

ORIGINALDecision No. 65101

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

James M. Nissen,

Complainant,

vs.

Case No. 7557

Pacific Gas and Electric Company,
a corporation,

Defendant.

ORDER OF DISMISSAL

Summarizing the complaint herein, it is alleged that the Alameda County Planning Commission granted complainant a use permit to construct and operate a private airport on the east side of Greenville Road in the Livermore area. A required form was filed with the Federal Aviation Agency for operation of the airport, and complainant was advised by the District Airport Engineer that the proposal was "acceptable from an airspace utilization standpoint." (Ex. C.) Thereafter traffic patterns were approved by the Air Traffic Area Supervisor, Federal Aviation Agency. Complainant also received an airport permit from the Division of Aeronautics, Department of Public Works, State of California. (Ex. G.)

Complainant applied to defendant for electric service to his house on the south side of the runway of his private airport, requesting that defendant utility, at its own expense, install 300 feet of the power line underground on Greenville Road in the

west approach end of the runway. (Ex. E.) Complainant was advised by defendant that under the latter's Tariff Rule 15 the 1,245-foot normal overhead installation could be done at defendant's expense, but that as to the request that a portion of the extension be installed underground, defendant was governed by its tariff rule, and that an estimate of the approximate cost to complainant for the 300-foot underground section was \$3,800, being the estimated difference in the cost of overhead and underground construction. (Ex. F.)

The Federal Aviation Agency informed defendant that the proposed pole line would be a hazard to air navigation. (Ex. H.) It is alleged further that if the proposed line is constructed complainant's airport will no longer meet the requirements of the California Aeronautics Division, and the airport site permit will have to be rescinded. Complainant questions whether it is the intent of any rule or franchise to permit defendant to construct a power line on a public road in such a manner as to deny an adjacent property owner the right to use his property in a manner for which he has a permit or is otherwise legally permitted to do. It is alleged that erection of the line above ground will injure complainant in that it will constitute an unacceptable hazard to aircraft using the airport; will be a hazard to air navigation; and deny complainant his lawful use of his property.

Complainant seeks an order requiring defendant to serve complainant at its cost and in accordance with requirements acceptable to the Federal Aviation Agency.

Defendant's Tariff Rule 15, sec. D, governs underground line extensions. (Revised Cal. P.U.C. Sheet No. 3178-E.) It provides

in part that they will be made only where mutually agreed upon, except where defendant desires to maintain underground facilities for its operating convenience or in compliance with applicable laws, ordinances, or similar requirements of public authorities. It also provides for advancement by the applicant of a non-refundable sum equal to the estimated difference between the cost of the underground extension and an equivalent overhead extension.

Defendant's extension rule was considered in City of Walnut Creek v. P.G. & E. Co., Decision No. 58551, Case No. 6173. Complainant there sought an order requiring defendant to bear the entire cost of installing underground facilities within the area of underground districts created by ordinances of complainant city. In dismissing the complaint the Commission found that defendant's tariffs do not require it to provide underground facilities at its expense. It was found that defendant had consistently applied its extension rule so as to receive from an applicant for underground service the estimated cost of providing underground facilities less the cost of installing equivalent overhead facilities, this being the general practice of all electric utilities in the State. The decision also found as follows:

"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."

Public Utilities Code section 1702 provides that complaint may be made setting forth any act or thing done or omitted to be done by a utility, in violation or claimed to be in violation, of

any provision of law or any Commission order. The present complaint does not allege any such violation, but shows on its face that defendant has acted in compliance with its tariff rule, as it is required to do by the statute. Procedural Rule 12 contemplates that the Commission, without argument and without hearing, may dismiss a complaint for failure to state a cause of action, and for this reason IT IS ORDERED that Case No. 7557 is hereby dismissed.

Dated at San Francisco, California, this 19 day
of MARCH, 1963.

George A. Hoover
President
Frederick B. Hallock
Gallagher W. Bennett
Commissioners