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Decision No. 85702 ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LARRY L. DIER and
MIRIAM R. DIER,

Complainants,

vs.

PACIFIC GAS AND ELECTRIC
COMPANY, a corporation,

Defendant.

Case No. 9903
(Filed April 14, 1975)

Larry L. Dier, Attorney at Law, for himself and Miriam R. Dier, complainants.
Kathy Graham, Attorney at Law, for Pacific Gas and Electric Company, defendant.

OPINION

This is a complaint by Larry L. Dier and Miriam R. Dier (the Diers), husband and wife, against Pacific Gas and Electric Company (PG&E) to require PG&E to extend permanent electric service to their property in accordance with Section B, Rule No. 15 of PG&E's electric tariff schedule (Section B). Pertinent portions of Section B read as follows:

"B. Overhead extensions to Individual Applicants for Service

"1. Free Footage Allowances

"Overhead line extensions will be made by the utility at its own expense provided the length of the line required does not exceed the free length as determined from the following allowances.

(There is here set out a list of appliances and the free footage allowed for each. --Ed.)

* * *

"3. Extensions Beyond the Free Length

"a. Advances

"(1) Overhead line extensions of greater length than the free extension will be made provided the applicant for service advances to the utility $2.05 for each foot of line in excess of the free length..."

PG&E claims that the excessive investment-to-revenue ratio (30.1) which PG&E will incur in extending an electric line to the Diers is an unusual circumstance contemplated by Section E.7. of Rule No. 15 (Section E.7.) and justifies the issuance of a special ruling allowing PG&E to deviate from the provisions of Section B by requiring the Diers to pay PG&E approximately $34,000 as a prerequisite to requiring PG&E to extend the line. Section E.7. reads as follows:

"7. Exceptional Cases

"In unusual circumstances, when the application of these rules appears impractical or unjust to either party, or in the case of an extension of lines of a higher voltage, the utility or the applicant shall refer the matter to the Public Utilities Commission for special ruling or for the approval of special conditions which may be mutually agreed upon, prior to commencing construction."

A hearing was held on the matter in San Francisco before Examiner Pilling on September 23, 1975.

The basic facts are not in dispute. The Diers own 40 acres of land in Lassen County and have applied to PG&E for electric service. The area is sparsely settled. The free footage allowance to which the Diers, as individuals, would be entitled calculated in accordance with Section B is 3,685 feet.[1] The shortest practical

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1/ Since filing the complaint the Diers have decided to install a larger horsepower motor than originally planned so that the total free footage calculated under Section B would be increased to 4,560 feet. To avoid confusion this fact will not be taken into consideration since it will have no bearing on the outcome of the case.

route for the electric line extension is 3,860 feet in length. PG&E estimates that its cost to construct the line extension will be approximately $20,465 and estimates that it will receive a gross annual revenue from the Diers of $676, not including a fuel clause adjustment factor. PG&E claims that a yearly revenue of $676 justifies an expenditure on its part for a line extension costing only $2,408 (calculated by multiplying the yearly revenue from the Dier's residence service of $296 by 3 and adding the product of 4 times the agricultural pump yearly revenue of $380). PG&E has offered to extend the line upon payment by the Diers to PG&E of the difference between the alleged justifiable expenditure of $2,408 and the actual cost of construction of $20,465, or $18,057, plus a lump sum payment of $15,948 to cover the cost of ownership charges for a period of ten years. The Commission takes official notice that the Dier's property is within PG&E's service area as set out on the service area maps in PG&E's tariffs.

On December 24, 1974 all division managers in PG&E's Commercial Operations Department were ordered in writing to institute a trial procedure for processing lean [sic] electric extension applications by individuals for extensions over 2,500 feet in length where the investment-to-revenue ratio exceeded a specified fixed ratio which ranged from 2.0:1 to 6.0:1 depending on the particular schedule to be used and the volume to be used. When it was found that the requested extension would exceed a particular investment-to-revenue ratio the managers were told to invoke the Exceptional Cases Rule, Section E.7., and inform the applicant that the extension would be economically infeasible for PG&E under Section B but that PG&E would go ahead and make the extension if the applicant was willing to pay PG&E the difference between the reasonable expenditure based on estimated annual revenue and the actual cost of the extension plus a cost of ownership payment.

PG&E's witness testified that the lean extension procedure was designed to give PG&E no more than a zero rate of return and allows PG&E to cover only its costs of furnishing service. The witness testified that before the procedure was developed PG&E often declined to provide service to outlying areas where the extension was economically infeasible. The witness stated that the amount of annual revenue which would be required to make the Dier's requested extension economically feasible would be approximately $5,266. The witness stated that when the free footage allowances in the tariff were first established they bore some relationship to the cost of construction but because of the change in economic factors since that time the allowances are no longer realistic and are uneconomical for PG&E.

The procedure for handling lean electric extension applications was discussed informally by PG&E with the Commission staff. It was decided that before revising Rule No. 15 to reflect this procedure the procedure would be tried out for a year in order to evaluate it. The Commission on May 28, 1975 by Resolution No. E-1480 approved an agreement between one Mr. W. W. Harder and PG&E in which this procedure was used as the basis of an electric line extension.

When the Diers first became interested in the 40 acres they now own they took an option on the property rather than buy it outright because they were aware that there would be some problem with getting electric service. They secured a copy of PG&E's Rule No. 15 and were told that the cost of the extension to the Diers would be substantially higher than the figures set out in Rule No. 15 and that Rule E.7. would apply in their case. On March 27, 1975 the Diers applied in writing to PG&E for electric service. On March 31, 1975 PG&E wrote a letter to the Diers informing them of its preliminary estimate of the cost to them for making the extension. The preliminary estimate, while lower than that presented by PG&E's witness at the hearing, came to a substantial figure. Despite whatever knowledge the Diers had concerning PG&E's stand with respect to who was going to pay the cost of the extension, the Diers nevertheless relied on their own interpretation of Rule No. 15, concluded that Section B was the section applicable to their situation, and exercised their option to purchase the 40 acres. PG&E admits that the only unusual circumstance surrounding the proposed extension to the Diers is related to the unusually high investment-to-revenue ratio which is approximately 30:1. Within a mile radius of the Diers' home PG&E has six customers. The last connection in the area was in 1972 and the one previous to that was in 1968. The Diers claim that property in the area with electricity sells for over twice as much per acre as does property without electricity.

The Diers argue that their request for electric service does not give rise to an unusual circumstance. They admit for the sake of argument that inflationary pressures may well justify PG&E increasing its rate for line extensions by shifting the cost of construction and cost of ownership to an applicant where the length of the extension makes PG&E's cost-to-revenue ratio excessive. However, they claim that before PG&E may lawfully charge such increased rates or require applicants to accede to provisions differing from those contained in PG&E's tariffs PG&E must first secure approval from the Commission and publish such increased rates and different provisions in its tariffs. This PG&E has not done; hence, it must make the line extension under the provisions presently in its tariffs, namely, in accordance with those in Section B, rather than under some other provision unilaterally established by PG&E. They argue that Section E.7. sets forth no guidelines concerning what is an unusual case and that they are entitled to rely upon published tariff provisions. The Diers also contend that PG&E as a public utility may not discriminate against them as to rates and charges simply because their business will be less profitable than that of other applicants.

PG&E contends that the Commission, via the Harder resolution, supra, has recognized that a line extension resulting in an excessive investment-to-revenue ratio for the company is one unusual circumstance contemplated by Section E.7. PG&E also cites Stewart v Great Western Power Company (1913) 3 CRC 1160 and W. H. Early Company v Great Western Power Company (1917) 13 CRC 699 as precedents for its refusal to make a line extension where the cost-to-revenue ratio would be excessive. PG&E argues that since there is no indication that the sparsely settled area will grow in the near future and generate new customers no future justification exists for employing its capital on a presently economically infeasible project. Additionally, PG&E contends that if PG&E is required to make the extension on terms other than those it proposes, its other ratepayers would be forced to subsidize the service and contribute towards a fair rate of return on PG&E's profitless investment in facilities.

Discussion

In 57 CPUC 346 (Decision No. 59011) dated September 15, 1959, which was the result of an investigation by the Commission to determine, among other things, the need for the development of uniform principles in utility extension rules and in which case PG&E was a respondent, the Commission made certain findings relative to free footage allowances which are pertinent to our decision here:

> "(3) in developing allowances there are other factors to consider than merely cost and revenue, such as value of service, competition, history, public requirements, and burden on existing customers;
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> * * *
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> "(16) that in unusual cases, when the application of the new rules appears impractical or unjust to either party, the matter should be referred to the Commission under the exceptional cases provisions of the rules. The Commission will require that where the extension involves more than a $20,000 investment, any free allowances by the utility in excess of a 5-to-1 investment-to-revenue ratio be reported to the Commission annually in a summary report;" (57 CPUC at 364, 365.)

By Decision No. 59011 the Commission ordered PG&E to establish a list of free footage allowances for uniform application throughout the state for use when extending lines to individual customers and to insert in its extension rule that which now appears word for word as Section E.7. of PG&E's tariff Rule No. 15 (see Ordering Paragraph 1 and Appendix A, page 10 in Decision No. 59011 folio). The uniform application of a list of free footage allowances to all extensions to individual customers throughout the state obviously could not be expected to result in a uniform profit for each such extension made by PG&E and very conceivably some extensions could result in a loss. The Commission in Decision No. 59011 also recognized that an inordinately high investment-to-revenue ratio could, in certain cases, result from the uniform application of the list, which fact is borne out by the second sentence in above Finding 16; the inclusion of that sentence in the finding dealing with unusual cases lends credence to PG&E's contention that an inordinately high investment-to-revenue ratio - in this case 30:1 - is an unusual case.

Finding 3, above, indicates that one of the elements to be considered in developing allowances is the increased financial burden which existing customers may be called upon to bear as the result of a proposed extension. PG&E has shown that the proposed extension will not pay its way; it will not recover out-of-pocket costs nor a return on investment. Hence, other ratepayers will have to subsidize service to the Diers as well as contribute toward a fair return on the profitless investment. This burden will not be offset by the satisfaction of any public requirement. Under the circumstances no reason exists to ask the other ratepayers to subsidize the Diers' proposed service. The Diers' application for service, because of the inordinately high investment-to-revenue ratio, presents an unusual case within the meaning of PG&E's Rule No. 15, Section E.7.

Findings

1. PG&E is a public utility electrical corporation as defined in Section 216 of the Public Utilities Code and as such is subject to the jurisdiction of the Commission.

2. PG&E, as required by Section 489 of the Public Utilities Code, has duly on file with the Commission schedules which show PG&E's electric rates, charges, rules, contracts, and privileges and include Rule No. 15 which contains the provisions under which PG&E will extend distribution lines of standard voltages necessary to furnish permanent service to applicants for its electric service.

3. Section B of PG&E's Rule No. 15 provides that PG&E will construct the extension at its own expense for varying distances depending upon the number and type of appliances to be served (free footage allowances) and that the applicant must advance to PG&E $2.05 a foot for lengths in excess of the free footage allowances.

4. Section E.7. of PG&E's Rule No. 15 provides that in unusual circumstances where the application of any of the provisions of Rule No. 15 appears impractical or unjust to either party the matter may be referred to the Commission for a special ruling or the approval of special conditions.

5. The Diers have duly applied to PG&E for electric service to their property located within PG&E's service area in Lassen County.

6. The Diers claim entitlement to the free footage allowances for their appliances of 3,685 feet computed in accordance with Section B of PG&E's Rule No. 15.

7. The length of line extension necessary to bring service to the Diers is 3,860 feet.

8. PG&E has a systemwide in-house rule (lean extension procedure) under which it refuses to make line extensions where the investment-to-revenue ratio is in excess of certain specified ratios, the greatest being 6:1, on line extensions over 2,500 feet unless the

applicant for the service advances to PG&E an amount of money equal to the cost of the excess investment necessary for service plus a cost-of-ownership charge to cover the excess investment for a period of ten years.

9. PG&E refuses to give the Diers the free footage allowances computed in accordance with Section B of PG&E's Rule No. 15 because the investment-to-revenue ratio which will result from constructing the line will be 30:1 and as a prerequisite to extending service to the Diers is requiring the Diers to enter into a contract in conformance with PG&E's lean extension procedure which will require the Diers to advance to PG&E approximately $34,000, compared with an advance of $358 if the free footage allowances are given.

10. PG&E claims that an investment-to-revenue ratio of 30:1 is an unusual circumstance within the contemplation of Section E.7. of PG&E's Rule No. 15 which justifies its refusing to give the free footage allowances and requiring an applicant under such circumstances to advance monies required by its lean extension procedure.

11. PG&E established its systemwide lean extension procedure to obviate uneconomic extensions over 2,500 feet which it had been forced to make because steadily increasing construction costs in many instances rendered the free footage allowance rules too liberal and made advance payments requirements for extensions beyond the free length unreasonably low.

12. Requiring PG&E to comply with the Diers' application for service under Section B of PG&E's Rule No. 15 would unfairly require other PG&E ratepayers to subsidize service to the Diers and would require other ratepayers to unfairly contribute to a reasonable rate of return on the capital which PG&E would be required to invest in the extension.

13. No public requirement exists which justifies shifting the burden to other ratepayers as set out in Finding 12.

14. An inordinately high investment-to-revenue ratio, which will result from complying with an application for electric service, as will result in this case if the proposed extension is made, is an unusual circumstance within the meaning of Section E.7. of PG&E's Rule No. 15.

15. PG&E's offer to construct the line extension upon the terms described generally in the body of this decision in accordance with the provisions of the proposal identified as Exhibit 3 in this proceeding is reasonable.

Conclusions

1. The 30:1 investment-to-revenue ratio which will result in complying with the Diers' application for electric service is inordinately high and constitutes an unusual circumstance as that term is used in Section E.7. of PG&E's Rule No. 15.

2. The relief requested should be denied.

ORDER

IT IS ORDERED that the relief requested is denied.

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

Dated at San Francisco, California, this 20th day of APRIL, 1976.

William Symons Jr. President
Vernon L. Sturgeon
[illegible]
Robert Batinovich
Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.