

Decision 84-12-053 December 19, 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Peter M. Jensen for deviation from)
the requirements for undergrounding)
of utilities in Butte County.)

Application 84-06-029
(Filed June 11, 1984)

Peter M. Jensen, for applicants.
Peter W. Hanschen and Andrew L. Niven, Attorneys
at Law, for Pacific Gas and Electric Company;
and Kristin Ohlson, for Pacific Bell;
interested parties.
Ray S. Kahlon, for the Commission staff.

O P I N I O N

Applicants, Peter M. Jensen, et al., seek a deviation from Pacific Gas and Electric Company's (PG&E) underground extension rules to allow an overhead extension of electric service to a number of lots where the minimum size is less than 3 acres, located near Forest Ranch, Butte County.

Application

Applicants state in their application that on January 3, 1972, approximately 24 lots were created by lot book split in an area located about 3.5 miles northeast of Forest Ranch, California, by a landowner who created a number of 1-acre, 2.5-acre, 5-acre, and some 10- and 20-acre lots within a 120-acre piece of land which he owned at the time. A road right-of-way (Carol Ann Lane) was created to serve those lots not bordering existing roadways, with this right-of-way also designated for use by utilities. All have been sold at least once since that time.

Applicants further state that in about 1975, the Butte County Board of Supervisors changed the residential zoning within this area to 5-acre lots. While most of the lots are now 5 acres in

size, designated land use on the earlier 1-acre and 2.5-acre lots is the same as that for the 5-acre lots, not more than one single-family dwelling or accommodation per parcel. The 5-acre lots are allowed overhead utility service while those of less than 3 acres are not, a significant economic penalty.

Applicants also state that many lots, 3 to 5 acres each, are being served by overhead telephone and electrical service and surround applicants' 1- to 2.5-acre lots. Further in 1980 the Pacific Telephone Company installed overhead service to most of the 2.5-acre lots in this application.

Applicants state that their lots are not in proximity to nor visible from any designated scenic highway, state, or national park, or other area determined by any governmental agency to be of unusual scenic interest to the general public. Applicants conclude that the proposed exemption would not have a potentially adverse environmental effect.

Applicants state that construction of underground service would be significantly more costly: underground between \$10.00 and \$12.00 per foot, and overhead between \$2.00 and \$4.00 per foot.

Applicants state that no common trenching will be available because each of the lots will be served by individual wells and septic systems, and each is being served by overhead telephone lines.

Applicants state that lots surrounding the applicants' lots are being served by an overhead telephone line, that any electrical lines would be concealed by existing vegetation (as is the telephone line which now serves the small lots) and that virtually all future utility line extensions to lots (3 plus acres) surrounding those of applicants will be overhead.

Applicants contend that PG&E would provide overhead electric service under its extension rules to the 3-plus-acre lots surrounding these smaller lots. Applicants contend that in order to supply the larger lots PG&E may have to run overhead lines through or

immediately adjacent to the smaller lots, eliminating any aesthetic advantage to providing underground service to the smaller lots. The applicants request that we exempt them from the underground extension rules applicable to lots of less than 3 acres. Applicants contend that if the extension is not granted some small lot owners would be denied electric service because of the high underground cost involved. Applicants further contend that the 3-plus-acre lot owners with identical zoning restrictions would be and are being served overhead.

Hearing

A duly noticed hearing was held before Administrative Law Judge (ALJ) J. J. Doran in San Francisco on October 19, 1984, and the matter was then submitted upon receipt of a late-filed exhibit by November 5 and comments thereon by November 19.

Position of the Parties

Applicants state that they want overhead electric service, and that an underground extension is not required because their lots are not in a subdivision but were created by lot splits.

PG&E states that an underground extension is required under Rules 15 and 15.1, Electric Line Extensions, and it is not aware of unusual circumstances making the application of the rules "impractical or unjust." PG&E also states that it is neither supporting nor opposing the application for deviation.

The Service and Safety Branch of the Commission staff (staff) recommends that the application be denied, and states that no unusual circumstances exist.

Testimony

Witness Jensen for applicants testified that the area is not a subdivision as defined in the State Subdivision Map Act. He states that Pacific Bell's Assistant Vice President, R. B. Roche's letter to the Commission dated July 26, 1984 supports his statement.

He testified that these lots do not constitute a "de facto" subdivision, as claimed by the Chico office of PG&E and therefore do

not require an application for deviation. He further testified that brand new subdivisions all around applicants were being served with overhead electricity.

He further testified that applicants have had to spend a considerable amount of time and money in order to attempt to defend themselves against the consequences of the statements made by two PG&E employees. Therefore, he continues, should not the burden of proof be placed squarely on PG&E's shoulders?

He added that most of the considerations contained in the application as to why applicants should be exempted from the underground rule were suggested by PG&E's Chico office staff. The same individuals claimed that the lots are located in a de facto subdivision.

The witness also states that one of the applicants who has lived on two lots without power for the past four years is now suffering from a severe heart condition. His physician has prescribed home pulmonary care, and the question has recently arisen as to whether nonelectrically operated equipment currently being used is, or will be, sufficient to meet his needs and the doctor's advice.

Further, the witness testified that PG&E accepted applications in 1981 from lot owners on Carol Ann Lane. He stated an overhead extension was estimated to cost \$27,000. He said PG&E advised them to go to the county to get whatever permits the county required. The county gave them permits to install temporary service power poles, which 15 lot owners installed. However, the lot owners decided not to go ahead with the extension. He was not able to provide documentation for his assertions on the extension. He states that the cost is now estimated to be \$107,000 for an underground extension, but that it is impractical to come up with that sum of money.

A resident (5-acre lot) on Headwaters Road, adjacent to the 16-lot area of applicants, testified in support of the application. He now uses his own generator, but would like PG&E electricity.

An owner of a 5-acre lot in the Royal Drift Estates close to applicants' area wants electricity and testified in support of the application. He testified that in 1981, PG&E said it would make an overhead extension to Royal Drift Estates, but that his deposit check was returned, and now the utility is stating that the service should be underground. He also states that underground would cost too much for him.

Staff witness Rehal, a utilities engineer, recommended that the requested exemption be denied.

He based his recommendation upon the following facts:

1. The property for which the deviation is requested is a portion of NE 1/4 of Section 2F, Township SN, Range 3E, M.D.B. It consists of 24 lots ranging from 1.9 acres to 20.1 acres recorded on individual names in Butte county.
2. The deviation is requested from PG&E's Electric Tariff Rule 15. Applicants' tract does not qualify for an overhead service extension as the conditions in neither Paragraph C.1.a. nor C.1.b. of PG&E's Tariff Rule 15 are satisfied.
3. From his field investigation it does not appear to be impractical to construct an underground line extension within applicants' subdivision and no unusual circumstances exist.
4. There are no electric facilities existing in the subdivision. The only overhead utility line is a telephone line (on trees) extended to seven individuals by Pacific Telephone (now Pacific Bell). It appears that this line was installed overhead contrary to Pacific Bell's Tariff Rule 15 and there has not been any exemption granted by the Commission. Pacific Bell should be required by the Commission to place this line underground in accordance with the utility's filed tariffs and at the utility's expense.

5. PG&E estimates the total cost for an underground extension to be \$106,000, while the cost of an overhead extension is estimated to be \$75,000. The applicants would have to contribute a nonrefundable advance of \$28,000 in addition to trenching and backfilling costs in the case of an underground extension but an overhead extension can be constructed at no cost to them.
6. Applicants' cost of an underground extension could be reduced an undetermined amount if a joint electric-telephone trench were used for the portion which should be reinstalled underground at Pacific Bell's expense.

Staff witness Rehal also testified that, as defined in PG&E's Electric Rule 15, Section F, the area qualifies as a subdivision "...an area in which a group of dwellings may be constructed about the same time, either by a large scale builder or by several builders working on a coordinated basis."

Further, he states that he is not aware of any special environmental considerations.

Kenneth H. Hustad, supervisor of Technical Tariffs and Services in the Commercial Department of PG&E, testified in response to the four issues stated in the ALJ's letter to interested parties on September 25, 1984 as follows:

1. PG&E's Electric Line Extension Rules 15 and 15.1 are applicable to the customers requesting a deviation in the application. PG&E's Electric Rules 15, Section D.4., and 15.1 are applicable to the customers (formed as a single entity) requesting a deviation from the requirements for underground electric facilities to and within the subdivision shown on Butte County Assessor's Parcel Map 56-30 that is attached to the application. These tariffs applied to these circumstances require an underground system. For individual applicants within the subdivision, PG&E's Electric Rule 15, Section D.2., is the applicable tariff. It provides for an underground extension to an individual applicant.

An overhead extension to or within the subdivision is not applicable because it does not meet the conditions of service stated in Electric Rule 15, Section C.1. Specifically, Section C.1.a. is not met because significant overhead lines do not exist within the subdivision and no agreement for electric service was entered into with PG&E before May 7, 1972. Section C.1.b. is not met because there are parcels within the subdivision which are less than 3 acres.

2. Under these rules the customers and their premises are within a residential subdivision or development. The assessor's parcel map, which was recorded on April 21, 1971, represents a de facto subdivision. PG&E's Electric Rule 15, Section F, defines "tract or subdivision" as "...an area in which a group of buildings may be constructed about the same time...." The first paragraph of Electric Rule 15.1 states that the rule is applicable "...to furnish permanent electric service within a new single-family and/or multi-family residential subdivision of five or more lots (subdivision)..."
3. There are no unusual circumstances making the application of these rules "impractical or unjust." Trenching is estimated to be more difficult than average for the PG&E system but normal for the area. The cost of the underground system does not represent an exceptional circumstance.
4. The subdivision area is wooded, foothill country. An overhead installation would require some normal tree trimming. An underground system would be installed generally along existing roads. The witness was not aware of any other environmental information that would be relevant to this proceeding.

The witness stated that PG&E is neither supporting nor opposing the application deviation. Further, PG&E will accept and comply with the Commission's ruling.

At the close of the hearing on October 19, 1984, the ALJ instructed PG&E to research its records and to file by November 5, 1984, late-filed Exhibit 5 to address the following two subjects: first, the history of applicants' requests for electric service in 1981 and 1982; and second, revised cost estimates for the line extensions from PG&E's nearest electric facilities to the applicants' lots.

In Exhibit 5 and the supplement to Exhibit 5, PG&E's witness Hustad states that PG&E did receive applications for electric service in the vicinity of the applicants' property during 1981 and 1982. In 1981 PG&E was contacted by Robin Kennedy regarding electric service to and within Royal Drift Estates, a 5-acre lot subdivision, located beyond the Carol Ann Lane area to the east of PG&E's existing facilities. In June and November of that year PG&E offered to prepare a preliminary engineering estimate to determine the route, design, and costs of such an extension, in exchange for a \$2,000 advance. Without receiving the advance, PG&E contacted potential applicants on Carol Ann Lane (area in which applicants have lots) and other areas along the tentative route in an effort to identify sufficient electric load to justify the extension. The contacts along Carol Ann Lane were incidental to the goal of providing service to Kennedy, the applicant at Royal Drift Estates. As a result of these communications, several requests for service were received from residents of the Carol Ann Lane area. In April 1982, PG&E invited interested persons to a meeting on May 13, 1982 at PG&E's Chico office to discuss the proposed extension. Approximately eight people from the Carol Ann Lane-Royal Drift Estates area attended. Ultimately, only \$600 of the \$2,000 advance for the engineering estimate was received, so the checks were returned. The project never advanced to the point where an engineering estimate could be initiated.

Applicants state in commenting on the late-filed exhibit, that in 1981, PG&E agreed to serve both areas with overhead service and that individuals in the Carol Ann Lane area started contacting PG&E in 1977 about electric service. PG&E contacts with Carol Ann Lane were incidental to ascertaining the load to justify the Royal Drift Estates line extension at that time. The engineering advance to determine the route, design, and cost of the extension was not made, and therefore a final determination of the project was not made. There were no specific commitments.

PG&E's witness states that a search of the Butte County land records since the hearing on October 19, 1984 has revealed that the lots and subdivisions as they exist today in the Carol Ann Lane area are the result of numerous lot splits and resplits over the past 15 to 20 years. He further states that it is difficult to determine from the parcel maps and lot numbers where one subdivision or development ends and the next one begins. As previously testified, all 27 lots in the Carol Ann Lane area (Lots 1-27) clearly appear on Assessor's Map 56-30 to constitute a de facto subdivision. However, the land records reviewed since preparation of Halstad's original testimony cast doubt on this conclusion. The land records do tend to confirm, though, that the 16 lots along Garland Road and Carol Ann Lane (Lots 4, 8, 9, and 15-27 on Assessor's Map 56-30) definitely do constitute a de facto subdivision, because they are the result of a four-by-four split. (Applicants' lots are in this area.)

The witness estimates the applicants' charges for electric service to and within these 16 lots to be the summation of the following for an underground or overhead extension:

1. An extension from the closest existing electric distribution facilities to Carol Ann Lane.
 - a. Underground (Rule 15D) \$60,000 (nonrefundable)
 - b. Overhead (Rule 15B) \$26,000, less
free footage
(all refundable)

2. An extension within the 16-lot subdivision.
 - a. Underground, property owners as a single entity (Rule 15.1) \$53,000 (\$26,000 subject to refund)
 - or
Underground to individuals, separately (Rule 15D) \$21,000 (nonrefundable)
 - b. Overhead (Rule 15B) \$10,000, less free footage (all refundable)

The witness further states that several property owners in Royal Drift Estates have applied for and qualify for overhead electric service. He believes that Point A is the most practical take-off point for extension of electric service to Royal Drift Estates. He states that, under PG&E's tariffs, it would not be permissible to follow the existing public roads from the same starting point as Carol Ann Lane (closest facilities) to Royal Drift Estates, because the overhead line would pass through a subdivision with lots less than 3 acres. However, PG&E would be permitted to extend overhead electric service if it were successful in obtaining rights-of-way around the subdivision (the Carol Ann Lane area). If the prospects for development of load in the Royal Drift Estates are strong enough, PG&E would explore the possibility of obtaining these rights-of-way in order to extend overhead service. If such an overhead extension is made, then lot owners in the Carol Ann Lane area would be able to obtain underground electric service from a much closer take-off point. While the load at Royal Drift Estates by itself might not justify an overhead extension along public roads and newly acquired rights-of-way, the combination of loads at Royal Drift Estates and in the Carol Ann Lane area may be sufficient to justify such an overhead extension with an underground extension from this new overhead line to the Carol Ann Lane area.

Based upon the Hustad's testimony, a 7,150-foot extension would be required to serve Carol Ann Lane (applicants) including 5,200 feet to the edge of the area and 1,950 feet within. An additional 1,000-foot extension would be required to reach Royal Drift Estates. According to Hustad's testimony, the loads may be sufficient to justify a free overhead extension to both Carol Ann Lane and Royal Drift Estates, and an underground extension within the 16-lot Carol Ann Lane area, estimated to cost customers \$21,000. This in-tract charge amounts to about \$1,300 per lot. ✓

Undergrounding the entire extension to Carol Ann Lane without considering Royal Drift Estates is estimated to cost \$81,000 or about \$5,000 per lot. It is estimated that an overhead extension to Carol Ann Lane could be made at no cost to customers, assuming typical electric loads with a free footage allowance of 700 feet per lot. PG&E estimated its total cost to construct an overhead line to and within the 16-lot subdivision to be \$72,000 or \$4,500 per lot compared to underground at \$178,000 or about \$11,100 per lot.

Conclusion

There have been lot splits in the area of applicants' lots and vicinity. As a result of these lot splits there are 27 lots on Butte County Assessor's Map 56-30 including 16 contiguous lots within applicants' area. Twelve of these face Carol Ann Lane and 4 face Garland Road. All but one are under 3 acres. These 16 lots constitute a de facto subdivision under PG&E's line extension rules.

Section F of PG&E's Rule 15, Line Extensions, defines "Tract or Subdivision": An area for family dwellings which may be identified by filed subdivision plans or as an area in which a group of dwellings may be constructed about the same time, either by a large scale builder or by several builders working on a coordinated basis." Rule 15.1 is applicable to "Extension of underground distribution lines at available standard voltages necessary to furnish permanent electric service within a new single-family and/or

multi-family residential subdivisions of five or more lots (subdivision) and in a new residential development consisting of five or more dwelling units in two or more buildings located on a single parcel of land..."

The applicants requesting a deviation are within a subdivision as defined in these rules.

About 8 of these 16 lots have mobile homes, 2 others have houses, and the remaining 6 lots are vacant. There are no electric lines in the area. There is a telephone tree line serving 7 customers. Therefore, there are no significant overhead lines in the area. There are no other fixed utilities in the area. No agreement has been entered into with the utility to provide electric service.

PG&E's Tariff Rules 15, Section D, and 15.1, Underground Extension Rules, are applicable to the customers requesting the deviation in this application. Applicants did not show that they are different from other underground extensions. There are no unusual circumstances making the application of these rules impractical or unjust. Since applicants' underground cost may be substantially reduced if an extension can be justified to Carol Ann Lane, nearby 5-acre lots, and Royal Drift Estates at the same time, applicants should explore such an extension.

Decision (D.) 76394 in Case (C.) 8209, dated November 4, 1969, included a finding that it is Commission continued policy to encourage underground construction, that underground construction should be the standard in California, and that all new residential subdivisions should have electrical line extensions constructed underground.

D.80736 in C.8993, dated November 14, 1972, reaffirmed the Commission's policy to require that line extensions be constructed underground. ✓

In formulating its policy the Commission was cognizant of the fact that the average cost of an electric underground extension is substantially greater than that of an overhead extension.

Findings of Fact

1. The applicants are requesting that electric service be extended to lots within a residential subdivision or development as defined in PG&E's electric line extension Rules 15 and 15.1.

2. PG&E's electric line extension Rules 15 and 15.1 are applicable to applicants.

3. No significant overhead lines or an agreement to provide electric service entered into before May 5, 1972 exist within the subdivision where applicants are located, hence applicants' case does not meet the condition of PG&E's Tariff Rule 15, Section C.1.a.

4. Lots smaller than 3 acres exist in the subdivision where applicants are located, hence the applicants' case does not meet the necessary conditions of PG&E's Tariff Rule 15, Section C.1.b.

5. The terrain does not make it impractical to construct an underground electric line extension to applicants' area.

6. Cost of an underground line extension in this area is not prohibitive or unreasonable.

7. No unusual circumstances exist making the application of these rules impractical or unjust.

8. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusion of Law

The application for deviation should be denied.

O R D E R

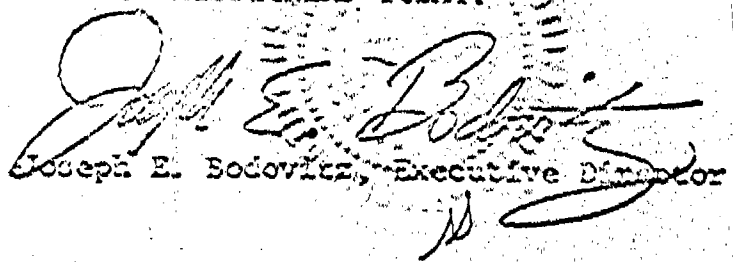
IT IS ORDERED that the application is denied.

This order becomes effective 30 days from today.

Dated DEC 19 1984, at San Francisco, California.

DONALD VIAL
President
VICTOR CALVO
PRISCILLA C. GREW
WILLIAM T. BAGLEY
FREDERICK R. DUDA
Commissioners

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


Joseph E. Bodovitz, Executive Director

Decision 84 12 053

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