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ORIGINAL

Decision No. 68556

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

TOWN OF WOODSIDE, DONALD J. SCOFIELD, ELEANOR J. WOOD, ROBERT LEE SIMS, JANE L. SIMS, SAMUEL O. POND, DOROTHY L. POND, BARBARA DONALD, MALCOLM DONALD, T. H. HOLBROOK, BETTY WYNN HOLBROOK, R. J. ELKUS, EUGENE ELKUS, JR., JANET K. ADAMS, WILLIAM J. ADAMS, JR., GAIL B. RATHBUN, BERTA F. RATHBUN, MAC LEAN ULRICH, MARY VIRGINIA ULRICH, ALEXANDER DONALD, FRANCES PARK PILLSBURY, PARKER F. WOOD, JR., CAROLINE R. CHICKERING, ETHEL SAVAGE, CHARLES SAVAGE, MRS. KEITH C. ELLIOTT, MRS. GORDON REYNOLDS, MRS. ALEX SAUNDERS, RUTH L. HART, A. C. WRIGHT, MRS. EDWARD G. RUSSELL, HAROLD V. KALLERUP, HOWELL C. JONES, EDITH M. JONES, Complainants, vs. PACIFIC GAS AND ELECTRIC COMPANY, Defendant.	Case No. 7871

Paul N. McCloskey, Jr., Theodore C. Carlstrom, and Austin Clapp, for the Town of Woodside and other complainants.
Howard E. Gawthrop, for the County of San Mateo, intervenor.
F. T. Searls, John C. Morrissey, and John A. Sproul, for Pacific Gas and Electric Company, defendant.
Charles A. Louderback and Franklin G. Campbell, for the Commission staff.

O P I N I O N

This is a complaint by the Town of Woodside (hereinafter referred to as Woodside) and thirty-three named individuals against Pacific Gas and Electric Company (hereinafter referred to as P.G.& E.). The County of San Mateo (hereinafter referred to as County) was granted leave to intervene in behalf of complainants. The

primary purpose of the complaint is to secure an order from this Commission which, it is hoped, would compel underground rather than overhead construction of a 220 kv transmission line designed to serve the Stanford Linear Accelerator Center (hereinafter referred to as SLAC). It is claimed that aesthetic considerations require that the transmission line be placed underground. A complaint by other parties seeking similar relief was before the Commission in Ligda v. P.G.& E., 61 Cal. P.U.C. 1.

A duly noticed public hearing was held in this matter before Commissioner Bennett and Examiner Jarvis at San Francisco on July 27, 29, 30, 31 and August 5, 7, and 19, 1964. The matter was submitted subject to the filing of briefs which have been received.

The first hurdle which complainants and County must surmount is that of jurisdiction. The defendant in this matter is P.G.& E., but the complaint alleges that the Atomic Energy Commission (hereinafter referred to as AEC) "has threatened and now threatens to exercise the sovereign rights of the government of the United States to condemn a right-of-way through the Town of Woodside and over, or adjacent to, the lands of complainants and to construct thereon an overhead 220 kv transmission line on towers averaging 120 feet in height. A condemnation action for a 100-foot easement and right-of-way through Woodside was filed by AEC on March 24, 1964, Action No. 42214 in the United States District Court in and for the Northern District of California, Southern Division." The AEC is not a party to this proceeding.

Complainants and County contend that Woodside Ordinance No. 1964-144, enacted on March 11, 1964, prohibits the construction or erection of the proposed overhead 220 kv transmission line and

that P.G.& E., a utility subject to the jurisdiction of the Commission, should be restrained from delivering electric power to AEC unless it constructs an underground line in conformity with the ordinance. It is argued that Section 2018 of Title 42 of the United States Code makes the AEC subject to the ordinance. That section provides as follows:

> "Nothing in this chapter shall be construed to affect the authority or regulations of any Federal, State, or local agency with respect to the generation, sale, or transmission of electric power."

The record discloses that the United States of America filed two actions in the United States District Court for the Northern District of California, Southern Division, seeking to condemn portions of the right-of-way for the proposed overhead 220 kv transmission line. These actions are Civil Nos. 42214 and 42323. Woodside appeared in said actions and moved that they be dismissed on the ground that the AEC was precluded from condemning the overhead right-of-way under the provisions of 42 U.S.C. §2018, in the light of Woodside Ordinance No. 1964-144. On June 12, 1964, the United States District Court entered an order striking the motions to dismiss and granted a summary judgment to the AEC. On June 17, 1964, the United States District Court entered a further order granting the AEC the right of immediate possession to the property involved in the two actions. These matters are now

on appeal before the United States Court of Appeals for the Ninth Circuit.[1/]

The Federal courts are the primary expositors of the meaning of Federal statutes. (Boyd v. Thayer, 143 U.S. 135, 180; Calhoun Gold M. Co. v. Ajax Gold M. Co. 182 U.S. 499; Downey v. City of Yonkers, 23 F. Supp. 1018, 1023, affirmed 309 U.S. 590; see also United States v. Waddill, 323 U.S. 353, 356; Clearfield Trust Co. v. United States of America, 318 U.S. 363.) There are presently orders of the United States District Court which impliedly hold that Section 2018 of Title 42 of the United States Code does not make AEC subject to the Woodside Ordinance. Casting aside questions of res judicata or collateral estoppel, the Commission should follow the holding of the United States District Court unless it is reversed. Furthermore, if the holding is reversed by the Court of Appeals or the United States Supreme Court, there would be no need for the Commission to act in this proceeding because the AEC would not be permitted to build an overhead line in the light of the Woodside Ordinance.

Complainants and County next contend that, under Sections 701, 761, 762, and 768 of the Public Utilities Code, the Commission should order the proposed transmission line to be built underground. P.G.& E. argues that these sections are not applicable to this proceeding because they deal with the Commission's jurisdiction over public utilities; that the sections do not give the Commission

1/ The Federal Court actions were alluded to by counsel for the parties on many occasions during the hearing. Copies of the orders were not offered or received in evidence. On June 29, 1964, P.G.& E. forwarded to the Commission copies of the orders entered by the United States District Court, which P.G.& E. urged supported its motion to dismiss, which had been previously filed. Copies were sent to complainants and County. The Commission is of the opinion that these orders should be part of the formal record in this proceeding, so that the orders themselves, rather than secondary evidence, may be referred to when appropriate. The Commission has ordered that they be included in the record and designated Exhibits Nos. 60 and 61. These orders are public acts of the judicial department of the United States and are also the proper subject of official notice. (Code Civ. Proc. §1875 (3); Rules of Procedure, Rule 64.)

jurisdiction to regulate the construction of transmission or distribution lines by private customers and that, in any event, the Commission has no jurisdiction to tell the AEC how to construct a power line on Federal lands. Complainants and County reply that the above-cited sections of the Public Utilities Code apply to non-utilities including the AEC and that, by virtue of 42 U.S.C. §2018, the Federal Government has made the AEC subject to the jurisdiction of the Commission.

As indicated, the AEC is not a party to this proceeding. Complainants and County seek an order against P.G.& E. which would, it is hoped, indirectly compel the AEC to place the transmission line underground. Sections 701, 761, 762, and 768 of the Public Utilities Code all deal with regulation of public utilities and not private power users:

> "701. The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." (Emphasis added.)
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> "761. Whenever the commission, after a hearing, finds that the rules, practices, equipment, appliances, facilities, or service of any public utility, or the methods of manufacture, distribution, transmission, storage, or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the commission shall determine and, by order or rule, fix the rules, practices, equipment, appliances, facilities, service, or methods to be observed, furnished, constructed, enforced, or employed. The commission shall prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility, and, on proper demand and tender of rates, such public utility shall furnish such commodity or render such service within the time and upon the conditions provided in such rules." (Emphasis added.)
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> "762. Whenever the commission, after a hearing, finds that additions, extensions, repairs, or improvements to, or changes in, the existing plant, equipment, apparatus, facilities, or other physical property of any public

utility or of any two or more public utilities ought reasonably to be made, or that new structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements, or changes be made or such structures be erected in the manner and within the time specified in the order. If the commission orders the erection of a new structure, it may also fix the site thereof. If the order requires joint action by two or more public utilities, the commission shall so notify them and shall fix a reasonable time within which they may agree upon the portion or division of the cost which each shall bear. If at the expiration of such time the public utilities fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost, the commission may, after further hearing, make an order fixing the proportion of such cost to be borne by each public utility and the manner in which payment shall be made or secured." (Emphasis added.)

"768. The commission may, after a hearing, by general or special orders, rules, or otherwise, require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in such manner as to promote and safeguard the health and safety of its employees, passengers, customers, and the public, and may prescribe, among other things, the installation, use, maintenance, and operation of appropriate safety or other devices or appliances, including interlocking and other protective devices at grade crossings or junctions and block or other systems of signalling, establish uniform or other standards of construction and equipment, and require the performance of any other act which the health or safety of its employees, passengers, customers, or the public may demand." (Emphasis added.)

A reading of the aforesaid Code sections indicates that, on their face, they do not attempt to confer upon the Commission the authority to regulate the construction of facilities by nonutilities who may be customers of regulated public utilities. However, even if it be assumed, for the sake of argument only, that the Commission has jurisdiction over the construction of facilities by nonutility customers of public utilities, we are not here dealing with an ordinary customer. The AEC is an instrumentality of the Federal Government and the transmission line, if constructed, will be owned

by the United States. When Congress has expressed a policy, no state or state agency has the power to impose conditions upon which the Federal Government may effectuate that policy. (U.S. Constit., Art. VI, Cl. 2; United States v. Georgia Pub. Serv. Comm., 371 U.S. 285, 292; Paul v. United States, 371 U.S. 245; Kohl v. United States, 91 U.S. 367; McCulloch v. Maryland, 17 U.S. 316.) It has previously been noted that complainants and County contend that Congress has subjected the AEC to the jurisdiction of the Commission by virtue of 42 U.S.C. §2018. However, the Commission deems the holding of the United States District Court in the aforesaid condemnation cases controlling on this point.

Unless the holding of the United States District Court is reversed, this Commission has no jurisdiction to determine how the AEC should construct a transmission line on Federal property to one of its facilities. This Commission cannot, and will not, under the guise of making an order against P.G.& E., attempt to assert jurisdiction over the AEC. It is clear that, on the present state of the record, complainants and County must be denied relief because of lack of jurisdiction by this Commission to grant any of the relief requested.

Wholly aside from the propriety of any action by this Commission which would be contrary to the decision of the Federal District Court, there is yet another ground for refusing the relief requested by complainants. Even if the Federal District Court had not acted, or even if we felt free to ignore its judgment, we would be compelled to deny the relief sought herein for the more fundamental reason that complainants have failed, on the merits, to prove their case.

Complainants and County contend that the Commission has jurisdiction over the rates which P.G.& E. may charge for furnishing electric energy to AEC; that under the rates proposed in the contract entered into between P.G.& E. and AEC on January 10, 1963, an underground line could be constructed to SLAC and P.G.& E. still make a profit on the service; that P.G.& E. and AEC are presently renegotiating said contract and that the Commission should hold that it will not approve any contract between the parties unless it provides for an underground transmission line and charges at the rates specified in the January 10, 1963 contract. P.G.& E. responds that there is presently no contract before the Commission; that there is a question of whether the Commission has jurisdiction to regulate the rates charged to the AEC; that there are no rates presently before the Commission; that P.G.& E. could not construct an underground transmission line to SLAC, furnish energy to the AEC at the rates provided for in the contract of January 10, 1963 and make a profit; that if such action were compelled it would burden the general ratepayers of the system for the benefit of a select few and that P.G.& E. has no way of compelling AEC to agree to any suggested contractual provisions.

We turn first to the question of our jurisdiction over rates. P.G.& E., in a footnote in its brief, suggested that this Commission may not have jurisdiction to pass upon the rates it proposes to charge AEC for furnishing electric energy for SLAC. It cites the Paul and Georgia Public Utilities Commission cases in support of this proposition. These cases have been previously considered herein. They hold that when Congress has expressed a

policy, no state or stage agency has the power to impose conditions upon which the Federal Government may effectuate that policy. We construe 42 U.S.C. §2018 as authorizing state regulation of rates with respect to local sales of electric energy to the AEC. The conduct of AEC and P.G.& E. indicates that this is the construction placed upon Section 2018 by those entities. The contract of January 10, 1963 contained a provision that the service furnished and rates charged thereunder were subject to regulation by this Commission and that it would not become effective until approved by this Commission. At the hearing, P.G.& E. indicated that it would submit any revised contract to the Commission for approval before rendering service thereunder. The Commission finds and concludes that it has jurisdiction over the rates to be charged AEC by P.G.& E. for furnishing electric energy to SLAC. (See also, United States v. Oklahoma Gas & Electric Co. 297 Fed. 575.)

Complainants and County contend that AEC has indicated it would accept an underground line having less capacity (180 mw) than the proposed overhead line (300 mw) if the charges for electrical energy were the same as those provided for in the contract of January 10, 1963. It is argued that P.G.& E.'s estimates for constructing an underground line having the capacity to transmit 180 mw of electric energy are too high; that an underground line

could be constructed for approximately $675,000 more than the proposed overhead line and that the rate schedule in the January 10, 1963 contract would give P.G.& E. a reasonable return on such underground facility. It is also argued that AEC agreed to absorb some of the difference in cost and that Woodside would, if legally possible, contribute $150,000.

The record discloses that, prior to the time AEC decided to condemn a right-of-way and itself build the transmission line to SLAC, AEC indicated that, in lieu of the overhead 220 kv line capable of delivering 300 mw of electric energy, it would accept as a temporary expedient an underground line capable of delivering 180 mw of electric energy. It was contemplated that, as the energy demands of SLAC increased, by 1973 it would be necessary to have another underground line to meet the SLAC power needs. The cost of the additional line is estimated to be approximately $2,500,000. The overhead line AEC proposes to construct would follow a different route than the suggested underground line. Since AEC is in the process of condemning a right-of-way for the overhead line, there is some doubt as to whether it would accept an underground line at this time. For the purpose of analyzing complainants' and County's position on the point under consideration we assume that AEC would still accept service by an underground 180 mw line.

An electrical engineer called by complainants testified that a 180 mw underground line could be built at a cost of $1,687,500. This engineer testified that the line could be built at the cost of $47 a foot. P.G.& E.'s senior electrical engineer

testified that the cost of such a line would be $2,430,000, which did not include substation costs. P.G.& E. also called as a witness a consulting engineer, who, prior to his retirement on December 1, 1963, had been the electrical engineer in charge of underground high voltage transmission and distribution system design for the Department of Water and Power of the City of Los Angeles. This witness had extensive experience supervising engineering design, layout, layout of routes, preparing specifications for the type of equipment and cable and estimates of construction costs for underground high voltage transmission and distribution systems, including a 230 kv transmission line presently operating in Los Angeles. He testified that he had no knowledge of any estimates prepared by P.G.& E.; that he had prepared an independent estimate of the cost of an underground 180 mw transmission line to SLAC; that the cost of such a line would be $2,474,220 and that the cost of construction would be $68.80 per foot.

A discussion of the various estimates for constructing a 180 mw line would unnecessarily encumber this decision. The Commission finds that such a line cannot be constructed for $1,687,500 and that the cost of construction would be approximately $2,450,000. The record indicates that, at the P.G.& E. estimate, it would be necessary for P.G.& E. to charge AEC approximately $200,000 per year more than the rates provided for in the contract of January 10, 1963 if P.G.& E. constructed the line. The Commission finds that complainants and County have failed to establish that the rates under the January 10, 1963 contract would be compensatory for a 180 mw underground line costing $2,450,000.

Complainants contend that if AEC constructs the overhead line, P.G.& E. will lower the proposed rate by giving AEC a

"kickback" of $125,000 per year. It is argued that if the Commission disapproves the alleged "kickback" AEC will be disinclined to construct the overhead line. The Commission finds no merit in this contention. The proposed payment under consideration can, in no way, shape or form be considered a "kickback". The record discloses that the rates provided for in the contract of January 10, 1963 contemplated that P.G.& E. would construct the overhead line. These rates included an increment for the cost of constructing the line. The proposed payment of $125,000 per year represents the refunding to AEC of that portion of the rate designed to compensate P.G.& E. for the cost of constructing the transmission line. Since P.G.& E. will not build the line we see nothing wrong with this arrangement. In fact, it would be unreasonable for P.G.& E. to charge for costs it did not incur.

County contends that, assuming the cost of undergrounding the transmission line to SLAC will be substantially greater than the cost of an overhead line, and further assuming that AEC will not pay a rate for electric energy which will include an increment for an underground line and cannot be compelled to do so, the Commission should order P.G.& E. to construct an underground line and pass the additional costs on to the general ratepayers of the utility. It is argued that aesthetic considerations command such a result, and that this proceeding should be a point of departure from which the Commission should require higher rates, generally, so that all transmission and distribution systems installed in the future will be designed and built in accordance with aesthetic considerations.

P.G.& E. argues that the overhead line, which AEC proposes to build, does take aesthetics into consideration; that the design

of the line was changed to provide for the use of tubular steel poles rather than towers; that the overhead line is aesthetically acceptable; that it has been Commission policy to have the customer, rather than ratepayers generally, pay any additional costs which are required because of aesthetic considerations; that if the Commission wants to raise rates for the benefit of aesthetics, the general public would benefit more if the money were used in connection with distribution rather than transmission systems and that, in the present case, undergrounding would bring little aesthetic benefit and any aesthetic benefit would be for a relatively few people.

The record discloses that the proposed overhead power line would have a total of 34 tubular steel poles. Five of these poles would be located in Woodside, and three of these five poles would be on Stanford University property. A substantial portion of the remaining poles would be located on the lands of an individual who proposes to subdivide his property. A few of the poles would be located in or near a privately owned and operated recreation area known as Searsville Lake. There are presently in Woodside 275 poles wholly owned by P.G.& E. and 2,213 poles jointly owned by P.G.& E. and the telephone company--a total of 2,488 poles.

The difference in cost between an overhead and underground service to SLAC would be as follows:

Cost of 300 mw overhead line	$1,012,000	Cost of 180 mw line*	$2,450,000
		Approximate cost of additional 180 mw line in 1973*	2,450,000
	$1,012,000		$4,900,000
		Difference	$3,888,000

*not including substation facilities.

In addition to the extra $3,888,000 which would eventually have to be spent for undergrounding the transmission of electrical energy to SLAC the record shows that if P.G.& E. constructs the underground lines it would be necessary to raise the rate approximately $200,000 per year just to pay for the additional costs of undergrounding one 180 mw line. When the second 180 mw line is required in 1973, a higher rate is inevitable because the entire cost of that line would not have been required if the proposed overhead line had been built. P.G.& E. estimates the fixed charges and cost of maintenance and operation of one underground 180 mw transmission line to be approximately $333,000. Thus, after 1973, at the rates presently proposed, underground facilities would require rates generating $533,000 per year more in revenues.

In view of the foregoing, the Commission is of the opinion that an order directing P.G.& E. to construct underground electrical distribution facilities to SLAC would be unwarranted. We are not persuaded that any aesthetic considerations involved should require the expenditure of an additional $3,888,000, which would be paid for by all the customers of P.G.& E.

It is clear that complainants and County have failed to establish in this record that the rates proposed are unreasonable in that they would burden other ratepayers for the service. While complainants and County talk in terms of the rate for the proposed overhead line being unreasonable, what they really mean is that, in their opinion, overhead construction is unreasonable. We do not agree with this contention. Putting aside questions of law and jurisdiction, the Commission is not disposed in this proceeding to hold that the alleged aesthetic considerations involved should compel the general ratepayers of P.G.& E. to provide sums to offset the expenses and carrying charges on $3,888,000, which represents the cost for the additional facilities which would be required to provide underground transmission to SLAC. This would also increase power costs to the facility.

The Commission is of the opinion that complainants and County are entitled to no relief in this proceeding.

No other points require discussion.

In addition to the various findings herein made, the Commission makes the following findings and conclusions:

Findings of Fact

1. AEC is constructing a linear accelerator at Stanford University, Stanford, San Mateo County, California. The accelerator is called SLAC.

2. SLAC will require substantial amounts of electric energy on or about January 1, 1966. In order to provide such energy additional transmission facilities must be constructed to serve SLAC.

3. On December 10, 1963, AEC and P.G.& E. entered into a contract which provided for the furnishing of electric energy to SLAC by P.G.& E. at specified rates. The contract also provided that P.G.& E. would construct the requisite transmission facilities to serve SLAC. Said contract, by its own terms, has not gone into effect, and AEC and P.G.& E. are presently renegotiating the contract.

4. P.G.& E. is not presently attempting, and does not now propose, to construct any transmission facilities to serve SLAC.

5. AEC has indicated that it will construct the requisite transmission facilities to serve SLAC. AEC has brought actions in the United States District Court for the Northern District of California to condemn a right-of-way for said transmission facilities.

6. The United States District Court has held that the manner in which AEC constructs said transmission facilities on the aforesaid right-of-way is not subject to local regulation under 42 U.S.C. §2018. Said holding is now on appeal in the United States Court of Appeals for the Ninth Circuit.

7. The immediate power requirements for SLAC are 180 mw of electric energy. By 1973, SLAC will require 300 mw of electric energy.

8. An overhead 220 kv transmission line to serve SLAC which will furnish 300 mw of electric energy can be constructed for $1,012,000. If two underground lines are constructed to serve SLAC, it would be necessary to provide two 180 mw lines for the delivery of 300 mw of energy. An underground transmission line to serve SLAC, which will furnish 180 mw of electric energy, can be constructed for $2,450,000, not including substation facilities. Two separate underground 180 mw transmission lines to serve SLAC could presently be built for $4,900,000, not including substation facilities.

9. If two 180 mw underground transmission lines were constructed by P.G.& E. to serve SLAC, the rate charged SLAC for electric energy would have to generate an additional amount of approximately $200,000 per year upon completion of the first line and $533,000 per year upon completion of the second one.

10. Any aesthetic considerations here involved do not justify this Commission requiring the expenditure of an additional $1,438,000, not including substation costs, to construct one 180 mw underground line and eventually a total of $4,900,000, not including substation costs, to construct two underground 180 mw lines to serve SLAC.

11. It would take 15 to 18 months to construct one underground 180 mw transmission line to serve SLAC, utilizing normal construction procedures. An underground line cannot be constructed, utilizing normal construction procedures, in time to meet the January 1966 power needs of SLAC. If extraordinary construction procedures were utilized the costs for constructing such a line would be greatly increased.

12. Complainants and County have failed to establish that the rates P.G.& E. proposes to charge AEC for service to SLAC are unreasonable or that said rates would unjustly burden any other ratepayers.

Conclusion of Law

Complainants and County are not entitled to any relief in this proceeding.

O R D E R

IT IS ORDERED that complainants and County are entitled to no relief in this proceeding and the complaint is denied.

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

Dated at San Francisco, California, this 7th day of FEBRUARY, 1965.

Frederick B. Holoboff
President

George G. Grover

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

I concur with the instant opinion, however my views as to aesthetics and public utilities should be set forth & guarded.
William M. Bennett

BENNETT, William M., Commissioner, Concurring Opinion:

There is much more to regulation than rates and charges. One of the critical problems facing California comes from an ever increasing public awareness of the necessity for planning and conservation of resources. More and more the public dialogue is concerned with the issue of conservation whether pertaining to freeways, billboards, the siting of nuclear plants or the undergrounding of utilities. And this is proper since Californians have a special heritage of beauty and apparently more and more of them are becoming gravely concerned over its spoilage.

The public utilities of our state are among the great builders. Their construction budgets are enormous and their impact upon cities and towns and open spaces is likewise enormous. The assertion of the vast authority of this Commission over the planning and the construction of public utility projects in terms of total public good, or in short, aesthetics, is, in my opinion, absolutely required and indeed, so far as I am concerned, somewhat overdue. Presently, without statewide directive applicable to public utilities generally, utility planning and construction now proceeds upon a piecemeal basis. It varies from county to county and if the end result is a state where utility construction is designed to produce an overall beneficial result in terms of need and aesthetics, this will merely be by chance. And the chance of this occurring is, in my judgment, exceedingly slight.

I note that the League of California Cities at its recent 1964 Annual Conference held in Los Angeles, California, took note that looking ahead twenty years at the problem of housing alone, five million additional residences will have to be provided for fifteen million people. The League properly asks "How, with five

million more homes and fifteen million more people, can we preserve and enhance the aesthetic environment?" The brief document entitled "Report of the League Committee on the Future: shows an awareness of the problems posed by population growth in terms of preservation of beauty and it specifically touches upon undergrounding so far as utility facilities are concerned. In the words of the report it states "it now seems feasible for cities to demand that the developers remove the ugliness of overhead wires. Many cities are passing ordinances requiring undergrounding in new subdivisions." By the same token and from the same basic controversy has arisen a quarrel between some subdividers and some public utilities as to the burden of the cost. One local planning commissioner, Commissioner Felix Warburg of Marin County, is reported in the press as urging "that the decision as to cost bearing is one of policy which should be set at the highest level by the State Public Utilities Commission, as it is of general statewide interest." To which I heartily agree.

It cannot have escaped general notice, including that of this Commission, that in President Johnson's Special Message to Congress on Natural Beauty, that he referred, among other things, to "the question of whether utility transmission lines can be laid underground."

A committee of the California Legislature has recently spoken out quite strongly in favor of some planning in terms of construction in California, and indeed throughout California local bodies are quite concerned as to this problem. Most of them are quite articulate in demanding that something be done.

No man proposes easy answers to difficult problems since the cold hand of economics is laid upon the ideal of aesthetics. Costs cannot be ignored but this is the very reason, among many

others, why I have urged that a statewide investigation be called bringing forth all of the public utilities who make substantial capital additions and betterments, together with interested public officials and ratepayers, to the end that an evaluation may be had of public utility efforts at this time in terms of the true public interest.

This proceeding has focused attention on the problem of aesthetics with respect to construction of facilities by utilities. The issue of aesthetics suggests many questions which cannot be answered in an adversary proceeding, with limited parties such as this, because there are persons and interests who may be affected that are unrepresented. For example: Are there Commission rules which prohibit the use of techniques, by utilities, which provide more aesthetically pleasing construction at the same or lower cost than presently used types of construction? Should subdividers or general ratepayers pay the additional costs of undergrounding facilities in subdivisions? Should existing useful facilities be replaced by those which are more aesthetically pleasing? In new construction, should ratepayers in one area of the State pay for aesthetics in another area? What are the costs and benefits of an emphasis on aesthetics in construction of utility plant? How will this affect the average customer's monthly utility bills? I believe that these and other questions relating to aesthetics should be explored in a proceeding with utilities, consumers, conservationists, municipalities, planners, subdividers, builders and all interested groups.

That this Commission has the authority to conduct such proceedings is beyond question. That there is the urgency to do so is also beyond question in my mind. The failure of the Commission to respond to so large a challenge is a thing of disappointment to me and will result inevitably in this task being performed

either by a legislative committee or by a directive in statute form that we get on with business which is obviously ours. The hard fact is that there is no agency in the State of California other than this Commission which has the necessary powers and scope of authority to deal with the vexing problem of the preservation of beauty in California so far as public utilities are concerned. And if the Commission continues in its course of inaction then inevitably by default our proper function will flow to some other place. I suspect that the public utilities of California, which themselves are being confronted with local demands are becoming more aware than is this Commission apparently of the public desire for some proper planning. The pace of undergrounding for example cannot be left to the tempo established by public utilities. I am sure that it could be expedited and that the question of the quantum of research and development by public utilities in this field would be most interesting to explore.

What is less enchanting than a view of the hills of the Bay Area, of the blue of the bay, of the endlessness of the Pacific, and its being marred by an intervening utility pole? At the risk of being flippant, it occurs to me that it is like nothing so much as a school boy mustache painted upon the Mona Lisa. And yet until utilities are given clear directives -- and none exist presently from this Commission -- until a timetable for undergrounding present facilities is imposed, until a policy with respect to new subdivisions is laid down, then with reasonable certainty it can be stated that the utility pole is a permanent part of the California landscape and indeed may have a longevity which will become the envy of the vanishing redwoods.

William M. Bennett

WILLIAM M. BENNETT

February 9, 1965,
San Francisco, California.