

Decision No. 80390

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

A. H. STEINBECK,

Complainant,

vs.

SAN DIEGO GAS & ELECTRIC COMPANY,  
a corporation,

Defendant.

Case No. 9349  
(Filed March 16, 1972)

George G. Grover, Attorney at Law, for complainant.  
Gordon Pearce, C. Edward Gibson and Frederick I. Fox, Attorneys at Law, for defendant.  
J. Bradley Bunnin, Attorney at Law, for Pacific  
Gas and Electric Company, interested party.  
Timothy E. Treacy, Attorney at Law, for the  
Commission staff.

O P I N I O N

Complainant A. H. Steinbeck seeks an order declaring certain land to be not a subdivision within the meaning of the electric line extension rules of defendant, San Diego Gas & Electric Company, and, hence, not subject to the mandatory undergrounding requirement of those rules. In the alternative, if the land is deemed to be a subdivision, complainant seeks a deviation from the undergrounding requirements.

Public hearing was held before Examiner Catey at San Diego on May 23, 24 and 25, 1972. Testimony on behalf of complainant was presented by complainant, by his consulting engineer and by the general manager of the municipal water district which has distribution mains in the area. Testimony on behalf of defendant was presented by five of defendant's officers and employees.

involved in, among other things, the design and planning of electric line extensions to serve new customers. The matter was submitted on May 25, 1972, subject to the filing of briefs. The final reply brief was filed June 20, 1972, the final transcript volume was filed July 13, 1972 and the matter is now ready for decision.

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.

Undergrounding was not made mandatory for extensions to serve individuals, as opposed to subdivisions, because of the numerous hardship cases and unreasonable situations which could arise. It was not the intent, however, to permit circumvention of the mandatory undergrounding rule for subdivisions by having de facto subdivisions created through successive lot splits. In this regard, defendant's tariffs<sup>1/</sup> define a tract or subdivision as:

"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."

Defendant, when investigating applications for line extensions, properly attempts to prevent circumvention of the rules. If there is reasonable cause to believe that an extension will serve a de facto subdivision, undergrounding is proposed by the utility. An application or complaint can be filed with the Commission by the potential customer requesting deviation from, or a different interpretation of, the extension rules.

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<sup>1/</sup> This identical definition also appears in the tariffs of other electric utilities. See Decision No. 79825, dated March 21, 1972, in Application No. 52971, involving Pacific Gas and Electric Company.

In this proceeding, complainant's property is not part of a formal subdivision. Over a relatively short period of time, however, about 160 acres of land described in detail in Exhibit A attached to the filed complaint and located a few miles northeast of the City of Escondido in San Diego County was divided, by successive lot splits, into 64 lots of about 2½ acres each. Complainant owns thirteen of the 2½-acre parcels in four noncontiguous locations delineated on Exhibit B attached to the filed complaint. ✓

The record shows that there was a considerable amount of coordinated effort on the part of present and previous owners of the various parcels: Exhibits Nos. 2, 3, 4, 5, 7, 8, 9, 12, 16, and 17 show the various sales, transfers and lot-splits which resulted in the present parcel configurations; Exhibit No. 10 is a copy of mutual covenants, conditions, and restrictions recorded by the owners of the parcels; the 64 lots have been referred to in covenants and by a real estate broker as "Mountain View Estates"; in splitting the parcels, road easements were provided and some road grading has been accomplished; all of the owners who recently split their larger parcels employed the same engineering firm; water mains were installed several years ago by a local municipal water district along the road easements fronting many of the 2½-acre parcels; a single realtor had at one time a listing on many of the parcels and had assigned "lot numbers" thereto.

Although there was considerable joint effort by the various property owners, there is no evidence to indicate that a group of dwellings will be constructed about the same time, either by a large-scale builder or by several builders working on a coordinated basis. Complainant's testimony that he is not a builder (Tr. 51) and that he has not plans to build homes on his parcels (Tr. 50) is uncontroverted. In fact, the present complaint was filed because a potential sale of one of complainant's parcels was frustrated by the potential of undergrounding.

requirements for an applicant for a line extension to serve a single dwelling to be constructed, not coordinated with any other dwelling construction.

Further lot splits by purchasers of complainant's 2-1/2-acre parcels are precluded (Tr.37) by the minimum lot size provisions of San Diego County in the particular zone.

Maps covering the division of complainant's property as well as property of other owners in the area into the present 64 2-1/2-acre parcels were filed with San Diego County prior to the enactment of Ordinance 3829 on February 1, 1972. Division 2 of this new ordinance covers the division of land (other than subdivision) and would be applicable to future land divisions such as are involved in this complaint. Section 82.313 requires that utility facilities be placed underground, except that the County Director of Planning may waive or modify the requirements when it is impossible or impractical in the particular case to conform fully to the requirements, provided any such waiver or modification is in conformity with the spirit and purpose of the requirements.

San Diego County appears to have numerous lot-split developments. If it were not for the county's requirement which appears intended to assure underground electric line extensions in future developments of this type, it might be appropriate to consider an investigation into the reasonableness of extending the mandatory requirement to cover such developments. If this were deemed appropriate, however, any change would necessarily be prospective and would not affect this proceeding. San Diego Gas & Electric Company and other electric utilities should continue to attempt to prevent circumvention of the present rules and should, wherever appropriate, make recommendations for expansion of the mandatory underground requirements. The utilities may request that underground line extensions be required in specific areas, whether being developed by lot-splits or any other means. In so doing, however, the

utility's proposal should include appropriate recommendations for the division of costs between the utility, the applicants for service, and subsequent applicants for service.

Findings and Conclusion

The Commission finds that:

1. Complainant's property described herein is not part of a subdivision or subdivisions identifiable by filed subdivision plans.
2. There are no plans for construction of a group of dwellings at about the same time on parcels which include complainant's property.

The Commission concludes that, under the situation described herein, complainant's parcels should not be treated as though they were all or part of a subdivision or subdivisions in applying defendant's line extension rules.

No findings can be made, conclusions reached, nor orders issued as requested by complainant regarding any of the other property described herein in the general vicinity of complainant's property. The owners of the other parcels are not parties to this proceeding and did not present testimony regarding their construction plans.

O R D E R

IT IS ORDERED that, in the absence of evidence that a group of dwellings are likely to be constructed about the same time on parcels described herein owned by complainant, A. H. Steinbeck, and delineated on Exhibit B attached to the filed complaint herein, either by a large-scale builder or by several builders working on a coordinated basis, defendant San Diego Gas & Electric Company, in

applying its line extension rules, shall not treat complainant's parcels as though they were all or part of a subdivision or subdivisions.

In all other respects, the complaint in Case No. 9349 is dismissed.

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

Dated at San Francisco, California, this 27th day of AUGUST, 1972.

I abstain:

*[Signature]*

*Vernon L. Sturgeon*  
President

*William J. Spence*  
*Bill Spence Jr.*

Commissioners

*I will file a dissent.*  
*Thom Moran*


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COMMISSIONER MORAN, Dissenting.

I dissent because this decision, like Decision No. 80388, also handed down today, represents a major retreat from the policy previously established by this Commission to require ultimate undergrounding of utility lines in residential subdivisions.

As in Decision No. 80388, the facts in this case make this retreat unusually regrettable, as the subdivision consists of sixty-four spacious lots, totaling 160 acres in area and will therefore unquestionably by its nature become a residential area of luxury homes and the residents will not only be able and willing to pay the modest extra cost of undergrounding but indeed desirous of doing so. It will then be too late to change to undergrounding except at a greatly increased cost to the residents.

August 29, 1972  
San Francisco, California

  
Thomas Moran  
Commissioner