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ORIGINAL

Decision No. 81394

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FRANK A. ALLEN,

Complainant,

vs.

COLFAX TELEPHONE EXCHANGE,

Defendant.

Case No. 9461
(Filed October 27, 1972;
amended November 22, 1972)

Paul C. James, Attorney at Law, for complainant.
Leonard G. Weiss and John Weld, Attorneys at Law, for defendant.
Ermet Macario, for the Commission staff.

O P I N I O N

A public hearing in the above complaint was heard before Examiner Daly on March 15, 1973 at San Francisco with the matter being submitted upon concurrent briefs, which were filed on March 27, 1973.

The record indicates that complainant is the owner and developer of Sierra Estates, a subdivision consisting of 66 lots, the smallest of which is five acres in size, located in Placer County five miles north of Colfax; that defendant is a public utility providing telephone service to 1,900 customers in a 65 square mile area located in Placer and Nevada Counties; that Sierra Estates is located within defendant's service area; that as of the time of hearing 57 lots had been sold and each buyer at the time of purchase was shown a final subdivision public report issued on June 11, 1970

by the Department of Real Estate of the State of California, which contained therein the following:[1]

> "Telephone: Colfax Telephone Exchange. The telephone company advises:
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> "Existing facilities are located on Weimar Crossroad and any extension from these would be in accordance with our tariff schedules on file with the California Public Utilities Commission. Charges are at the rate of $10 per 100 feet, less a free footage allowance of one thousand feet on public roads or 300 feet on private property per subscriber.";

that in approximately March of 1972 several property owners requested defendant to extend service; that defendant refused to extend service in accordance with the rates specified in the report of the Department of Real Estate, claiming that the single dwelling residential Zone R1 had been substantially modified by a T-Overlay permit issued on July 20, 1971 by the Placer County Planning Commission, which allowed the purchasers of lots within the Sierra Estates subdivision to place mobile homes upon their property; that as the result of an oral arrangement, whereby complainant gave defendant a check in the amount of $3,000, defendant extended its facilities to the subdivision and is presently providing service to three lot owners, who were not charged for the extensions; and that defendant has refused to make any additional extensions of service within the subdivision until complainant advances the remaining cost of installation within the entire subdivision, which is estimated by defendant to be between $13,000 and $15,000.

1/ The report relied upon a letter from defendant addressed to the Department of Real Estate and dated November 19, 1969, wherein defendant quoted the rates provided for in its published tariff on file with this Commission and more specifically contained in Provision 2 of Schedule A-15. (Exhibit 1.) The tariff provisions which were considered in this proceeding are more specifically set forth in Appendix A attached hereto.

Defendant's owner-manager, who is also the chairman of the Placer County Planning Commission, testified that at the time he wrote the letter to the Department of Real Estate the Sierra Estates subdivision was zoned for single family permanent dwellings; that defendant's experience in providing service to similar subdivisions indicated that they were extremely slow to develop and service was installed gradually; that at the time he wrote the letter he was of the opinion that the rates set forth in the letter could be applied because he expected the installation to be spread over a long period of time and under such circumstances he did not expect the physical plant required for such extensions to be unreasonably expensive; that with the issuance of the T-Overlay permit allowing the use of mobile homes within the subdivision, numerous lots were purchased by owners who have placed or intend to place mobile homes on their properties; that service to mobile homes is service of abnormal risk and of unpredictable duration; that because of the change in the area defendant refused to provide service in accordance with the rates stated in its letter to the Department of Real Estate; that subsequent thereto complainant requested defendant to extend service to and within the whole subdivision area; that complainant and defendant thereupon entered into an oral agreement pursuant to Special Condition 8 of defendant's Schedule A-15[2/] whereby complainant would pay in advance the total cost of construction of the facilities requested, which defendant estimated would be $20,000; that complainant paid to defendant $3,000 in part performance and in reliance thereon defendant extended service to the subdivision and down the length of Suncrest Drive at an estimated cost of $6,000; that in so extending service defendant extended cable to the development sufficient to service the entire subdivision, rather than installing only such cable as was needed to extend service to the lot owners along Suncrest Drive; that no charge was made to the lot owners; and that although defendant has received additional requests for service from individual

2/ See Appendix A.

property owners it has refused to make any further extensions until complainant has paid the remainder of the cost of total installations estimated to be between $13,000 and $15,000.

Complainant testified that the zoning area of the subdivision has never been changed and still remains R1; that the T-Overlay merely permitted owners to place mobile homes upon their property; that at the present time there are 8 mobile homes and 3 conventional homes within the subdivision; that within the next three years 11 additional mobile homes will be placed upon lots and 22 conventional homes will be built; that the average cost of the lots sold within the subdivision is $11,500 and the average cost of improvements, such as wells, septic tanks, and grading, is $3,200; that the mobile homes are approximately 22 feet wide and 66 feet long and cost in excess of $15,000; that he was completely unaware of defendant's intention not to provide service in accordance with the rates set forth in its letter to the Department of Real Estate until 1972 when several of the property owners told him of their requests for service and of defendant's refusal; that he subsequently met with defendant's owner-manager; that in an attempt to expedite matters whereby service would be extended to the three property owners he gave defendant a check for $3,000 with the understanding that it was to be held for one month and then returned; that he entered into no oral agreement to pay for the cost of installing service within the whole subdivision or any part thereof; and that defendant has since cashed the check and has refused to refund the $3,000.

Two property owners were called on behalf of complainant. Mr. Ralph Stonier purchased his lot for $11,400. He has expended $3,200 in improvements and has placed a $17,100 mobile home upon the property. Mr. Charles Kosmak paid $13,900 for his lot and has expended approximately $11,000 in improvements including wells for water, septic tank, and a two-car garage that serves as temporary quarters pending construction of a permanent home, which is now in

the planning stage. Each testified that he had read the subdivision report issued by the Department of Real Estate prior to the purchase of his property and each was of the understanding that the individual property owner was to pay for the extension of telephone service. Both testified that at no time, either before purchase or after acquisition of their lots, did complainant represent to them that he would pay for the cost of extending telephone service. Both further testified that they had made individual requests upon defendant for service in accordance with the rates specified in the subdivision report and each had been refused.

Mr. Stonier also testified that he suffers from a heart condition and requires a telephone in case of an emergency, and Mr. Kosmak testified that his wife and daughter presently occupy the premises and also have an emergency need for telephone service.

Complainant requests that defendant be ordered to comply with future requests by owners for telephone service in accordance with the rates set forth in the subdivision report; that defendant be ordered to compute the charges for the three telephones already installed in accordance with the same rates; and that defendant be ordered to refund the $3,000 paid by complainant.

Defendant requests that complainant take nothing from his complaint; that it be dismissed because the dispute involves an oral agreement, which complainant seeks to rescind or modify; that such relief is beyond the jurisdiction of this Commission and can only be made available to complainant through an action brought in the Superior Court of the State of California; that in the alternative the Commission find that defendant is not obligated to further extend service within the Sierra Estates subdivision until the total cost of construction is paid in advance pursuant to the terms and condition of Special Condition 8 of Schedule A-15 or pursuant to the terms and conditions of Rule 13;[3/] that in the alternative that there be a special order that application of the

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3/ See Appendix A.

rates set forth in the subdivision report would be unjust and that further advances be made in accordance with new rates and conditions, which defendant more specifically sets forth in its answer.

Defendant contends that the subsequently acquired right of the property owners to place mobile homes upon their property changed the nature of telephone service to one of abnormal risk and of unpredictable duration. Defendant therefore takes the position that if it is to be required to extend service to the property owners on an individual basis the appropriate provision of its tariff is contained in Rule 13 (Exhibit 11) relating to temporary service. Rule 13 applies to speculative projects and requires an applicant to advance the estimated cost of installation plus the estimated cost of removal less the estimated salvage value. Defendant's contention might have merit if the subsequent modifications had the effect of changing the area into a trailer park where the property owner leases space for trailers or homes for a short or indeterminate period. In the matter at hand the area, when fully developed, will consist of both conventional homes and mobile homes. In the case of mobile homes the investment in land, improvements, and home will be substantial. The situation does not lend itself to the gypsy-type life style as pictured by defendant. There is no reason to believe that service to a property owner with a mobile home would be any less permanent than to an owner of property with a conventional home. This is not temporary service and Rule 13 is not applicable.

Defendant also contends that as a result of an oral agreement with complainant whereby complainant agreed to advance the total cost of extending service throughout the subdivision, the appropriate rates to be assessed are set forth in Special Condition 8 of Schedule A-15, which applies to line extensions, to new subdivisions, or to real estate developments, in their entirety. The record shows that complainant gave defendant a check for $3,000 and that thereafter defendant spent $6,000 to extend cable sufficient

to serve the entire area. Although complainant testified that the check was not intended as an advance he was unable to explain why he gave it to defendant other than to expedite matters for the three property owners who had requested service. It is unlikely that complainant would have advanced an unrestricted check for $3,000 unless there had been a definite understanding as to the purpose for which that money was to be used. It is equally unlikely that defendant would spend $6,000 installing cable in an area which defendant considered too risky for application of its usual rule for line extensions (Provision 2 of Schedule A-15) unless there had been an understanding as to the extent service was to be provided and as to how and by whom the remaining cost was to be paid.

Provision 2 of Schedule A-15 sets forth the primary method for line extensions by defendant and it was that provision which defendant properly offered in its letter to the Department of Real Estate. Upon learning that mobile homes would be allowed in the subdivision and concluding that this change would make application of the provision unwarranted, it was the obligation of defendant to apply to the Commission for authority to deviate from its tariff provisions as required by General Order No. 96-A, paragraph X.A. This it failed to do.

Instead, defendant simply refused to provide service under Provision 2, which it had no right to do, but offered service under Special Condition 8. Special Condition 8 is not an alternative to Provision 2 to be applied at the whim of defendant. It is, as indicated in paragraph 8.a. of Special Condition 8, an alternative available at the option of the subdivider since it requires him to pay in advance the total cost of construction in the subdivision. After defendant's refusal to provide service under Provision 2, the parties then arrived at their disputed agreement to proceed under Special Condition 8. Here defendant violated its tariffs by proceeding with construction after receiving from complainant only

$3,000 of a total cost estimated variously as being $16,000 to $20,000. It is elementary that a utility may not deviate from its filed tariffs, either by its own acts or in agreement with a subdivider or ratepayer, without authority of this Commission. Authority to deviate from the express terms of Special Condition 8 was necessary. (General Order No. 96-A, paragraph X.A.)

A public utility is in a superior position to know its own tariffs, their meaning and interpretation, and the requirements of General Order No. 96-A. This Commission has a responsibility to the citizens who reside in defendant's service area and have a need for telephone service. Telephone service has been delayed because of defendant's failure to observe its tariffs.

Findings

1. Complainant is the owner and developer of Sierra Estates, a real estate development located in Placer County.

2. Defendant is a public utility providing telephone service in Placer and Nevada Counties pursuant to published tariffs on file with this Commission.

3. Sierra Estates is within the service area of defendant.

4. Complainant has sold approximately 57 lots and at the time of purchase most of the buyers were shown a final subdivision report issued by the Department of Real Estate of the State of California which quoted a letter from defendant wherein defendant offered to provide extended telephone service to Sierra Estates pursuant to the rates set forth in Provision 2 of Schedule A-15 of its published tariff on file with this Commission.

5. Approximately nine property owners have made requests upon defendant for telephone service, but defendant has refused to provide service in accordance with the terms specified in Provision 2 of Schedule A-15 on the ground that the property owners were permitted to place mobile homes upon their lots, thereby making telephone service to the area one of abnormal risk.

6. Sierra Estates subdivision is not a speculative area notwithstanding the fact that a number of purchasers have placed, or intend to place, mobile homes upon their properties. Defendant's Rule 13 is not applicable.

7. Defendant was obligated under the terms of its line extension tariff (Provision 2 of Schedule A-15) to offer service at the request of the property owners unless it received authority from this Commission to deviate. No such authority was sought.

8. Defendant has not shown any basis upon which a deviation from the terms of Provision 2 of Schedule A-15 is justified for Sierra Estates.

9. Defendant has extended service to three property owners within Sierra Estates pursuant to an agreement entered into with complainant whereby complainant advanced $3,000 as part payment of the cost of extending cable throughout the entire subdivision purportedly in accordance with Special Condition 8 of Schedule A-15.

10. Defendant has expended $6,000 in extending cable in Sierra Estates and refuses to extend any further until complainant pays the remaining cost of installation, which is estimated between $13,000 and $15,000.

11. The purported agreement under Special Condition 8 was not in accord with defendant's tariffs, and no authority to deviate from its tariffs was given by this Commission as required by General Order No. 96-A, paragraph X.A.

12. The property owners in Sierra Estates are entitled to telephone service under Provision 2 of Schedule A-15 and they are entitled to such service now.

13. The agreement between complainant and defendant is invalid.

14. The $3,000 paid by complainant to defendant was paid in violation of defendant's tariff and in violation of Public Utilities Code Section 532.

Conclusions

1. Defendant should forthwith offer telephone service to all applicants residing in Sierra Estates under the terms of Provision 2, Schedule A-15, of its filed tariffs.

2. Defendant should reimburse complainant in the sum of $3,000 advanced by complainant.

3. Defendant is admonished to observe its tariffs carefully and to accurately and fully explain the obligations and options therein contained in all future dealings with persons seeking service.

4. The relief requested should be granted to the extent set forth in the following order.

O R D E R

IT IS ORDERED that:

1. Defendant shall forthwith offer telephone service to all applicants residing in Sierra Estates under the terms of Provision 2, Schedule A-15, of its filed tariffs.

2. Defendant shall reimburse complainant in the sum of $3,000.

3. In all other respects the requests set forth in the complaint and the answer thereto are denied.

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

Dated at San Francisco, California, this 22nd day of MAY, 1973.

President

Commissioners

Provision 2 of Schedule A-15

2. Aerial, or, at Utility's option, underground extension to plant beyond existing exchange or suitable toll circuits of this Utility. (Not applicable to subdivisions or real estate developments; see Special Condition 8.)

   a. Free Footage Allowance:

      The Utility will construct at its expense a maximum of 1,000 feet of line extension and service connection per applicant, the combination of which includes not more than 300 feet of service connection on private property.

   b. Extensions to Plant Exceeding Free Footage Allowance:

      Each 100 feet or fraction thereof of line extension and/or service connection.

Special Condition 8 of Schedule A-15

8. Line Extensions to Serve New Subdivisions or Real Estate Developments in Their Entirety:

   a. Where requested and permissible, aerial facilities to and within real estate developments will be provided under the following conditions:

      (1) The applicant, in addition to any labor or material to be furnished by him, will pay in advance the estimated total cost of the Utility's construction. Any difference between the amount advanced and the actual cost shall be advanced or refunded, as the case may be, within 60 days after completion of the Utility's construction.

      (2) When, within the first three-year period after completion of construction, the subdivision density requirement has been met, the Utility will refund the advance in (1) above. If, at the end of the three-year period the subdivision density requirement has not been met, the Utility will refund that portion of the advance proportional to the ratio of the then permanent main telephone and PBX trunk line terminations density to the subdivision density requirement. No interest will be paid on such advances.

   b. Where underground facilities are to be constructed to and within new subdivisions or real estate developments, line extensions and service connections will be provided in accordance with Rule No. 16.

Rule No. 13 - Temporary Service

A. Establishment of Temporary Service

The utility will, if no undue service impairment to its existing customers will result therefrom, furnish temporary service or service to speculative projects under the following conditions:

1. The applicant shall pay, in advance or otherwise as required by the utility, the estimated cost installed plus the estimated cost of removal, less the estimated salvage of the facilities necessary for furnishing service.

2. The applicant shall establish credit as required by Rule No. 6, except that the amount of deposit prescribed in Rule No. 7 shall not exceed the estimated bill for duration of service.