

Decision No. 81063

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WARDE CAPITAL CORPORATION, a Small )  
Business Investment Company,

Complainant,

vs.

SOUTHERN CALIFORNIA WATER  
COMPANY,

Defendant.

Case No. 9441  
(Filed September 22, 1972)

Neil N. Werb, Attorney at Law, for complainant.  
William V. Caveney, for defendant.  
James J. Cherry, Attorney at Law, for the  
Commission staff.

### O P I N I O N

Complainant Warde Capital Corporation seeks an order authorizing defendant Southern California Water Company to proceed with overhead electrical installations for Tracts 7961 and 8029, San Bernardino County, near Big Bear Lake.

Public hearing was held before Examiner Catey at San Bernardino on January 9, 1973. Complainant's president testified on behalf of complainant. Defendant's Big Bear division manager testified on behalf of defendant. Notice of hearing had been sent to officials of San Bernardino County and the county's position was set forth in a letter received as Exhibit No. 1. The matter was submitted on January 9, 1973, subject to the receipt of a late-filed exhibit. That exhibit now has been received.

#### Complainant and Defendant

Complainant is a California corporation and a Small Business Investment Company licensed under the Small Business Investment Act of 1958. Complainant, in loaning funds to the developer of Tracts 7961 and 8029, also became guarantor of completion bonds that were

issued to insure that the streets and sewers would be completed. The developer had not been required to post a completion bond covering electric and other utility distribution lines.

Defendant is a public utility which provides, among other utility services, electric service to the Big Bear Lake area in which Tracts 7961 and 8029 are located.

#### History

In 1968 and 1969, a real estate development company known as Mountain Empire Financial Corporation (developer) subdivided land in the community of Big Bear, San Bernardino County, and formed Tracts 7961 and 8029. The approximately 120 lots in the two contiguous tracts have been sold to individual purchasers, one of whom has constructed a home on his lot and is awaiting electric service.

At the time the two tracts were being formed, overhead electric distribution lines in new residential subdivisions were permissible under defendant's tariffs. However, 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 new residential subdivisions. Then-existing subdivisions were exempted from the new restrictions where an overhead line extension agreement was entered into prior to May 5, 1972.

Developer did not keep complainant informed as to the progress of its development work. Complainant had no reason to suspect or believe that developer was not proceeding diligently with tract improvements, including arrangements for the then-permissible overhead electric line extensions. It was not until developer became insolvent that complainant learned that developer would be unable to complete the improvements. In order to comply with obligations to the bonding company and to various governmental agencies, and to protect lot purchasers and complainant's own investment, complainant involuntarily assumed the burden of completing the streets and sewers.

Complainant has assumed no legal obligation to install utility facilities, such as electric and water lines, in the tracts. Complainant is, however, willing to do so, provided the electric lines can be installed overhead as previously planned to keep the installation cost within its financial capabilities and to avoid undue delay. Complainant's president testified that the extra cost and time delays entailed in undergrounding the electric lines would probably force abandonment of the project by complainant. Lot purchasers would then be left to their own devices in securing completion of the utility improvements.

Discussion

Most of the Big Bear area is supplied from overhead electric distribution lines. Tracts 7961 and 8029 are almost completely surrounded by other tracts, none of which are served by underground systems. These facts, in themselves, do not justify additional overhead lines. In fact, many if not most new residential subdivisions have overhead lines somewhere nearby and the transition to underground construction must start somewhere. The presence of surrounding overhead lines is an important consideration, however, because if adjacent property owners had improved their view by arranging for underground utility lines, it would be unfair to frustrate their objectives by permitting new overhead lines in the two tracts. Under those circumstances, even the potential hardship on existing lot purchasers in Tracts 7961 and 8029 might not have justified a deviation from the undergrounding requirements of defendant's tariffs.

The estimated cost of overhead electric distribution lines for the two tracts is about \$15,000, as compared with \$33,400 for underground lines plus perhaps another \$15,000 for the cost of trenching. The lots were all sold to individual purchasers on the basis of overhead electric facilities and there appears to be no feasible way to assess the added cost of undergrounding to the present lot owners.

Defendant does not maintain a large supply of materials required for underground distribution systems inasmuch as the Big Bear system is its only electric operation, only one tract in its service area has so far been supplied by an underground system, only one additional tract is currently being planned with underground lines, and defendant knows of only two additional tracts to be planned in the near future. Defendant's suppliers apparently do not assign a very high priority to defendant's orders for materials such as pad-mount transformers. A fifty-week delay has been quoted by those suppliers.

Defendant has no objection to an order by the Commission that overhead electric distribution facilities in Tracts 7961 and 8029 may be installed in accordance with defendant's rules for overhead extensions. San Bernardino County has advised by letter (Exhibit No. 1) that it has no objections to overhead electric service in the two tracts, provided all utility services and the rough grading of roads are completed promptly. A lot owner who was unable to attend the hearing stated in a letter (Exhibit No. 4) to the Commission that he and several other lot purchasers whom he was able to contact were satisfied with overhead power lines and were anxious to build homes without undue delay.

It appears that denying the requested relief would, in this instance, not necessarily avoid the ultimate installation of overhead lines on a piecemeal, haphazard basis to serve individuals who build homes upon their lots. Denial of relief would cause a hardship to those individuals who have purchased lots in the two tracts in good faith, on the expectation that electric service would be available. The original developer is insolvent and complainant claims to have assumed no legal obligation to provide electric distribution facilities.

Staff counsel, in his closing statement, contended that the existence of overhead facilities nearby is not, in itself, a valid basis for the requested deviation but that the other extenuating

circumstances cited by complainant and defendant might warrant the granting of an extension of time for the two tracts beyond the deadline date prescribed in defendant's tariffs for the execution of a contract for overhead electric distribution line extensions.

Findings

1. If the developer of Tracts 7961 and 2029 had entered into an electric line extension contract with defendant prior to May 5, 1972, overhead line extensions would be permissible under defendant's tariffs.

2. Complainant was unaware of the May 5, 1972 deadline in defendant's tariffs for overhead line extension agreements covering new residential subdivisions until complainant took over the developer's obligation to complete streets and sewers.

3. Under the circumstances hereinabove described, defendant and the county of San Bernardino have no objection to overhead lines in the two tracts, and there would be no significant aesthetic disadvantages to the public in extending power lines in the two tracts overhead rather than underground.

4. The applicability of the mandatory undergrounding provisions of defendant's tariffs would be unjust in this case because of the unreasonable hardship on existing lot owners.

5. An extension of time for complainant and defendant to enter into an overhead line extension agreement will not be adverse to the public interest.

6. An unnecessary delay in the effective date of the order herein would cause further inconvenience to the lot purchaser who has already built his home.

Conclusion

A reasonable extension of time should be granted for complainant and defendant to enter into an overhead electric line extension agreement. The order should be made effective immediately to avoid further delay in the provision of electric service to the home constructed in one of the tracts.

O R D E R

IT IS ORDERED that the May 5, 1972 deadline in Rule 15 of the electric utility tariffs of Southern California Water Company for entering into an overhead line extension agreement is extended to March 31, 1973 insofar as it relates to Tracts 7961 and 8029, San Bernardino County.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 21<sup>st</sup>  
day of FEBRUARY, 1973.

Vernon L. Sturgeon  
President  
William J. Aguirre, Jr.  
M. J. Brown  
Robert L. Brown  
Robert L. Brown  
Commissioners