

Decision No. 82053

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MONTGOMERY VILLAGE, INC.,
a California corporation,

Complainant,

v.

PACIFIC GAS AND ELECTRIC COMPANY,
a corporation, PACIFIC TELEPHONE
AND TELEGRAPH COMPANY, a corpora-
tion, and NORTHERN CALIFORNIA
JOINT POLE ASSOCIATION

Defendants.

Case No. 9435
(Filed August 30, 1972)

William J. Smith, Attorney at Law, for Montgomery
Village, Inc., complainant.

James M. Phillips, Attorney at Law, for The Pacific
Telephone and Telegraph Company, defendant.

O P I N I O N

This is a complaint by Montgomery Village, Inc. (Village) against Pacific Gas and Electric Company (PG&E), The Pacific Telephone and Telegraph Company (PT&T), and Northern California Joint Pole Association, which is comprised of PT&T and PG&E. Prior to hearing, Village stipulated to the dismissal of PG&E as a defendant.

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis in Santa Rosa on March 23, 1973. It was submitted on April 11, 1973.

The material issues presented in this proceeding are:

1. Did PT&T properly carry out its duties and obligations under its tariff and a Santa Rosa underground utility district ordinance with respect to Village? 2. Did PT&T properly require Village to pay for the relocation of utility pole here under consideration?

At all times herein mentioned, the Northern California Joint Pole Association was acting as the agent for PG&E and PT&T. Inasmuch as the complaint against PG&E will be dismissed, the discussion herein will relate solely to PT&T. Any discussion of costs will relate to the prorata demand of PT&T with respect to the utility pole here under consideration.

Village is the operator of Montgomery Village Shopping Center in Santa Rosa. On May 16, 1972 the Santa Rosa City Council adopted Ordinance No. 1003, which established an underground utilities district. Ordinance No. 1003 encompassed a portion of the Montgomery Village Shopping Center. The ordinance required utility companies to remove their overhead facilities and place them underground no later than June 1, 1973.

In July 1972, Village commenced the construction of a 5,000 square foot facility for Crocker National Bank. The bank facility was within the boundaries of the underground utility district. Existing utility poles were serving the area in question at the time of enactment of the ordinance and the commencement of construction of the bank. Because of the widening of the street abutting the bank and Village's desire to provide sufficient parking for the bank, the bank was constructed in an area in which an existing utility pole was located. Construction was begun around the utility pole. In order to complete the bank building, it was necessary to remove the pole. The pole was in good condition and was being used by PT&T to provide telephone service to 35 telephone users in the shopping center. In July 1972, Village contacted a representative of PG&E and requested relocation of the pole. PT&T was notified of the request. PT&T indicated that its estimated cost in connection with the relocation would be \$790.

On August 1, 1972, Village's attorney sent a letter to the Joint Pole Association, with a copy to PT&T in which he indicated that rather than relocate the utility pole in question, the area

encompassing the bank should be undergrounded because this would have to be done anyway within the coming year. On August 10, 1972, Village paid, under protest, the Joint Pole Association the amount requested for relocating the utility pole. On August 14, 1972, PT&T advised Village that it (1) would relocate the utility pole as previously indicated, or (2) underground its service and forego any relocation charges if Village provided supporting structures in connection therewith.^{1/} PT&T indicated to Village that if Village elected undergrounding at that time, it would take PT&T 60-90 days to accomplish the undergrounding.^{2/} Village indicated because of time requirements in connection with completing the bank building, it could not wait 60-90 days for undergrounding and requested relocation of the pole.

Village contends that PT&T was remiss in its duties and obligations by not being prepared to expeditiously underground its facilities in the area. It argues that, upon enactment of Ordinance No. 1003, PT&T should have commenced preliminary engineering studies for the area so that when the situation here under consideration arose, it would have been prepared to immediately contract for and construct the requisite underground facilities.

1/ Shortly thereafter, a dispute developed between Village and PG&E over whose responsibility it was, under Ordinance No. 1003, to provide and pay for the underground supporting structure. This controversy is not relevant to the issues herein presented. Since undergrounding was being compelled by the ordinance, there is no question of whether cost would influence whether or not it would be done. The issue would have to be resolved within a year, whenever the undergrounding was done.

2/ This period was necessary to provide time for the engineering, contracting, and construction of the project.

Ordinance No. 1003 required undergrounding by June 1, 1973. The only duty created by the ordinance, itself, was compliance by the specified date. At the time of Village's request for undergrounding, PT&T had 10 months in which to comply with the ordinance. It had ample time to accomplish any necessary engineering, contracting, and construction required by the ordinance. If Village had notified PT&T sufficiently in advance of the proposed construction of the bank building and the need for removal of the utility pole, it could be argued that PT&T acted arbitrarily under its tariffs by not accelerating its procedures for undergrounding in the area and requiring the relocation of a pole for less than one year. However, no such notice was given by Village to PT&T. As indicated, Village commenced construction of the bank building around the existing utility pole. The request to remove the pole and provide other facilities was first made in July 1972.^{3/} In the circumstances, PT&T's offer on August 14, 1972, to provide for undergrounding within 60-90 days was not arbitrary or unreasonable.

Village next contends that PT&T acted improperly in requiring it to pay for relocating the utility pole under the facts herein presented. There is no merit in this contention. The utility pole which was removed in order to permit completion of the bank building was in good condition. The pole would have continued in service until undergrounding was accomplished in accordance with Ordinance No. 1003. The sole reason for removal of the pole and relocation of utility service in connection therewith was the construction activities of Village. PT&T's Rate Practice 28-T provides in part that:

^{3/} The request was made to a representative of PG&E, the other member of the Northern California Joint Pole Association. It was relayed to PT&T on July 18, 1972.

"Rearranging inside or outside wiring or cable serving one or more customers and a party other than the customer is responsible for the work.

"Such cases usually involve changes required by building alternations, (sic) house moving, et cetera, and are requested by contractors, building owners, et cetera. These requests should be referred to the Plant Department for consideration of the requested rearrangements and determination of basis of charges to be made for the work. Any billing in such cases will be arranged by the Plant Department on a CWO basis."

PT&T did not act arbitrarily or improperly in applying its Rate Practice 28-T and requiring Village to pay the cost of relocating the pole.

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. Northern California Pole Association consists of PG&E and PT&T.
2. At all times herein mentioned, Northern California Pole Association was acting as the agent for PG&E and PT&T.
3. Village has filed herein a stipulation that PG&E may be dismissed as a party defendant.
4. Village is the operator of Montgomery Village Shopping Center in Santa Rosa.
5. On May 16, 1972 the Santa Rosa City Council adopted Ordinance No. 1003, which established an underground utilities district. Ordinance No. 1003 encompassed a portion of the Montgomery Village Shopping Center. The ordinance required utility companies to remove their overhead facilities and place them underground no later than June 1, 1973.

6. In July 1972, Village commenced the construction of a 5,000 square foot facility for Crocker National Bank. The bank facility was within the boundaries of the underground utility district. Existing utility poles were serving the area in question at the time of enactment of the ordinance and the commencement of construction of the bank. Because of the widening of the street abutting the bank and Village's desire to provide sufficient parking for the bank, the bank was constructed in an area in which an existing utility pole was located. Construction was begun around the utility pole. In order to complete the bank building, it was necessary to remove the pole. In July 1972, the pole was in good condition and was being used by PT&T to provide service to 35 telephone users in the Montgomery Village Shopping Center.

7. In July 1972, Village contacted a representative of PG&E and requested relocation of the pole. PT&T was notified of the request. PT&T indicated that its estimated cost in connection with the relocation would be \$790, which Village would be required to pay.

8. On August 1, 1972, Village's attorney sent a letter to the Northern California Joint Pole Association, with a copy to PT&T, in which he indicated that rather than relocate the utility pole in question, the area encompassing the bank should be undergrounded because this would have to be done anyway within the coming year. On August 10, 1972, Village paid, under protest, the Northern California Joint Pole Association the amount requested for relocating the utility pole. On August 14, 1972, PT&T advised Village that it (1) would relocate the utility pole as previously indicated, or (2) underground its service and forego any relocation charges if Village provided supporting structures in connection therewith. PT&T indicated to Village that if Village elected undergrounding at that time, it would take PT&T 60-90 days to accomplish the undergrounding. Village indicated because of time requirements in connection with completing the bank building, it could not wait 60-90 days for undergrounding and requested relocation of the pole. The 60-90 day period was necessary to provide time for PT&T to do the necessary engineering, contracting, and construction of the project.

9. Village notified PT&T of the need for removal of the aforesaid utility pole in July 1972. PT&T had no knowledge of such need prior thereto.

10. PT&T's offer, on August 14, 1972, to provide for undergrounding within 60-90 days was not arbitrary or unreasonable.

11. If Village had not requested the removal thereof, the utility pole here under consideration would have continued in service until undergrounding was accomplished in accordance with Ordinance No. 1003.

12. The sole reason for removal of the utility pole and the relocation of service to a new pole which had to be installed therefor was the construction activities of Village and Village's determination not to wait 60-90 days for the utilities to be relocated underground.

13. PT&T's Rate Practice 28-T provides in part that:

"Rearranging inside or outside wiring or cable serving one or more customers and a party other than the customer is responsible for the work.

"Such cases usually involve changes required by building alternations, (sic) house moving, et cetera, and are requested by contractors, building owners, et cetera. These requests should be referred to the Plant Department for consideration of the requested rearrangements and determination of basis of charges to be made for the work. Any billing in such cases will be arranged by the Plant Department on a CWO basis."

14. PT&T's requiring Village to pay \$790 for the relocation of the utility pole here under consideration was not unjust, arbitrary, or unreasonable under the facts herein presented.

Conclusions of Law

1. The complaint against PG&E should be dismissed.
2. Santa Rosa City Ordinance No. 1003 required PT&T to do any undergrounding mandated thereunder by June 1, 1973. The ordinance imposed no duty on PT&T to complete any of such undergrounding before that date.
3. Village is entitled to no relief herein.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company is dismissed as a party defendant in this complaint.
2. The relief requested against the remaining defendants herein is denied.

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

Dated at San Francisco, California, this 30th day of OCTOBER, 1973.

William L. Stinson
President
William L. Stinson

Commissioners

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

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.