

Decision No. 77870

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Frank W. Mahoney and Florence S. Mahoney,)
 Complainants,)
 vs.)
 Pacific Gas and Electric Company,)
 a corporation,)
 Defendant.)

Case No. 9058
(Filed May 7, 1970;
Amended June 8, 1970)

Ernest M. Thayer, for Frank W. Mahoney
 and Florence S. Mahoney, complainants.
Jack F. Fallin, Jr., for Pacific Gas and
 Electric Company, defendant.
Alfred V. Day, for the Commission staff.

O P I N I O N

According to complainants, for some years past and at all times material herein they were and are the owners and reside on the real property known as 96 Sotelo Avenue, Forest Hill Subdivision, San Francisco.

Complainants allege that their real property is subject to an easement in and upon a strip of land of the uniform width of five feet along the northerly edge of said property for the purpose of forever maintaining gas pipes and devices for maintaining a gas system and electric lines and devices for maintaining and operating an underground electric system; that said strip is located along the rear of complainants' property; that they have always recognized said easement reserved for gas and electricity and have not interfered with defendant's use of said easement; that said five feet cannot be used by complainants in any way as a retaining wall was

built inside the easement; that in addition to said five feet easement on their lot defendant has an easement on the lot immediately north of complainants' lot of the width of five feet, which easement is also irrevocably dedicated for gas and electric service; that defendant has therefore a permanent easement 10 feet in width along the entire length of the block on which complainants' house is located; that the 10-foot easement is of record and shows on all title reports; that defendant has at present another gas line and devices in the middle of Sotelo Avenue; that defendant has notified complainants in writing that unless complainants grant to defendant the right to dig up complainants' concrete alley along the side of said property in order to insert a gas pipe therein that gas service will be terminated; that defendant relies upon Section E-1 of Rule 16, Revised California P.U.C. Sheet No. 5416 effective April 20, 1960 and General Order No. 58-A in terminating complainants' gas service; that said rule is for the purpose of determining payment of costs upon relocation and not for the purpose of terminating service; that said General Order requires defendant to maintain its facilities in a condition to render safe and adequate service and does not authorize termination of service; that defendant has arbitrarily changed its service and under claim of right under said rule and General Order will terminate gas service because complainants will not grant an additional easement to defendant; that defendant's action in this regard is arbitrary, discriminatory, burdensome and violates complainants' right of due process in that defendant will terminate service under color of said rule and General Order unless further portions of complainants' property are dedicated to defendant's gas service; that defendant has used the side yard of other lots on Sotelo Avenue for its gas service and

has performed said work in an unworkmanlike manner replacing concrete in a haphazard manner and leaving gas pipes exposed above the surface of the ground; that defendant can continue its present gas service to complainants over the 10-foot dedicated easement from the gas line presently in the easement which can be connected to defendant's existing gas main in Ninth Avenue without detriment or hardship to defendant and without requiring dedication of complainants' property for defendant's business purpose; and that the 10-foot easement will continue to be used by defendant for underground electric service leaving any unused gas pipes in place.

Complainants' request an order determining that Section E-1 of Rule 16 and General Order No. 58-A does not authorize termination of gas service to complainants.

In its answer defendant admits or denies the various allegations contained in the complaint. As its affirmative defense, defendant, in essence, claims that it has expressed to complainants its willingness to do everything it can to render the relocation acceptable to them short of indulging in the expensive, inefficient, aesthetically destructive, and unnecessary replacement in place proposed by complainants.

Public hearing was held at San Francisco before Examiner Gillanders on September 10 and 11, 1970, and the matter submitted on September 11.

Complainants presented four witnesses. Defendant presented one witness. The staff aided the development of a complete record through cross-examination.

Complainants' testimony clearly reveals that under no circumstances will they voluntarily grant defendant any new easement on their property. It is their position that defendant can and must continue service through the existing easement.

Defendant's testimony revealed that it considers that any reconditioning or replacement of the existing main and service would be engineeringly imprudent due to the age and condition of the pipes. Defendant's witness, its San Francisco Division Gas Engineer, however knew little or nothing regarding the actual condition of the pipes in question.

At the suggestion of the presiding examiner, defendant determined by actual field inspection that the 6-inch cast iron main was leaking and was "heavily rusted" and that the service pipe "should be replaced".

The Division Gas Engineer believes the best location for any new service would be Sotelo Avenue. He did not endorse the staff's suggestion that one solution to the problem would be the "insertion method" - a plastic pipe inserted into the 6-inch cast iron main in the easement - as he does not use the method in his division although such insertion method has been used in other PGandE Divisions. In any event he would use steel pipe for any new piping regardless of location - front or rear.

The record reveals that numerous proposals were made by defendant to complainants in an effort to reach a satisfactory solution. Among the proposals was an offer to continue service from the rear easement at a cost of \$500 to each party. The record further reveals that the staff's insertion method would cost approximately \$200.

The record further reveals that Sotelo Avenue belongs to the Forest Hill Association and that the City of San Francisco has not accepted such avenue due to the substandard construction. PGandE has no written authorization from the association to place pipes in Sotelo Avenue.

Findings of Fact

The Commission finds that:

1. Complainants for some years past and at present were and are the owners and reside on the real property known as 96 Sotelo Avenue, San Francisco, California.

2. Complainants' property is subject to an easement in and upon a strip of the uniform width of five feet along the northerly edge of said property.

3. The purpose of the easement is the maintaining of a gas system, an underground electric system and an overhead telephone system.

4. Defendant currently operates both underground electrical facilities and a 6-inch cast iron gas main approximately within the above-mentioned easement.

5. The 6-inch cast iron gas main was installed about 1915.

6. The 1915 cast iron gas main lies at the rear of 96 Sotelo Avenue and gas service is currently provided to complainants through a service connection from this main. The service connection was installed in 1930.

7. Sotelo Avenue is the property of the Forest Hill Association.

8. Sotelo Avenue does not meet the standards for street construction set by the City of San Francisco.

9. Pacific Gas and Electric Company does not have written authority from the Forest Hill Association for its installations in Sotelo Avenue.

Conclusions of Law

The Commission concludes that:

1. The 6-inch cast iron main and the steel service supplying 96 Sotelo Avenue should be repaired or replaced.

2. Section E-1 of Rule 16 and General Order No. 58-A do not authorize termination of gas service to complainants under the circumstances existing in this matter.

3. It is not legally bound to accept all testimony adduced before it at its face value or as conclusive merely because there is not testimony offered and received in contradiction of it.


4. The evidence clearly reveals that repair or replacement of the main in the easement and the replacement of the service from such main and the continuance of service to 96 Sotelo Avenue from such main and service is fair and equitable to complainants, to defendants, and to the other ratepayers of defendants.

O R D E R

IT IS ORDERED that gas service to complainants be continued by Pacific Gas and Electric Company and at Pacific Gas and Electric Company's sole expense by means of piping laid in the existing rear easement and in the backyard of complainants' property at 96 Sotelo Avenue.

The effective date of this order shall be the date hereof.

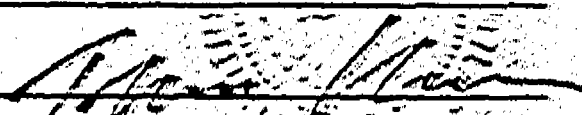
Dated at San Francisco, California, this 27th day of OCTOBER, 1970.




Chairman



Commissioner





Commissioners