

Decision No. 80958

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Dart Industries, Inc.,  
a Delaware corporation, for an excep-  
tion to the mandatory undergrounding  
requirements of Rule 15.1 for Tract  
3595 of Bear Valley Springs, a land  
project, located in Kern County,  
California.

Application No. 53170  
(Filed February 24, 1972)

Sam J. Whiting, Attorney at Law, for applicant.  
Joe Fontaine and Mrs. Joy Lane, for Project Land Use  
Task Force, protestant.  
R. E. Woodbury, R. Cahall and H. Clinton Tinker,  
Attorneys at Law, for Southern California Edison  
Company, interested party.  
James Cherry, Attorney at Law, for the Commission  
staff.

### O P I N I O N

Applicant Dart Industries, Inc., seeks a deviation from the mandatory undergrounding provisions of the line extension rules of Southern California Edison Company (Edison).

Public hearing was held before Examiner Catey at Bakersfield on May 31, 1972. Notice of hearing had been sent to applicant, to the electric and telephone utilities which will serve the area, and to the Clerk, County Counsel, and Chairman of the Board of Supervisors of Kern County. Applicant presented evidence through the project engineer for the land development, the project manager for the development, the president of applicant's land development affiliate, the construction superintendent for the excavation and grading contractor on the project, the engineer-manager for the local community services district, and the electric utility's manager of customer services.

Edison made a short statement of position at the conclusion of the hearing, in lieu of filing a brief. The matter was submitted subject to the filing of briefs by parties other than Edison on June 16, 1972. The due date was extended to June 30, 1972, at the request of staff counsel and with the concurrence of the other parties. Filing of applicant's brief was suspended temporarily pending receipt of certificate of service. The required certificate of service was received on July 7, 1972 and the matter is now ready for decision.

Applicant is the developer of a large area known as Bear Valley Springs, located eleven miles from Tehachapi in Kern County. It includes about 24,000 acres, subdivided into approximately 4,500 lots. It covers essentially an entire basin with access only by two entrance roads. The development is planned as a "closed community" with guards to be maintained 24 hours a day at the two entrance gates.

Tract No. 3595 is a portion of the Bear Valley Springs development, located at the northeast edge thereof. It constitutes about five percent of the total area and six percent of the total lots within Bear Valley Springs.

Applicant commenced the Bear Valley Springs development several years ago. Overhead electric lines were planned for essentially all of the development. Contracts were entered into between applicant and Edison for overhead line extensions throughout the development except for Tract No. 3595 and for some small high-density areas to be served by underground lines. Those contracts were entered into prior to the effective date for mandatory undergrounding in new subdivisions. Acquisition of the land now comprising Tract No. 3595 by applicant was delayed by the former owner and, in the meantime, Decision No. 77187, dated May 5, 1970, in Case No. 8993, required electric utilities to revise their overhead line extension rules to make them inapplicable to new residential subdivisions.

A considerable amount of evidence regarding relative costs of overhead and underground lines, difficult terrain, and other factors was presented by applicant. Some of this evidence was challenged in briefs by protestant and the Commission staff. On the other hand, Edison's position is that (1) under the facts in this case the benefits of undergrounding are not commensurate with the additional costs, and (2) undergrounding in this case would probably result in substantially higher operation and maintenance expenses than the normal undergrounding with which Edison most frequently has been confronted. Protestant and the Commission staff have pointed out some apparent exaggerations in applicant's presentation as to cost and difficulty involved if electric lines were to be installed underground in Tract No. 3595. Were it not for the other key factors discussed hereinbefore in previous paragraphs and summarized hereinafter in the findings, we would not be inclined to grant the deviation on the basis of cost and difficulty alone. The combination of other factors forms the basis for granting the deviation.

Protestant expressed some concern that a granting of the deviation for Tract No. 3595 would set a precedent for other nearby agricultural land which might later be subdivided into residential lots. We emphasize that the same combination of factors set forth in the following findings would be required if this decision is to be considered as a precedent.

#### Environmental Impact Report

On September 26, 1972, protestant filed a motion asking that the Commission direct its staff to prepare an Environmental Impact Report pursuant to the Environmental Quality Act of 1970 before the Commission renders its decision on this application.

Even if this Commission had been subject to the Environmental Quality Act prior to the recent enactment of Chapter 1154 of the Statutes of 1972 (A.B. 889), a contention which the Commission vigorously contested before the California Supreme Court (Desert Environment Conservation Ass'n. v Public Utilities Commission,

S. F. No. 22898), an Environmental Impact Report would not have been required in this instance. The only potentially adverse environmental impact which could be said to result from a grant of the instant application involves the aesthetics of overhead electric lines. The sequestered nature of the closed community created at Bear Valley Springs, however, makes the area essentially inaccessible to the general public; travelers using the public roads will not see the overhead lines here allowed. Moreover, within the private development itself, most other utility lines, which will serve about 95 percent of the land area encompassed, will be overhead. Thus, an exemption from the undergrounding requirement of the remaining five percent cannot be considered to create a significant environmental impact in these circumstances.

Even if it were successfully contended that the environmental impact of this grant of relief is significant, Section 21171 of A.B. 889 establishes a 120-day period during which the impact-statement requirement is suspended. During that moratorium period, public agencies brought within the ambit of the Environmental Quality Act by passage of A.B. 889 naturally will be expected to work out appropriate procedures for future proceedings<sup>1/</sup> but, in the meantime, are not expected to halt all action on pending matters.

In any event, the essential purposes of the Environmental Quality Act have been achieved in this case. The county officials who might have been concerned with an Environmental Impact Report were advised in advance of the nature of the proceeding and were given adequate notice of the hearing. Further, the hearing was set at the county seat so that county officials and other local interests could appear with a minimum of inconvenience. The environmental issues were fully aired by way of testimony, cross-examination, and oral argument, and the record of the proceeding is before us for

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<sup>1/</sup> Case No. 9452, an investigation on the Commission's own motion into appropriate future procedures, is now pending.

consideration. These facts constitute, we believe, substantial compliance with the intent of the Environmental Quality Act. (See Friends of Mammoth v Board of Supervisors of Mono County et al., 8 Cal 3rd 247.)

The Commission finds that:

1. Tract No. 3595 is part of the Bear Valley Springs development.
2. Most of the Bear Valley Springs development, other than the approximately five percent represented by Tract No. 3595 and extending each side of Tract No. 3595, is to be served by overhead electric line extensions pursuant to contracts entered into prior to the deadline for overhead line extension contracts.
3. Due to delays beyond applicant's control, a contract for the remaining portion of Bear Valley Springs, in Tract No. 3595, was not entered into before expiration of the deadline for overhead line extension contracts.
4. Overhead lines in Tract No. 3595 would not be visible to the general public without leaving public roads, entering Bear Valley Springs through one of two guarded entrances and driving along several miles of private roads. The environmental impact affecting the general public thus will be insignificant.
5. Under the conditions hereinabove described, there would be no significant aesthetic disadvantages to the public in extending power lines in Tract No. 3595 overhead rather than underground, the applicability of mandatory undergrounding provisions of Edison's tariffs would therefore be unjust, and the requested deviation would not be adverse to the public interest.

O R D E R

IT IS ORDERED that Southern California Edison Company is authorized and directed to deviate from the mandatory undergrounding

provisions of its line extension rules to the extent of providing an overhead line extension or extensions in Tract No. 3595, Kern County.

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

Dated at San Francisco, California, this 16<sup>th</sup> day of JANUARY, 1973.

I abstain:

*Edward C.*

*Joseph L. Sturgeon*  
President  
*J. P. Williams*  
*Alan Sloan*  
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.