

Decision No. 67252**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Santa Rosa Home Builders and
Developers Council,
Complainant,

v.

Case No. 7885

The Pacific Gas and Electric
Company, a corporation,
Defendant.

ORDER OF DISMISSAL

Summarizing the complaint herein, it is alleged that an ordinance of the City of Santa Rosa requires that utilities installed after March 1, 1964 shall be installed according to a "streamline" or partial underground system. Defendant's Rule 15 provides that underground line extensions will be made in compliance with applicable laws, ordinances, or similar requirements of public authorities. Defendant has refused to accept the responsibility for any increased cost of such installation, has not petitioned the Commission for relief, and has arbitrarily assumed that the builder or developer will pay all additional costs of such required installation.

Complainant seeks an order "establishing a rate in the area which is or will be affected by said Ordinance which will allow the defendant to assume his just responsibilities" under the ordinance.

In Nissen v P.G.&E.Co., 60 Cal. P.U.C. 663 (1963), complainant sought an order requiring defendant utility to extend service and to place 300 feet of the extension underground, without cost to the complainant. In dismissing the complaint the Commission stated in part as follows:

"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."

The ordinance attached to the present complaint recognizes the necessity of compliance with applicable rules. It applies to "undergrounding or partial undergrounding * * * in areas outside the electric underground district." It also provides in part as follows:

"Where arrangements are required between a property developer and the supplying utility company by the rules or regulations of the Public Utilities Commission of the State, for the installation of such facilities, the property developer shall make such arrangements with the utility company."

Under Public Utilities Code section 1702 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 complaint does not allege any such violation. It shows on its face that defendant has acted in compliance with its tariff rule, as it is required to do by the statute.

In so far as the prayer of the complaint may be construed to be a request for an increase in rates for electric service in the area affected by the ordinance, complainant is not a proper party to request a rate increase, the complaint does not allege that existing rates are unreasonable, and under section 1702 a complaint as to the reasonableness of electric rates must be signed by specified public officials or by not less than 25 actual or prospective consumers of electricity.

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 Case No. 7885 is hereby dismissed.

Dated at San Francisco, California, this 26th day of May, 1964.

Halleman W. Brundage
 President

Arthur E. Mitchell

Charles W. Reay

George J. Hoover

Fredrick B. Hallock
 Commissioners