JM/JR

ORIGINAL

Decision No. 80169

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of Dart Industries Inc., a Delaware corporation, for an exception to the mandatory undergrounding requirements of Rule 15.1 for the subdivision Rancho Corral De Quati, Santa Barbara County, California.

Application No. 53049
(Filed December 13, 1971)

Sam J. Whiting, Attorney at Law, for applicant.
J. Bradley Bunnin, Attorney at Law, for Pacific Gas and Electric Company, interested party.
Vincent V. MacKenzie, Attorney at Law for the Commission staff.

O P I N I O N

Dart Industries Inc., petitions for an exception to the mandatory requirements of the Pacific Gas and Electric Company (PG&E) Rule 15.1 as it applies to the undergrounding of electric lines serving new subdivisions and specifically as it might apply to petitioner's development at Rancho Corral De Quati, Santa Barbara County.

Public hearing was held before Examiner C. Towers Coffey at Santa Barbara on February 28, 1972. The matter was submitted on April 12, 1972, upon the receipt of briefs.

In the latter part of 1970 and early in 1971, a Mr. Sherwood Chillingworth entered into negotiations to buy Rancho Corral De Quati, a cattle ranch of about 1,043 acres in size located near Santa Ynez, California. Mr. Chillingworth testified he was interested in the property because of its potential as a varietal grape producing vineyard. He intended to retain 320 acres for his own use and to sell the remaining land. To this end, he secured a 40-acre, limited agricultural zoning for the property and applied to the Real Estate Commission for a Public Report so that he could divide the property and sell the portion he did not want. He had the property surveyed and the survey recorded, dividing the property into 17 parcels of 40 or more acres each.

Mr. Chillingworth, who is not a land developer, believed that overhead electric service would be provided these properties. His belief was supported by a letter to this effect from the utility, PG&E, dated April 19, 1971.[1/]

During this time, he entered into an agreement with Dart Industries, the applicant in this case, under which Dart agreed to purchase the property. After acquiring the property, Dart learned that PG&E would not install electric utility service overhead, because PG&E believed that Rule 15.1 may apply. Dart then sold the 17 parcels with the understanding that Dart would provide overhead extensions to the parcels or the cash equivalent thereof to the purchasers. It is for the purpose of determining that the mandatory undergrounding rule does not apply, or in the alternative to secure an exception thereto, that this application has been made.

For the following reasons Dart argues that Rule 15.1 applies only to subdivisions that are residential in nature, and not to subdivisions that are agricultural in nature:

A. The preamble to Rule 15.1 specifically states that Rule 15.1 applies within new single family and/or multi-family residential subdivisions of five (5) or more lots and in new residential developments consisting of five (5) or more dwelling units in two (2) or more buildings located on a single parcel of land. Thus, the language of Rule 15.1 applies only to subdivisions for residential dwellings.

B. In Decision No. 79825, dated March 21,1972, Application No. 52971, the Commission set forth the definition of the term subdivision as used in Rule 15.1 as follows:

> "An area for family dwellings which may be identified by filed subdivision plans or as an area in which a group of dwellings may be constructed about the same time, either by a large scale builder or by several builders working on a coordinated basis." (Emphasis added)

1/ Decision No. 77187, dated May 5, 1970, in Case No. 8993, required electric and communication utilities to revise their overhead line extension rules to make them inapplicable to residential subdivisions.

Again it appears that Rule 15.1 applies only to land that has been subdivided for the purpose of constructing family dwellings and not lands that have been subdivided for the purpose of agricultural use.

C. Decision No. 76394, issued on November 4, 1969, Case No. 8902, prescribed the present rule for underground extensions, but makes no mention of lands subdivided for agricultural purposes in its lengthy discussion. It did frequently refer to residential subdivisions, not only in the discussion, but in the findings of fact and its conclusions which led to the order establishing underground utilities as standard.

D. Decision No. 77187, dated May 5, 1970, Case No. 8993, makes frequent reference to residential subdivisions but makes no mention of agricultural subdivisions. In making the order, which made it clear that undergrounding of utilities was mandatory, the Commission specifically ordered that the following language should be applied to Rule 15C:

> "Not applicable to service within new single family and/or multi-family residential subdivisions of five (5) or more lots (subdivision) and in new residential developments consisting of five (5) or more dwelling units in two (2) or more buildings located on a single parcel of land (development) unless a master plan, preliminary map or tentative map has been filed for the subdivision with the appropriate local authorities pursuant to the Subdivision Map Act on or prior to May 5, 1970, and where an agreement has been entered into with the utility for electric service prior to May 5, 1972." (Emphasis added.)

E. At the time of the hearings which culminated in the above decisions, no evidence was introduced regarding agricultural lands and the undergrounding of utilities serving them.

Applicant argues that Rancho Corral De Quati is not a subdivision for the following reasons:

A. California Business and Professions Code Section 11535, after defining the term subdivision, states in pertinent part:

> "(c) Subdivision does not include the division of any real property improved or unimproved or a portion thereof shown on the latest equalized County assessment role as unit or contiguous units, which is divided for the purpose of sale, lease, or financing, whether immediate or future, if any of the following conditions prevail: . . . (4) any parcel or parcels of land divided equally into lots or parcels, each of a gross area of forty acres or more or each of which is a quarter-quarter section or larger, or such other amount, up to sixty acres, as may be specified by local ordinances." (Emphasis added.)

All of the parcels in Rancho Corral De Quata exceed forty (40) acres in gross area, and therefore, Rancho Corral De Quati does not meet the definition of subdivision as contained in California Business and Professions Code Section 11535.

B. The term "subdivision" as defined in Rule 15.1 sets forth two requirements in the alternative which must be met before an area will be considered to be a subdivision. Either, it must be "an area for family dwellings which may be identified by filed subdivision plans..." or in the alternative, it must be "an area in which a group of dwellings may be constructed about the same time, either by a large scale builder or by several builders working on a coordinated basis." Since Rancho Corral De Quati is not a subdivision as defined in the Business and Professions Code Section 11535, or by any Ordinance of the County of Santa Barbara, there is no requirement that any sort of subdivision plans be filed. At the same time, there is no evidence in the record to indicate that a group of dwellings is being constructed at about the same time by either a large scale builder, or by several builders working on a coordinated basis. Since neither of these requirements are met, Rancho Corral De Quati is not a subdivision as defined by the Public Utilities Commission in this instance.

Applicant argues that the following facts indicate that Rancho Corral De Quati is an agricultural development and is not a residential development:

A. The development is zoned 40-AL-O. This zoning establishes a 40-acre minimum for limited agricultural purposes, with oil operations allowed. The size of the parcels are inconsistent with an intent to create a residential subdivision.

B. Mr. Chillingworth testified that the primary purpose of the 40-AL-O zoning is agricultural and not residential. The letter from the Santa Barbara County Planning Department dated November 22, 1971, and attached to the application herein as Exhibit I supports this testimony.

C. It is unlikely that the 40-AL-O zoning will be changed so as to allow further subdivision in the near future. The Santa Barbera County Planning Commission has refused an application for 20-acre zoning on this property.

D. There is no development, either residential, commercial, or industrial, in the vicinity of Rancho Corral De Quati which would serve to influence or encourage further subdivision of these properties. The Rancho Corral De Quati properties and the adjacent properties have been and are being used for such agricultural purposes as cattle grazing, hay and alfalfa growing, and other agricultural purposes.

E. Rancho Corral De Quati is not suited for any purpose other than agricultural use, and it does not appear that it would be possible to resubdivide the property in the reasonably foreseeable future.

F. While it is possible under the present zoning to construct a dwelling on each of these parcels, there is no evidence that any such dwellings are presently under construction or planned.

G. The applicant's first witness, Mr. Chillingworth, has had extensive studies made regarding the feasibility of growing varietal grapes on the property. These studies indicate that the commercial growing of varietal grapes is quite feasible. Further, the Sisquoc Valley, about 11 miles away from Rancho Corral De Quati, is a proven grape producing area.

H. Mr. Chillingworth and others are presently planning to grow grapes on a cooperative basis on these properties. In particular, the owner of Parcels 7, 8, 9 and 10 and the owners of Parcels 11 and 3 have indicated interest in such vineyard operations.

I. Numerous indicia of a residential development are not present in Rancho Corral De Quati. For example, the developer has not improved any roads, neither water nor sewer systems have been provided, no improvements or amenities of any kind have been provided, and there are no plans for any such amenities or improvements.

In addition to the foregoing, applicant argues that undergrounding of electric lines should not be required at Rancho Corral De Quati because of the following:

A. All utility extensions within this development would be constructed on private rights-of-way, none of which would be visible from any major public thoroughfares. Such extensions would only be visible from the county road which presently runs through the development. Since this record indicates that this county road is now festooned with numerous overhead power transmission and telephone lines, the addition of the few extension lines involved in this development would not measurably increase the esthetic burden upon this road.

B. This property is crisscrossed with numerous overhead power and telephone lines at the present time. Some of these overhead lines have been installed by public utilities, and others are privately owned.

C. The substantial number of trees and the terrain involved serve to reduce to a minimum the esthetic impact of the additional overhead extension lines that may be required.

D. Since these properties will be used for agricultural purposes it will be necessary to supply power to outbuildings, pumps, and other equipment and machinery at various locations on these properties. This may be done by private overhead extensions from the utility installed meter.

E. The witness for PG&E testified that 11 of the 17 parcels would be served, in the event undergrounding is required, with underground risers from existing poles. No useful purpose would be served by installing only a small distance underground in full sight of the numerous overhead extensions that presently exist.

F. The plans for the development of this property were predicated upon the belief that overhead utilities would be installed. It was only after the applicant had purchased the property, and made substantial investments in planning and engineering that they became aware that underground utilities may be required.

G. The cost of underground extensions to the remaining Lots 1, 2, 4, 5, 7 and 9 would be approximately $41,560. In the event that the underground extensions are required, the developer is committed only to advance an amount equal to the cost of overhead extension, approximately $8,000. The net cost to the 6 parcel owners involved then would be approximately $33,000 or an average of $5,500 to have power extended to his parcel. Each parcel owner could be subject to additional costs of up to $8,000 in order to extend the extension underground across his property to the point of use. The undergrounding cost for any one parcel, therefore, could be well over $13,500.

Findings and Conclusion

The Commission finds:

1. Rancho Corral De Quati is not a residential subdivision or development as defined in PG&E Rules 15 and 15.1 or in Appendix A to Decision No. 76394, or in Decision No. 77187.

2. Rancho Corral De Quati is not a subdivision as defined by the California Business and Professions Code or by any Ordinance of the County of Santa Barbara.

3. PG&E Rule 15.1 and paragraph C of PG&E Rule 15 are not applicable to Rancho Corral De Quati.

4. All parcels in Rancho Corral De Quati exceed 40 acres.

5. All parcels in Rancho Corral De Quati are used primarily as agricultural properties.

The Commission concludes that the application should be granted.

O R D E R

IT IS ORDERED that Pacific Gas and Electric Company is authorized and directed not to require undergrounding of extensions to serve the seventeen parcels of Rancho Corral De Quati in Santa Barbara County.

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

Dated at San Francisco, California, this 20th day of JUNE, 1972.

Chairman

Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.