

ORIGINAL

Decision No. ~~82547~~

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mr. and Mrs. Alvin J. McGowan,
Complainants,

v.

San Diego Gas & Electric Co.,
a corporation,
Defendant.

Case No. 9342
(Filed March 6, 1972; amended
August 24, 1972)

Richard A. Gant,
Complainant,

v.

San Diego Gas & Electric Co.,
a corporation,
Defendant.

Case No. 9496
(Filed January 12, 1973)

Higgs, Fletcher & Mack, by Pitts Mack and
Craig D. Higgs, Attorneys at Law, for
Mr. & Mrs. Alvin J. McGowan, complainants.
Gant & Asaro, by John J. Hargrove, Attorney
at Law (New York), for Richard A. Gant,
complainant.

Gordon Pearce and Frederick I. Fox, Attorneys
at Law, and Friedman, Heffner, Kahan &
Dysart, by Vincent P. Master, Jr., Attorney
at Law, for San Diego Gas & Electric Company,
defendant.

O P I N I O N

On March 6, 1972 Mr. and Mrs. McGowan filed a complaint
(Case No. 9342) protesting the removal of an existing pole and
associated equipment and the installation of a new pole and equipment
on San Elijo Street, in San Diego. Complainants had requested
defendant to remove the new pole and relocate it to its original

position or to remove the existing overhead system and replace it with an underground system. Defendant did not remove the new pole nor did it underground the system as requested.

Complainants allege that defendant's action has caused them mental suffering and anguish as well as certain money damages to the value of their home.

Hearing was held at San Diego on August 24, 1972 before Commissioner Moran and Examiner Gillanders and the matter submitted.

Testimony and exhibits were adduced from complainants and defendant. In addition, testimony was adduced from a Mr. Gant^{1/} called by the examiner.

By Decision No. 80811 dated December 12, 1972, the Commission found as follows:

"1. On November 9, 1971 defendant erected a new pole on San Elijo Street, San Diego, opposite the extension of the property line between the property of complainants and the parcel immediately to the north.

"2. The new pole substitutes for another location on San Elijo Street, approximately 35 feet to the north.

"3. The pole in the new location serves electricity to two homes on the easterly side of San Elijo Street which were served since 1947 from the old pole. Neither the new pole nor the old pole serves the home of complainants.

"4. The new pole was placed because a sketch, provided to defendant by a contractor building a new home on the property immediately to the north of complainants' property, showed that the old pole would be in the proposed driveway to the new house.

"5. The driveway was not placed as proposed and the old pole was not in the driveway as built.

^{1/} The gentleman who subsequently filed Case No. 9496.

"6. The new pole is the source of underground service to the new residence.

"7. The new residence is owned by R. Gant.

"8. Mr. Gant saw the old pole before he bought the property.

"9. Mr. Gant did not request the removal of the old pole.

"10. It is the policy of defendant that once a work order of the type used in replacing poles is issued no further check is made to determine if the need for the work order still exists.

"11. Defendant's field crews have no authority to question the work assigned to them.

"12. It would cost approximately \$600 to remove the new pole and place it in the old pole location."

The Commission made the following conclusions of law:

"1. Defendant's policy of not checking the need for work once a work order has been issued resulted, in this case, in unnecessary and useless expenditure of not only its funds but the funds of others.

"2. Defendant's policy is not in accordance with generally accepted utility practice.

"3. Defendant should be ordered to remove the new pole and install a suitable pole in the same location as the old pole it replaced.

"4. Defendant should pay all costs involved in the removal and installation including any incurred by Mr. Gant necessary to maintain his underground electric service.

"5. This Commission has no authority to award damages for the type of damage, suffering, and anguish alleged in the complaint."

The Commission ordered defendant to immediately remove the new pole, install a suitable pole at the former location of the old pole, and do all work necessary to continue service to its existing customers at no cost to such customers.

On December 29, 1972, Richard A. Gant filed a Petition for Rehearing; on January 12, 1973, Richard A. Gant filed Case No. 9496 asking that the pole not be located near his property; on January 17, 1973 complainants McGowan filed an objection to the Petition for Rehearing; on January 16, 1973, the Commission issued Decision No. 80971 suspending the order in Decision No. 80811, reopening Case No. 9342, consolidating Case No. 9342 with Case No. 9496 and setting a prehearing conference on these matters for February 2, 1973.

A prehearing conference was held at San Diego on February 2, 1973 before Examiner Gillanders.

At the prehearing conference, Mr. John Hargrove, Attorney for Mr. Richard A. Gant, proposed a compromise pole relocation wherein the pole in question would be relocated approximately 15 to 20 feet west of its present location and solely on Mr. Gant's property. Prior to the prehearing conference, Mr. Gant had suggested this proposal to San Diego Gas & Electric Company, who had prepared a preliminary survey which determined that such a proposal was feasible from an engineering standpoint. It was agreed by the attorneys at the prehearing conference that Mr. Craig Higgs, attorney for the McGowans, would present this proposal to the McGowans and if found acceptable by them, these matters could be settled. The examiner instructed defendant's attorney to advise him by March 5, 1973, as to the status of the settlement negotiations.

By letter dated March 5, 1973, the examiner was advised by Mr. Master that "On Friday, March 2, 1973, I received a call from Mr. Higgs advising that Mr. and Mrs. McGowan had found the proposed compromise to be unacceptable. Therefore, it appears that these matters will probably go to hearing in order to be resolved."

Hearing on the consolidated matters was held at San Diego before Examiner Gillanders on September 11, 1973. Evidence was adduced from defendant and from Mr. Gant. At the conclusion of the taking of evidence, at the request of complainant Gant with

the active support of defendant and with the acquiescence of complainant McGowan, all parties, their attorneys, the examiner, and the hearing reporter visited both the exterior and interior of the McGowan and Gant residences in order to see the new pole and its appurtenances; to visualize what the view from the residences would be if the new pole was moved to the suggested compromise location; and to visualize what the view would be if the new pole was moved as ordered in Decision No. 80811. At the conclusion of the visit, the matter was submitted subject to three late-filed exhibits, two of which were received on September 21 and the other on September 25, 1973.

On September 26, 1973 the examiner received a letter from defendant which stated:

"This letter will confirm our conversation of this date wherein I advised you that pursuant to authorization from Mr. McGowan's counsel and myself, San Diego Gas & Electric Company and Mr. and Mrs. McGowan propose to meet in the near future to discuss the compromise pole location, which, as you know, was the subject of discussion earlier this year. As I indicated I will advise you at my earliest opportunity of the results of this meeting."

On October 5, 1973 the examiner received a letter from defendant which stated:

"By letter dated September 21, 1973, I advised you that negotiations between San Diego Gas & Electric Company and Mr. and Mrs. McGowan concerning the compromise pole location had been renewed. On September 28, 1973, representatives from San Diego Gas & Electric Company visited the McGowan residence in an effort to resolve this matter. Unfortunately, the proposed compromise pole relocation is still unacceptable to Mr. and Mrs. McGowan."

The matters are now ready for decision.

Discussion

The McGowans had no further evidence to present. They stand on Decision No. 80811.

Defendant's evidence given at the September 11, 1973 hearing was an obvious attempt to refute Conclusions 1 and 2 of Decision No. 80811.

Mr. Gant, testifying on his own behalf in Case No. 9496, in essence, repeated the testimony he previously had given in Case No. 9342.

In our opinion, the testimony of defendant concerning the practices of other utilities is hearsay and in this proceeding will be given no weight. The fact that defendant did not present as a witness the man who actually made the decisions regarding the relocation of the pole, but relied instead on its previous witness to challenge our prior decision, leads us to conclude that if this witness was presented his testimony would be detrimental to its position.

The forthright testimony of Mr. Gant settled the question of why the old pole was originally moved. Moreover, it does establish that our prior decision was correct.

Additional Findings

1. The view from the McGowan residence has been polluted by the pole that now exists on the extension of the property line between the McGowan and Gant properties. Such pollution has been somewhat ameliorated by the McGowans allowing a tree to grow and thus obstruct the view of the pole. However, the branches of the tree block the view of the skyline to some extent.
2. The McGowans' view would still be polluted if the pole was moved to the compromise position but to a lesser extent.
3. The McGowans' view would not be polluted if the new pole was moved to its original position.
4. Some sight pollution exists from the Gant residence with the pole in its existing location.

5. Less sight pollution would be visible from the Gant residence if the pole was moved to the compromise position.

6. More sight pollution would be visible from the Gant residence if the new pole was moved to the original position. However, less sight pollution would be visible than if the pole had never been moved as defendant has agreed to paint the new pole to blend with the sky, to use modern post and rack construction, and to raise the height of the wires above the ground level. By placing a new pole in the old poles' position the McGowans' view will be returned to its former state and that Gant's view will be improved somewhat over what it was when he purchased the lot.

Conclusion

The suspension granted by Decision No. 80971 should be dissolved, and Decision No. 80811 should be affirmed.

O R D E R

IT IS ORDERED that:


1. Decision No. 80811 is affirmed.

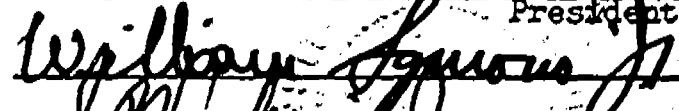
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2. The suspension of Decision No. 80811 granted in Decision No. 80971 is dissolved.

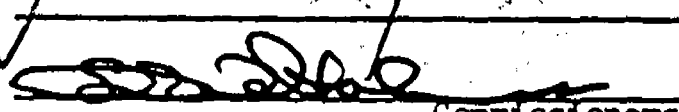
The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 12th day of MARCH, 1974.



President






Commissioners

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