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ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Sylvester's Security Alarms, Inc., Complainant, vs. General Telephone Company of California, Defendant.	Case 84-01-03 (Filed January 6, 1984)

Alan L. Pepper, Attorney at Law, for Sylvester's Security Alarms, Inc., complainant.
Kathleen S. Blunt, Attorney at Law, for General Telephone Company of California, defendant.

O P I N I O N

Background

This proceeding involves a dispute about whether a tariffed condition of service, requiring a customer to pay for telephone plant extension costs, should apply. The complainant, Sylvester's Security Alarms, Inc. (Sylvester's) contends it should not because:

1. It has, after initially checking with the defendant's (General) representatives, acted in justified economic reliance on the tariff condition not applying;
2. The particular tariff rule is "discretionary" and unreasonable; and
3. The particular circumstances presented mean the rule should not be applied.

The amount in dispute is $39,156. Sylvester also contends if he must pay the $39,156, it would be a double payment to General, as the plant would all be included in its rate base.

A hearing was held in Los Angeles on March 29, 1984 before Administrative Law Judge Alderson, and the matter was submitted after oral argument. Five witnesses testified.

Statement of Facts

Don Sylvester owns Sylvester's, having founded the alarm service in 1960. Headquartered in Santa Maria, Sylvester's serves about 1,100 customers in the region, with some as far away as Paso Robles and Lompoc. The service is monitored alarm service, with 615 of Sylvester's lines presently monitored at the Santa Maria Police Department and 101 at a telephone answering service. The alarm service has grown and several years ago Sylvester anticipated that the Police Department would eventually want his monitoring done elsewhere, which would mean his finding a "central station" location and moving the private-line alarm loops now running from General's Santa Maria central office to the Police Department and answering service so that they would terminate at a new common location. Sylvester's has recently been given notice by the Police Department to move its monitored lines out by January 1986.

Sometime in 1981 Sylvester started inquiring of General's Santa Maria customer service representatives about the cost of moving the lines. He recalls being told of the tariffed charge for connecting each line at a new location in Santa Maria and being told that would be the only charge. Sylvester started looking for a site. In early 1982 he found an unimproved one-acre parcel in a new industrial park area, within the city limits, and about one mile from General's central office. Being interested in the building site, Sylvester called General's Santa Maria "alarm desk," which in essence was one of the business account representatives, Linda Atkins. The evidence shows they spoke on January 27, 1982. Sylvester's business record memorializing his understanding, Exhibit 1, is that his alarm service could "relocate anywhere in town" and the only charge would be for reconnecting the lines at the new location. Atkins testified that she indeed spoke with Sylvester. She is sure she did not

mention any other charge because only the "plant department" personnel administer and are familiar with the tariff rules requiring customer payment for extending service facilities. While she did not address any "cable move costs," she could not recall if Sylvester specifically asked about the potential of such additional costs; Sylvester said he did not ask specifically about "cable costs" because he did not know of the tariff provision, and the purpose of this call was to get a definitive answer from General on what tariffs applied before he purchased the lot. Atkins, according to Sylvester, said it was not General's policy to confirm tentative cost or price quotes by letter.

In early February Sylvester made an offer for the lot, finally paying $141,000, and escrow closed in June 1982. Plans for a building were commissioned by Sylvester. They are now drawn, but pending resolution of this dispute construction has not started.

About the time escrow closed, Ernie Leo, General's outside plant engineer for the Santa Maria area, became aware of Sylvester's intention to relocate. He started assessing the plant facilities in view of putting 900 cable pairs to the new location. Leo researched the tariffs, but he did not discover the applicability of the particular tariff rule in question. (Rather, he concluded, Schedule 41 applied). The applicability of the tariff rule (Schedule GG), and the decision that it should apply, given the costs and circumstances, was decided by Robert Blewett, the regional resident engineer. This was communicated to Sylvester at a meeting in June, followed by a letter of July 26 from the Santa Maria Exchange Manager, J. W. Larson. Apparently to ameliorate the impact on Sylvester, Larson offered a five-year installment payment program for the then $55,504 cost estimate. Shortly before the hearing, General reevaluated its plant cost estimate and concluded $39,156 should be borne by Sylvester.

General's Cost of Relocating the Cable Pairs

The industrial park site where Sylvester's would relocate is undeveloped. General's Leo said if it ran cable pairs to accommodate Sylvester's request for 900, it would run a 1,200-pair cable so there would be cable margin to accommodate growth in demand in the area. Accordingly, Leo said 75% of the incremental cost should be borne by Sylvester. Sylvester contends General has to extend plant to the industrial park in any event, and that General's Leo could just as easily be underestimating overall future demand in the area as overestimating; cited in support of this proposition by Sylvester is that some portions of General's "backbone" cable plant in Santa Maria have had half the cable pairs unused for years. According to Sylvester, this is not illustrative of a good track record in growth forecasting. General's goal is to forecast five years ahead and aim toward an 85% fill-rate for backbone cables. Although there is underlying disagreement about Leo's growth forecast and to a lesser degree his cost estimate, serious doubt has not been cast on either by Sylvester's cross-examination.

The Tariff Schedules in Dispute

At the heart of General's position is a portion of its Schedule GG, Parts A and B:

"A. REGULATIONS APPLICABLE TO ALL PRIVATE LINE SERVICES AND CHANNELS - Continued

"18. Application of Construction Charges

"a. General

"(1) All rates and charges quoted in the schedules of the Utility provide for the furnishing of service or channels when suitable facilities are available or where the construction of the necessary facilities does not involve unusual costs.

"(2) When the revenue to be derived from the service or channels is not, in

> the option of the Utility, sufficient to warrant the Utility assuming the unusual costs of providing the necessary construction, the customer may be required to pay all or a portion of such costs, the amount depending upon the circumstances in each case."

* * *

"B. REGULATIONS APPLICABLE TO PRIVATE LINE SERVICES

"1. The Service

> "Private line service is that of furnishing, for the communication purposes of the customer and authorized users, facilities, including channels and station equipment, between specified locations for a continuous period, or for regularly recurring periods at stated hours; it is furnished on a contract basis subject to the availability of such facilities and the requirements of the Utility's message toll telephone and teletypewriter exchange services."

Sylvester's contends this schedule is ambiguous and it could just as easily be construed to apply when some novel facility is requested rather than just furnishing the usual private-line loops.

The first General employee in its plant department, Leo, had not construed Schedule GG to be applicable. From his analysis Schedule A-41 applied, which governs "service connection, move and change charges." He concluded relocating one end of Sylvester's loops from one premise to another would be governed by Special Condition 10 of Schedule 41, which coincided with the information supplied earlier to Sylvester by Atkins. The relevant portions of Schedule A-41 are:

"APPLICABILITY

> "Applicable to charges for processing and completion of customer or applicant requests for all exchange services except Centrex and Inward Dialing. Applicable charges for these services will be as shown in Schedule No. A-6, Section VII, A.4., and Section VIII, A.3." (Emphasis added.)

* * *

"Special Conditions"

* * *

"10. A change of location from one premises to another, will not be treated as a move but as a disconnect and a new installation.

"11. Nonrecurring charges set forth in other schedules will be in addition to the charges set forth in this schedule."

We can easily understand why General's Leo could construe Sylvester's request as moving service from "one premises to another," with only specified and quantified nonrecurring charges applying. On its face Schedule A-41 would seem to apply to moving and reinstalling a private line, as it is not one of the services excepted from Schedule A-41's application. Special Condition 11, read most liberally in General's favor, could be a reference to a "nonrecurring charge" of the type specified in Schedule GG, but the usual meaning of "nonrecurring charge' is reference to a discrete or quantified tariff rate.

Sylvester does not object to paying the applicable tariff charge for connecting each line when he relocates, and he understands they are periodically increased. Incidentally, the eventual termination cost for removing a private line is built into the connection charge, so in that sense, General has been compensated for the eventual removal of Sylvester's loops at their existing locations.

Discussion

General contends Schedule GG must apply, irrespective of whether Sylvester was apprised of it before he bought the lot, because the circumstances fit: the costs to relocate one end of the cable pairs to serve his alarm company are "unusual," and the move will unduly burden all ratepayers if Sylvester does not bear a reasonable share of the estimated cost. Sylvester's contention that General will double collect if paid for the plant because it could also be included in rate base is incorrect. Customer-contributed plant is not included in rate base or plant in service (Account 100.1).

General is correct that ordinarily the tariffed rate applies even though a customer may have been quoted a different charge by a utility's representative (see, Empire West v Southern California Gas Company (1974) 12 C 3d 805). However, here we are faced with a tariff rule which not only does not have a discrete rate, but which when read in connection with other schedules is not clearly applicable.

The general rule that PU Code § 532 precludes a utility from ultimately assessing any rate different than that in its published tariff clearly applies when a discrete rate is published. Discrete quantified rates differ from Schedule GG because this Schedule lists a condition of service which may or may not apply, depending on case-by-case circumstances. It would be too harsh and unfair now to apply such an unusual tariff condition, particularly a condition for service that can be discretionary. Sylvester was not apprised of the potential applicability of Schedule GG by the utility representatives to whom he would normally be expected to direct inquiries about applicable rates and/or conditions of service. There is no dispute about Sylvester's having asked repeatedly about the cost of relocating one end of his alarm loops within Santa Maria, nor is there any question of his reliance on the information supplied. We cannot, given the nature of the condition of service in question, apply Schedule GG in Sylvester's case. An omission to inform a customer of the potential for applicability of a tariff condition such as Schedule GG is a different matter than an omission or misquote about access line rates or clearly applicable nonrecurring charges. Accordingly, the general rule that the tariff must govern, irrespective of circumstances or detrimental reliance, does not apply in this instance.

The other reason Sylvester's must prevail, which is independent of our holding that Schedule GG cannot be applied given Sylvester's good faith detrimental reliance, is that there is an

underlying ambiguity in General's tariffs about which rates and/or conditions of service are directly applicable to Sylvester's circumstanes. General's Atkins did not apprise Sylvester of all potential charges because administering Schedule GG was not in her department; rather it is applied by the plant or engineering department. From our review of General's tariffs we can easily understand why General's Santa Maria plant engineer, Leo, could conclude Schedule A-41 applied and not Schedule GG.

We are occasionally presented with ambiguity in specific tariff schedules in complaint proceedings, but here we are presented with an overall ambiguity about which schedule governed Sylvester's circumstances. Tariff ambiguity means reasonable minds can differ on applicability, and the fact General's Leo and Blewett reached differing conclusions buttresses our observation that General's tariffs are not as clear as they should be. It is a longstanding principle that in disputes about applicable rates or conditions, instances of tariff ambiguity must be resolved in the customer's favor.

General's counsel indicated that General's search of its records found no other instance where Schedule GG was applied to a customer as it proposes here. Blewett corroborated this; he could recall the particular portion of Schedule GG being discussed before, but had never seen it applied. Although Sylvester presented testimony by the president of Checkmate Alarm Service, of Palm Springs, to show General is selective in its application of Schedule GG, it was not shown that the circumstances surrounding Checkmate's relocation were directly comparable.

We think Schedule GG should be revised for prospective application so it is clear it can apply to relocating private lines, and Schedule A-41 should be revised to reflect that in some instances the overall charges to move and reconnect a great many private lines

could be affected by Schedule GG. Also, to rectify things prospectively, we think General's business account representatives should have their rate reference materials revised or cross-referenced so they indicate when many lines are relocated there may, depending on circumstances, be a charge for construction. At least they could apprise inquiring customers, who in turn could check with the appropriate plant engineering personnel. These tariff and operational charges are minor, and we think they would go far toward both ensuring Sylvester's predicament is not repeated, and General would have an easier time administering its tariffs.

While the above modifications to General's tariffs will be relatively easy, there are deeper problems with Schedule GG which must be resolved if the portions under dispute are to be retained. The underlying condition of service is essentially logical and for a good purpose: The general body of ratepayers should not subsidize extraordinary costs to serve a single customer with relatively unusual needs. However, to ensure uniform application of such a tariff condition from exchange to exchange, or between General's different operating regions, there must be more objective criteria or cost to revenues formula developed and included in Schedule GG. Otherwise the tariff rule will be too subjective and discretionary, and can only lead to further disputes in those rare circumstances when it may arguably be applicable. We will order General to make an advice letter filing, for our review, which either cross-references its tariffs and modifies Schedule GG to include an objective criteria for applicability, or eliminates the portions of Schedule GG under dispute in this proceeding.

We will grant the requested relief, which is an exemption from any construction cost charge. General should file an advice letter to amend its tariff schedules as described above.

Findings of Fact

1. In January 1982 Sylvester asked General's business account representative about the potential charges for relocating private-line alarm loops to a new location. He was not apprised of the potential for any portion of construction costs being assessed to his alarm service.

2. Relying on the magnitude of potential charges cited by General in January 1982, Sylvester purchased a building site.

3. The allocated incremental cost for General to extend 900 cable pairs to Sylvester's new site is $39,156.

4. One of General's plant engineers, Leo, construed Schedule A-41 as governing the charges for relocating Sylvester's private-line loops.

5. General's business account representatives are not familiar with the potential applicability of Schedule GG to circumstances such as those posed by Sylvester's relocation.

Conclusions of Law

1. There is ambiguity and uncertainty between General's Schedules A-41 and GG, as to which tariff clearly governs charges for relocating one end of private-line loops from one premises to another.

2. Tariff Schedule GG cannot be applied to Sylvester's because its sole applicability is questionable.

In order to expeditiously resolve the uncertainty about the total charges applicable to Sylvester so it can proceed with building and relocation plans, and enter a formal order for service, the following order should be effective today.

C.84-01-03 ALJ/ec/bg/ec *

O R D E R

IT IS ORDERED that:

1. Sylvester's Security Alarms, Inc. shall not be assessed for facilities or construction charges in connection with its move to the site at Oakley and Knudsen Streets in Santa Maria; it can, however, be assessed for the applicable charges for connecting the relocated lines that are in effect when its service order is entered.

2. Within 90 days from today General Telephone Company of California (General) shall file an advice letter to modify its tariffs so the potential applicability of Schedule GG to a relocation of private-line loops is clear, and to modify Schedule GG to include an objective criteria for charging customers for plant facility costs. If General concludes it cannot develop objective criteria for inclusion in Schedule GG, it may propose withdrawing the portions under dispute in this proceeding. When General files its advice letter it shall serve a copy by mail on the Western Burglar and Fire Alarm Association's representative, Alan L. Pepper.

3. The relief requested in the complaint is granted as set forth above.

This order is effective today.

Dated MAY 16 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

Commissioner William T. Bagley being necessarily absent, did not participate.

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Joseph E. Bodovitz, Executive Director