

ORIGINAL

Decision No. 82168

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

REDEVELOPMENT AGENCY OF THE CITY AND )  
COUNTY OF SAN FRANCISCO, a public  
body, corporate and politic,

Complainant,

v.

PACIFIC GAS & ELECTRIC COMPANY, a  
corporation,

Defendant.

Case No. 9379  
(Filed May 17, 1972)

Michael A. DiSanto, Attorney at Law, for San  
Francisco Redevelopment Agency, complainant.  
John C. Morrissey, Malcolm H. Furbush, and  
Robert Ohlbach, by Robert Ohlbach, for Pacific  
Gas and Electric Company, defendant.

O P I N I O N

This is a complaint by the Redevelopment Agency of the City and County of San Francisco (Agency) against Pacific Gas and Electric Company (PG&E). The dispute involves the applicability of PG&E's gas Main Extension Rule to Agency.

A duly noticed public hearing was held in this proceeding before Examiner Donald B. Jarvis in San Francisco on February 2, 1973. The matter was submitted subject to the filing of briefs, the last of which was filed on March 28, 1973.

The material issues presented in this proceeding are:

1. Does PG&E's gas Main Extension Rule apply to Agency? 2. If PG&E's gas Main Extension Rule applies to Agency, should the Commission order PG&E to waive the application thereof under the facts herein presented?

The Commission makes the following findings of fact:

1. Agency is a body corporate and politic established under California Health and Safety Code Sections 33100, et seq.

2. Agency does not permanently operate projects. It acquires land which it prepares for redevelopment. When the land has been prepared for redevelopment, Agency has the authority to give, lease, or sell the land to public agencies (for schools, fire stations, parks, etc.) and private developers. There are two general categories of private developers: (1) nonprofit corporations which receive federal subsidies to provide low or moderate cost housing and (2) commercial developers which receive no federal subsidies.

3. Agency is presently engaged in the Hunters Point Redevelopment Project in the city and county of San Francisco. The redevelopment plan for the project was approved by the Board of Supervisors of the city and county of San Francisco.

4. Most of the land in the Hunters Point Redevelopment Project will be sold to public agencies or nonprofit corporation private developers. Some of the land will be sold to private commercial developers.

5. Under Title 1 of the Housing Act of 1949, a city is required to contribute up to one-third of the cost of an urban renewal project. Cities generally pay for their share with non-cash grants by financing public facilities such as schools, hospitals, freeway ramps, etc. to the requisite amount in the redevelopment area. The Federal Government pays its share in cash to the redevelopment agency in charge of a project. There is no legal inhibition to preclude a city from contributing to or advancing cash for an urban renewal project. There is no prohibition against a private developer participating in an urban renewal project by contributing or advancing funds in connection therewith.

6. Gas transmission and distribution lines are normally placed underground.

7. A portion of the area being redeveloped by Agency consists of wartime (World War II) housing. The gas system in that area was installed by the Federal Government. It was operated and maintained by the Federal Government until it was transferred to Agency, which continued to operate and maintain it. PG&E has refused to accept these lines for use in its system. In addition, the streets in the Hunters Point Redevelopment Project have been realigned, and it is necessary to construct a new gas system in the area. The gas service requested by Agency from PG&E for the Hunters Point project is an extension of new service and not a relocation of existing PG&E service.

8. PG&E has offered to provide gas service to the Hunters Point Redevelopment Project in accordance with its tariff gas Main Extension Rule (Rule 15). PG&E's Rule 15 provides in part that:

"C. Main Extensions to Serve Subdivisions, Tracts, Housing Projects and Multi-Family Dwellings

1. Advances

- a. Gas distribution main extensions to and/or in subdivisions, housing projects, and multi-family dwellings will be constructed, owned and maintained by the utility in advance of applications for service by ultimate users only when the entire estimated cost of such extensions, as determined by the utility, is advanced to the utility; however, the payment of the portion of such advance as the utility estimates would be refunded within six months under other provisions of this extension rule shall be postponed for six months if the subdivider-builder furnishes to the utility evidence that he has received state and local authorizations to proceed promptly with construction and that he has adequate financing, and provided further that the subdivider-builder agrees in writing in his contract for the extension to pay immediately at the end of six months all amounts not previously advanced which are not then refundable. At the end of such six-month period, the utility shall collect all such amounts not previously advanced which are not then refundable.

2. Method of Refund

The amount advanced in accordance with Section C-1 hereof will be subject to refund as follows:

- a. Refunds of an advance will be predicated on connections of separately metered permanent general or firm service load and/or customers; will be made without interest; and will be made within ninety days after date of first service to such load and/or customer; except that refunds may be cumulated to \$25.00 minimum or the total refundable balance if less than \$25.00 before each refunding.

- b. For such load and/or customer the utility will refund an amount based on the footage that the allowable free length under Section B exceeds the length of main (if any) required to serve, multiplied by the unit cost per foot applicable at the time the extension was originally constructed.
- c. Refunds also will be made for the appliances and the load specified in Section B-1 permanently installed in excess of the load installed originally when added within one year of first taking service. Such refunds will be made within ninety days after the utility receives notice of the addition by the customer.
- d. Where there is a series of extensions, on any of which an advance is still refundable, and the utility makes succeeding free extensions with excess allowances or where additional load or customers connect to succeeding extensions, refunds will be made to repay in turn each of such advances which remain refundable beginning with the first in series from the original point of supply.
- e. When two or more parties make a joint advance on the same extension, refundable amounts will be distributed to such parties in the same proportion as their individual advances bear to the total joint advance.
- f. No payment will be made by the utility in excess of the amount advanced by the applicant or applicants nor after a period of ten years from the date the utility is first ready to render service from the extension, and any unrefunded amount remaining at the end of the ten-year period will become the property of the utility."

9. The Federal Department of Housing and Urban Development has promulgated an Urban Renewal Handbook. The provisions of the Handbook are applicable to Agency. They are not applicable to and are not binding on PG&E.

10. Chapter 1 of the Site Preparation and Projects Improvement section of the Urban Renewal Handbook provides in part as follows:

"INELIGIBLE PROJECT IMPROVEMENTS

- (1) Utility service connections, except those normally provided by the public entity without direct charge to the consumer.
- (2) Privately owned utility facilities.  
(See RHA 7209.1, Site Preparation and Project Improvements, Chapter 2, for policies governing the eligibility as a site clearance activity of the cost of removal or relocation of such facilities, and for policies governing the eligibility of the cost of the underground placements of privately owned utility distribution lines.)
- (3) Parking meters.
- (4) Off-street parking and loading facilities.
- (5) Private walks and driveways.
- (6) Finished grading and landscaping, except as described above in Items (3)(h) and (10) under 'Eligible Project Improvements.'
- (7) Signs, other than traffic control and street name signs."

11. The Department of Housing and Urban Development interprets the aforesaid section of the Handbook as precluding the use of federal monies for advances required under PG&E's Main Extension Rule.

12. The Commission has required all California utilities to adopt Main Extension Rules. All gas utilities in California have Main Extension Rules similar to that of PG&E.

13. The application by California utilities of their Main Extension Rules to urban renewal projects has been a source of controversy for approximately 11 years. California local agencies have attempted to secure a change or modification in the aforesaid Handbook provisions without success.

14. There are provisions in federal law whereby the Secretary of the Department of Housing and Urban Development may grant waivers to Handbook requirements.

15. If the Hunters Point project is successful, PG&E will refund to Agency all of the advances required under its Main Extension Rule.

16. At the time of hearing 330 housing units had been completed or were under construction in the Hunters Point project. Agency expects that 1400 - 2000 housing units will be built in the project.

17. Agency has requested that PG&E construct additional gas mains and facilities in the Hunters Point project, the total cost of which would be approximately \$60,000. PG&E, pursuant to its Main Extension Rule, requested an advance of approximately \$27,000 before it would commence the first phase of the requested construction.

18. On December 6, 1972 Agency and PG&E entered into a Main Extension Agreement. The agreement was without either party waiving any of their rights or respective legal positions herein. Agency agreed to advance \$30,521 so that PG&E would proceed with the first phase of construction. PG&E agreed to immediately refund the money in a lump sum if it was determined in this proceeding that PG&E's Main Extension Rule was not applicable to Agency.

With the foregoing facts in mind, we turn now to the issues raised by the parties.

Agency and PG&E agree that PG&E has an obligation to provide gas service to the Hunters Point project. They disagree on the source of the obligation and upon which authority controls the extension of gas service to the project. Agency contends that PG&E operates within the city and county of San Francisco pursuant to a franchise granted by the Board of Supervisors thereof;<sup>1/</sup> that PG&E's duty to serve the Hunters Point project is derived from the franchise; and that implicit in the duty imposed by the franchise is an obligation to extend service to governmental agencies within the city without requiring advances therefor. There is no merit in this contention.

The distribution of gas in California is a matter of state-wide concern and not a municipal affair. (Interim Opinion on Natural Gas Supply in California (1951) 51 CPUC 309; Pacific Tel. & Tel. Co. v City of Los Angeles (1955) 49 Cal 2d 272, 280; Pacific Tel. & Tel. Co. v City and County of San Francisco (1961) 197 CA 2d 133, 149; Los Angeles Ry. Co. v Los Angeles (1907) 152 Cal 242, 244; In re Johnston (1902) 137 Cal 115.) In the circumstances, any franchise granted PG&E by the city and county of San Francisco can be no more than a limited property right for the use of its streets. San Francisco has no power by franchise or otherwise to regulate PG&E in the conduct of its utility functions.

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<sup>1/</sup> PG&E contends that its duty stems from state law which requires it to provide nondiscriminatory service within its dedicated service area.

"The municipality's police power over its streets and thoroughfares is unquestioned. This applicant, apart from its rights under its constitutional franchise and under County Ordinance No. 516, cannot occupy such streets with its poles, wires, conduits, etc., and cannot carry on its necessary construction and maintenance work in such streets without a city franchise or permit. The city, within the scope of its jurisdiction, may impose such requirements, restrictions and conditions pertaining to the occupancy and use of its streets as in its judgment may be necessary and reasonable. The city may also, in accord with the 1937 franchise act, require from the utility the payment of a money consideration as compensation for the use of the city streets (Section III of Ordinance No. 1005).

"In these matters the authority of the city is exclusive and paramount, and this Commission desires to stay scrupulously within the bounds of its own jurisdiction and not directly or indirectly encroach upon the jurisdiction of the municipality. On the other hand, the law of this state places upon this Commission the exclusive regulatory authority over utility operation, service and rates, and the city is left without jurisdiction in such matters. We think the municipal subdivisions of the state should be equally concerned not to encroach upon this clearly defined jurisdiction of the Commission.

"Nor is this a question merely of legal construction; the public interest is involved in important particulars. If some cities were to impose unnecessary and costly franchise conditions burdening the operation and service of the utilities inside and outside of the cities' boundaries, such added costs would inevitably result in increased utility capital and operating expenses and in higher rates.

The supply to the public of the best possible utility service at the lowest possible cost and at the lowest reasonable rates is in the first instance the responsibility of the private utility's management and, beyond that, the exclusive responsibility of this Commission." (So. Cal. Edison (1943) 44 CRC, 733, 735-36; see also, Western Motor Transport Co. (1921) 20 CRC 1038, 1040; Oakland v San Francisco - Oakland Terminal Rys. (1923) 23 CRC 936, 940; Greyhound Lines, Inc. v Public Utilities Com. (1968) 68 C 2d 406, 412 In. 3; Oro Electric Corp. v Railroad Com. (1915) 169 Cal 466; Pacific Tel. & Tel. v City of Los Angeles, supra, Pacific Tel. & Tel. v City & County of San Francisco, supra; Los Angeles Ry. Co. v Los Angeles, supra.)

Agency puts misplaced reliance on cases which hold that, in the absence of a contrary provision, a public utility accepts franchise rights in public streets subject to an implied obligation to relocate its facilities at its own expense when necessary to make way for a proper governmental use of the streets.<sup>2/</sup> In the case at bench there is no relocation involved. Existing gas distribution facilities in the Hunters Point area were constructed by the Federal Government and are owned by Agency, not PG&E. Agency is requesting PG&E to extend its facilities into the urban renewal area. The question of the terms and conditions under which PG&E may extend its gas service is one to be determined by the applicable rules, regulations, and orders of this Commission.

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<sup>2/</sup> E.g., Southern Cal. Gas Co. v City of Los Angeles (1958) 50 C 2d 713, 716.

Agency next contends that PG&E's Main Extension Rule does not apply to urban renewal projects. This contention is not correct. PG&E's tariff Rule 15(C)(1)(a) applies to "subdivisions, housing projects and multi-family dwellings". The rule contains no exception when such construction is in connection with an urban renewal project.<sup>3/</sup> It cannot seriously be argued that the Hunters Point project does not fall within the language of Rule 15(C)(1)(a).

Finally, Agency contends that the Commission should order the waiver of PG&E's Rule 15(C)(1)(a) in connection with the Hunters Point project. We do not agree with this contention.

PG&E was ordered by the Commission, along with all other California gas utilities, to adopt a standard Main Extension Rule, which is its Rule 15. (Gas & Electric Utilities Extension Rules, supra, (1959) 57 CPUC 346; Order on Rehearing, Gas & Electric Utilities Extension Rules, supra, (1960) 57 CPUC 571.) The Commission's order resulted from extensive hearings and consideration given to the matter. The reason for requiring advances in connection with the Main Extension Rule is "to protect existing customers from uneconomic extensions where ultimate applicants for service do not materialize". (57 CPUC at p. 576.) This reason is equally applicable to public as well as private developers. (Public Utilities Code §532.) The tax base is broader than a rate base of an individual utility. Government

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<sup>3/</sup> At the time the Commission ordered PG&E to adopt Rule 15, the Federal Government appeared, as a consumer, in the proceeding (Gas & Electric Utilities Extension Rules (1959) 57 CPUC 346, 363) and the city and county of San Francisco was later permitted to intervene (Order on Rehearing, Gas & Electric Utilities Extension Rules (1960) 57 CPUC 571, 573).

is not immune from making erroneous decisions. If an urban renewal project is modified or not completed, the other customers of a private utility in the area serving the project should not be compelled to subsidize any unneeded utility construction. If a project is for a public purpose, it ought to be properly funded, including amounts for advances to secure requisite utility service. Furthermore, while the Hunters Point project is for a public purpose, most of the land in the area will be sold to private developers. A waiver of the Main Extension Rule would inure to the benefit of these developers. There is no reason why a private developer should be treated differently by a utility in an urban renewal area than in other areas. Government may wish to subsidize the developer to effectuate social policy, but the burden of doing this should not be cast upon the customers of a private utility which, fortuitously, happens to be the one required to serve the area in which there is urban renewal.

No other points require discussion. The Commission makes the following additional finding of fact:

Finding of Fact 19. There is nothing in this record which would require the Commission to order PG&E to waive its Rule 15 with respect to extending gas service to the Hunters Point project.

Based upon all of the findings heretofore made, the Commission makes the following conclusions.

Conclusions of Law

1. The Urban Renewal Handbook relates to the actions of Agency with respect to the Federal Department of Housing and Urban Development. The provisions of the Handbook are not applicable to and not binding on PG&E.

2. There is no legal inhibition to preclude the city and county of San Francisco from providing the money for the advance required under PG&E's Rule 15.

3. There is no legal inhibition to preclude the private developers, nonprofit or commercial, to whom Agency will sell a substantial portion of the land in the Hunters Point project from providing the money for the advance required under PG&E's Rule 15.

4. PG&E's Rule 15 is applicable to the extension of gas service requested by Agency in connection with the Hunters Point project.

5. An order directing PG&E to waive its Rule 15 with respect to extending gas service is not warranted in this proceeding.

6. Agency is entitled to no relief in this proceeding.

O R D E R

IT IS ORDERED that complainant is entitled to no relief in this proceeding.

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

Dated at San Francisco, California, this 27<sup>th</sup>  
day of NOVEMBER, 1973.

William L. Sturgeon  
President  
William J. Jones Jr.  
William J. Jones Jr.  
William J. Jones Jr.  
William J. Jones Jr.  
Commissioners