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Decision No. 84128

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HAROLD and BARBARA NYQUIST,
Complainants,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY,

Defendant.

Case No. 9701
(Filed April 8, 1974)

Barbara A. Nyquist, for complainants.
William B. Rowland, for defendant.

O P I N I O N

The complaint states:

"1. That the Defendant is:

The Pacific Telephone and Telegraph Company
345 Central Avenue
Pittsburg, California
J. Franklin, Manager

"2. The Complainants, after having made an application for telephone service to their residence at 7700 Byron Hot Springs Road, Byron, California, were advised by the Defendant that the extension of the service line would cost \$4,158.00 to install and that the Complainants share would be \$2,143.00.

"3. The Complainants, after looking into the matter further with the assistance of Action Seven, have discovered that according to the utilities Rule 15.1.1 (sic) and 16.1.A of Schedule #36-T which appear to govern this particular application the Defendants have adopted a policy of installing an extension of a line for new service of a single customer if said installation does not exceed the cost of \$3,000.00 maximum; as the Defendants feel exceeding this amount would be an unfair burden for their present customers to bear.

- "4. The Defendants have also expressed to the Complainants that their estimator feels the area in which the service was requested is a "no growth area" which at some time in history has been said about almost every heavily populated area now existing.
- "5. The Defendants (sic) are in full agreement with the concept of fair play adopted by the Defendants in regards to their present customers. However, it would seem that in keeping with this concept of fair play an applicant for the extension of service should pay the amount over the maximum cost of \$3,000.00 which has been set by the Defendants themselves.
- "6. The Complainants are herein proposing to pay the cost of installation which exceeds the maximum limit of \$3,000.00 to the Defendants for the service of a telephone."

On September 5, 1974 defendant filed a "Motion To Dismiss" on the following grounds:

"Complainants essentially challenge the reasonableness of the charge for a line extension which is necessary to provide telephone service to complainants' residence. The California Public Utilities Commission has recently ruled on precisely the same issue. The charge in question was submitted to the Commission for approval on February 28, 1974, in the form of a special contract signed by complainants and defendant (Attachment 1). The Commission specifically authorized the charge by Resolution No. T-8434 dated April 2, 1974 (Attachment 2).

"Thus, the issue which complainants now raise has already been determined by the Commission. Setting the issue for second consideration serves no purpose. Complainants have alleged no new facts or changed circumstances which would bear on the appropriateness of the line extension charge originally approved, and Pacific is unaware of any such new facts or changed circumstances. To require a different charge at this point would create a direct conflict with a prior Commission ruling for no apparent reason."

Hearing was held at San Francisco on September 16, 1974 before Examiner Gillanders. Defendant renewed its motion for dismissal. The motion was denied by the examiner. The contract being at variance with defendant's filed tariff, it was necessary to have Commission authorization or approval in accordance with Section X of General Order No. 96-A. (Commission authorization is needed to carry out terms of agreements where services are to be performed at other than filed tariff rates.)

Commission General Order No. 96-A provides, among other things, that the following provision be inserted in every such contract or agreement between a utility and the other contracting party:

"This contract shall at all times be subject to such changes or modifications by the Public Utilities Commission of the State of California as said Commission may, from time to time, direct in the exercise of its jurisdiction."

The contract did contain, as required, the provision or clause above quoted. Whatever agreements were entered into were done with the express understanding that they were subject to change, modification, or even abrogation by later Commission action.

Testimony was presented on behalf of complainants by Mrs. Nyquist. Testimony on behalf of defendant was presented by Mr. Banducci, its staff director of revenue planning. As a result of the testimony and the state of the resulting record the examiner ordered defendant to file a late-filed exhibit (No. 11) showing the following:

1. What the cost of the Nyquist line extension would have been in 1957;
2. What Pacific had argued in 1957, when the Commission promulgated the present line extension tariffs, should be considered to be an abnormally high cost line extension;

3. Whether the Nyquists' line extension would be less expensive if Pacific used "toll type" aerial construction, for example, taller poles with a 1,500 foot span between poles; and,
4. What the cost would be for burying the Nyquist line extension.

Defendant agreed to furnish the information by September 20, 1974. The complainants were authorized five days to reply if they so desired.

By letter dated September 19, 1974, defendant requested an additional two weeks in which to submit the information. The examiner granted the request and the information was supplied on October 4, 1974.

By letter dated October 7, 1974, complainants replied to the information sent to them by defendant. The matter was submitted as of October 9, 1974.

The record shows that in order to serve the Nyquist property new plant facilities must be constructed for 6,698 feet along Byron Hot Springs Road and for 450 feet on the Nyquist property.

The vast majority of defendant's line extensions are administered under Tariff Schedule No. 23-T which shows the following:

"CHARGES^{1/}

"For aerial or underground (at Utility's option) extensions to plant beyond existing exchange or suitable toll circuits of the Utility. See also Special Conditions Nos 1. through 7. (not applicable to subdivisions or real estate developments - See Special Conditions 8.)

^{1/}"Charges under this schedule are for abnormally long plant extensions to prevent unreasonably burdening the general body of existing customers." (Special Conditions, 1. General a.)

Charge

1. Free Footage Allowance Per Applicant:

The Utility will construct, without charge under this schedule, a maximum of 2,640 feet of line extension and service connection facilities, the combination of which includes not more than 300 feet of service connection facility on private property. No Charge

2. Extensions to Plant Exceeding Free Footage Allowance:

Each 100 feet or fraction thereof of line extension and/or service connection facilities. \$10.00"

On the basis of the above charges the cost to the Nyquists' for service would be \$460.

The estimated costs for the construction total \$4,158. The Nyquists' share according to defendant is \$2,143 based on an application of the exceptional circumstances clause of its tariff dealing with line extensions. The clause is contained in Tariff Schedule No. 36-T, Rules 15 and 16.

The clause first appeared as part of Schedule Cal. P.U.C. No. 23-T. It was originally called a "savings clause" and was promulgated in 1957 at the order of the Commission in Decision No. 55892.^{2/} The savings clause read:

"Arrangements may be made, other than as provided for above in this schedule, in the following cases subject to prior authorization of the Public Utilities Commission of the State of California.

* * *

"c. Any other line extensions involving unusual or disproportionately large construction expenditures as compared to the usual line extension."

^{2/} 56 CPUC 59.

Since 1957, the savings clause language has been modified and it has been consolidated with other rules in Tariff Schedule No. 36-T. The purpose remains the same, however, and the rule is specifically referenced in Schedule 23-T.

According to defendant, it is important to recognize that charges for high cost line extensions are never applied without the approval of the Commission. Pacific quotes the charges to the applicant and then sets forth the charges in a special contract. The contract is reviewed by the Commission staff and does not become effective until approved by Commission Resolution.

This record reveals that on June 30, 1972 defendant issued a directive regarding rural construction which reads, in part, as follows:

- "6. Stop further efforts in Improved Rural Service.
- "7. Stop or slow down high cost rural construction and reinforcements. Current procedures require that any cost greater than \$3000 per main station must be reviewed by the Rates and Tariffs group. We suggest further restrictions. You should give serious consideration to holding primary orders costing more than \$2000 per main station or regrades more than \$1000 per main station until they can be grouped with other orders."

It was not until November 1, 1973 that defendant adopted a formula to apply to "high cost rural" construction. Records of the Commission reveal the following communication with the staff:

"We have been mindful of your past admonishments concerning the need to be as equitable as possible to all concerned. Considering this, we adopted certain criteria in the establishment of relief dates for the held primary orders. The criteria include expenditure parameters for determining which service applications should fall into the 'Savings Clause' category, and once determined, what percentage of cost should be born by the individual applicants. We feel the criteria we have adopted are fair and equitable to the individual applicants, the general body of ratepayers and our firm.

"Here is our approach:

- "1. Any Line Extension costing more than \$3,000.00 will be considered extraordinary expense and the 'Savings Clause' in Rule 15 of 36-T will be invoked.

"To determine the amount of expense to be born by the individual applicant, the following percentages will be applied to the job costs:

	<u>Customer Pays</u>	<u>Pacific Telephone Pays</u>
Portion of Line Extension along public road	50%	50%
Portion of Line Extension along private road	75%	25%

- "2. When a Line Extension costs less than \$3,000.00, the normal Line Extension costs provided for in 23-T, will be passed on to the applicant (No "Savings Clause" Invoked).
- "3. Relief dates for held primary orders involving reinforcement of existing facilities, will not involve consideration of costs being passed on to the individual applicants."

Defendant explained its \$3,000 limit thusly:

"Q. Why do you think it is reasonable to classify anything over \$3,000 as abnormally high?

"A. Pacific Telephone Company made a study of the construction costs for rural line extensions throughout California from 1968 - 1970. It showed that the average construction cost per station was \$1,314. This included both aerial and buried construction. Some, of course, cost less, some more than this figure. The \$3,000 figure is more than twice that average cost. This limit effectively isolates the few extreme cases to which Tariff Schedule No. 23-T was not intended to apply. It prevents those exceptionally high costs which benefit only one subscriber from being passed on to the general ratepayer."

Attachment 1 to Exhibit 11 shows:

BROAD GAUGE COST ESTIMATE
FOR
AERIAL CONSTRUCTION

1957 MATERIAL PRICES AND LABOR COSTS

<u>Estimated Material Requirements</u>	<u>Material Unit Price</u>	<u>Labor Rate</u>	<u>Estimated Hours Labor</u>	<u>Cost</u>
18 Poles	\$58.00	\$6.52	64	\$1,461
7,350 ft. C Rural Wire	.05/ft.	6.53	52	707
4 118A Protectors	12.50	6.53	4	76
200 ft. Ground Wire	.10/ft.	-	-	20
1 Load Coil Case	7.00	-	-	7
Total				\$2,271

It is apparent that the cost of constructing the Nyquist line has increased 1.83 times since the adoption of the extension rule. It also is apparent that a simple line extension in 1957 cost approximately 32 cents per foot.

Attachment 2 to Exhibit 11 states:

"ARGUMENTS PRESENTED TO THE COMMISSION BETWEEN
1951 AND 1957 CONCERNING WHAT CONSTITUTED
UNUSUALLY HIGH CONSTRUCTION COSTS FOR LINE
EXTENSIONS

"The line extension tariffs involved in this proceeding were promulgated in 1957 by Commission Decision No. 55892. That decision was the Sixth Interim Opinion and Order in Case No. 5337. Case No. 5337 was an investigatory proceeding that was instituted on November 6, 1951 and terminated on February 24, 1959.* It concerned an investigation of the availability of facilities for telephone service and the need for modification of rules or practices of telephone utilities.

"Review of the records for Case No. 5337 indicates that no argument or statement was made by Pacific or by the Commission staff concerning what was to be considered unusually high costs under the savings clause of the line extension tariffs which were promulgated.

* Cal.P.U.C. Decision No. 58032.

"The matter of the revision of line extension tariffs first appeared in Case No. 5337 as part of the proceedings leading up to the Third Interim Opinion (Decision No. 53312, June, 1956). The staff, at that time, submitted a suggested table (Table 2-C, Ex. 5) which contained a savings clause substantially the same as the clause which was eventually promulgated in 1957.

"In its Third Interim Opinion, the Commission noted that the staff had studied the various line extension rules of existing telephone utilities and had recommended revision of those rules. The Commission stated, however, that there was insufficient cost data to enable it to prescribe an extension rule at that time. It therefore ordered that each telephone utility submit its view as to the length of the free footage allowance, separately for the base rate area and the suburban area, that will permit the utility to make line extensions under normal conditions without burdening other customers.*

"Pacific submitted cost data pursuant to the order and also submitted a sample tariff which incorporated the savings clause suggested by the staff. No reference was made to what was considered under the savings clause to be 'unusual or disproportionately large construction expenditures as compared to the usual line extension.' The issue apparently did not come up because there was no reason to set an exact dollar amount. The amount would vary between utilities and with the passage of time. In addition, Commission approval was necessary to implement the clause. Its purpose was to allow a certain measure of flexibility.

** Decision No. 53312, 6th Ordering paragraph (June, 1956).

"After review of the cost data submitted by utilities, the Commission promulgated, by Decision No. 55892 (December, 1957), the line extension tariffs which are presently being followed."

Discussion

An analysis of defendant's charges for its so-called "high cost rural" extensions clearly shows that the application of the \$3,000 breakpoint results in unreasonable discrimination. For example, an extension priced at 2,999 dollars would cost an applicant 35 dollars. An extension priced at 3,001 dollars would cost an applicant under defendant's interpretation of Schedule 23-T (using the Nyquist line cost of 58 cents per foot) 870 dollars.^{2/}

Under applicants' method unreasonable discrimination exists because defendant deprives applicant of any free footage allowance and charges costs based on current prices instead of costs based on 1957 prices in effect at the time Schedule 23-T was adopted.

Finding

Defendant's arbitrary \$3,000 limit of extensions under Tariff Schedule 23-T results in unreasonable discrimination and thus is unlawful.

Conclusion

Defendant must apply Schedule 23-T charges uniformly to all applicants until such schedule is changed by a decision of this Commission or the exceptional clause is defined by a decision of this Commission.

^{2/} It is interesting to note that subsequent to the filing of the Nyquists' complaint, defendant in Application No. 55214 filed September 30, 1974 is asking that Schedule 23-T be modified to allow charging 50% of cost in excess of free footage allowance of 1,000 feet.

O R D E R

IT IS ORDERED that:

1. Complainants may pay to defendant the sum of \$460.
2. Defendant upon receipt of the sum of \$460 shall forthwith construct and install telephone service to the Nyquists' property at 7700 Byron Hot Springs Road, Byron.
3. Defendant shall file with this Commission a notice of completion of the above-ordered installation within thirty days of receipt of aforementioned \$460 from the complainant.

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

Dated at San Francisco, California, this 19th
day of FEBRUARY, 1975.

Vernon L. Sturgeon
President
William J. Simon
Leonard Ross
Commissioners