and has lawfully exercised its powers.

(2) The company has not refused nor does it now refuse to comply with the underground district ordinance and the Commission finds the facts so to be.

The city claims that the intent of the ordinance has been effectively thwarted by the company's demand that applicants for electric service within the district pay the added costs of providing them with underground service, because such

applicants are unable financially to meet the demand. The record clearly shows, and indeed it is common knowledge and long within this Commission's intimate knowledge, that costs associated with providing underground service are several and often many times the costs of an equivalent overhead electric system.

Absent an ordinance requiring underground service, a developer, subdivider or builder commonly makes his choice between overhead and underground supply based, among other things, upon the economics of the particular situation. When by law underground supply is prescribed, there is no such choice; the costs thereof become but one component of the over-all costs of development and the developer either proceeds or not depending upon his financial ability and his prospective financial gain or reward. The choice of either developing or not developing is his alone. In either situation, whether in an overhead system area where the developer desires underground or in an area where underground is required, the utility stands ready to provide the service in compliance with law, in accordance with its rules and accepted good engineering practice and under the jurisdiction of this Commission.

(3) The city contends that the company has no rule by which it may charge a developer the difference in cost between underground and overhead service. The company points directly to the "Preliminary Statement" and to "Rule No. 15 - Line Extensions" of its tariffs as its authority to make the charge.

The "Preliminary Statement" reads, in part: "Where an extension of the Company's lines is necessary or a substantial

investment is required to supply service, applicant will, upon application to the Company, be informed as to the conditions under which service will be supplied. Applicants for service must also bring themselves within and comply with the established rules and regulations of the Company hereinafter given".[1/]

Rule No. 15, begins: "Extensions of overhead electric distribution lines of standard voltages necessary to supply bona fide applicants for electric service of a permanent and established character, will normally be made by the Company, entirely or partially, at its own expense in accordance with the following....". Paragraph (A) provides: "All such extensions in urban territory and centers of population will normally be constructed by the Company without cost to such applicants".[2/] (Emphasis supplied.) Rule No. 15 then continues setting forth details of extension provisions, all pertaining to overhead lines under various situations, until paragraph (E), dealing with real estate subdivisions is reached.[3/] This paragraph, with its first four subparagraphs provides, essentially, that subdivisions in either urban or rural territory will be provided electric service only after the entire estimated cost of the necessary electric facilities has been advanced to the company. Subparagraph 5 reads:

1/ From "3. - Procedure to Obtain Service", Revised CAL. P.U.C. Sheet No. 2064-E.

2/ From leading explanatory paragraph, Revised CAL. P.U.C. Sheet No. 2322-E.

3/ (E) Real Estate Subidvisions: Revised CAL. P.U.C. Sheet No. 2217-E.

"In the case of underground extensions in real estate subdivisions, the total amount to be refunded under Section E-3 above shall not exceed a sum of money equal to the estimated cost, plus ten percent (10%) thereof for supervision and overhead, of supplying such subdivision by means of overhead distribution lines."

Rule No. 15 also provides, in paragraph (G) thereof, that when application of the rule appears impracticable or unjust, the applicant for service or the company may refer the matter to this Commission for special ruling. 4/

The company, for many years (at least 25 years to the knowledge of the Commission), has consistently and uniformly applied these provisions of its extension rule in such manner as to receive from the applicant for underground electric service the entire estimated cost of providing the underground facilities less the cost of installing electrically equivalent overhead facilities. It is the general practice of all electric utilities in this State. The Commission is unaware of any instance in which it has been found that such a practice has been unreasonable.

The tariffs, including the rules as well as the schedules of rates and charges, under which the defendant renders its various services to the public, are on file with this Commission. These rules, binding with equal force upon the utility as well as upon applicants for the utility's services, have evolved to their present state through many formal proceedings and over a period of many years. They have had not only the attention of the specific utility and

4/ (G) Exceptional Cases: Revised CAL. P.U.C. Sheet No. 2217-E.

the utility industry generally, but have been subjected to the close scrutiny of the public and public officials and the expert knowledge of the Commission itself. A utility's tariffs are an especially intimate and inseparable part of the utility's existence and must be so viewed. They reflect not only the physical plant, its physical operations and its financing, but the day-to-day costs and methods of conducting the business. These are fundamentals and should be axiomatic.

The city calls attention to the filed extension rule of Southern California Edison Company, wherein the treatment to be accorded underground installations is spelled out at some length, and points to the fact that defendant's extension rule has no similar components. Edison's rule has also gone through an evolutionary process, however, and as a matter of fact the "spelling out" of the details of the portions dealing with underground installations appears in its present form for the first time in the latest revision of the rule, made effective December 1, 1956. Defendant's rule, insofar as it pertains to underground installations, has remained unchanged since 1943. Its revision may be overdue but be that as it may, the Commission on the record in this proceeding finds no unreasonableness in the practice of defendant in this regard.

In view of the evidence and those matters of which the Commission takes official notice, as hereinabove stated, the Commission finds that defendant's tariffs do not require defendant to provide underground facilities at its expense.

(4) The city's contention that the company is required to provide service to all prospective customers in its service area regardless of the expense it would have to incur in

complying with an ordinance prescribing the types of facilities which may be installed in a given area is contrary to the very essence of regulation, of which reasonableness is the foundation.

(5) The city's contention that it is the position of the company that underground facilities would be provided if the area were fully developed is at best an oversimplification of statements of fact and of policy. It is clearly contradicted by the very evidence upon which the city relies. In addition, the evidence clearly shows that the particular area is, in fact, not developed, merely that it is planned for development over some indefinite future period.

In areas where the density and magnitude of the electrical load to be served economically justifies underground installation, because the very bulk of equipment and the multiplicity and size of wires, cables and appurtenances make overhead facilities impracticable, utilities generally provide underground facilities without special charges therefor. This is a standard practice of direct practical value of which this Commission approves. The evidence in this proceeding indicates that the entire City of Walnut Creek, let alone the ordinance-created underground district therein, does not have as great a load as is to be found in some single buildings elsewhere on defendant's system. In view of the evidence, the Commission cannot find that Walnut Creek's underground ordinance district now justifies or in the near future will justify the installation of cost-free underground electrical facilities.

(6) The city contends that the company's charge for installing underground facilities is unreasonable and discriminatory against property owners in the special district which

the city has created. The evidence discloses no such condition, but to the contrary is convincing that the defendant's requirements as to payment of excess costs, as hereinabove discussed, are uniformly applicable to any customer or prospective customer in like circumstances anywhere on its system. The Commission concludes, therefore, that no unreasonable discrimination in fact exists insofar as defendant's services or practices are concerned.

Over-all Conclusion

In view of the evidence and after careful attention to the arguments of counsel and the brief of the city, the Commission finds that the complaint herein should be dismissed. Accordingly, good cause appearing therefor,

IT IS ORDERED that Case No. 6173 is hereby dismissed.

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

Dated at San Francisco, California, this 8th day of June, 1959.

President

Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.