

JUN 20 1988

ORIGINAL

Decision 88-06-045 June 17, 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

KENNETH E. AND JUDITH A. CARR,)
)
 Complainants,)
)
 vs.)
)
 PACIFIC GAS AND ELECTRIC COMPANY,)
 LEO CONNER, GARY HALL, AND PAUL)
 BUCKLEY,)
)
 Defendants.)
)
 (U-39-E))

Case 87-10-031
(Filed October 21, 1987)

Kenneth E. Carr and Judith A. Carr, for themselves,
 complainants.
Susan Rockwell, Attorney at Law, for Pacific Gas
 and Electric Company, defendant.

OPINION

Complainants Kenneth E. Carr and Judith A. Carr (Carrs) claim that Pacific Gas and Electric Company (PG&E) misled them regarding vertical clearance requirements from an existing 12,000 volt electrical transmission line (line) at their new house at 4717 Guenza Road in Santa Rosa. Carrs allege that as a result PG&E demanded they pay to raise or relocate the line to comply with General Order (GO) 95 requirements. Carrs maintain that PG&E representatives were at the site repeatedly, before and during construction, and assured the Carrs that the proposed house would be satisfactory regarding GO 95 clearance. They further claim that PG&E has no easement for the line at their property.

In the complaint Carrs ask that the Commission order PG&E to reimburse them for:

- \$23 per day from February 18, 1987 until the day service is provided by PG&E. The amount is based on Carrs' cost to provide electricity by portable electric generator.
- \$900 in attorney fees expended.

- \$1,350.42 being deposited in escrow with PG&E.

Attached to the complaint are copies of correspondence between Carrs and PG&E, drawings and photographs, covering the period from January 16, 1987 to August 13, 1987.

In answer to the complaint, PG&E alleges that it repeatedly informed Carrs of the 60 95 clearance requirement.

At the hearing on February 23, 1988 Kenneth E. Carr (Carr) testified that there are three major problems in this case:

- PG&E was aware of the planned location of the Carrs' house but made no mention of its policy to not allow construction in its easement until after construction had begun in November 1986.
- PG&E had representatives at the site various times before and during construction and indicated no clearance problem until late January 1987.
- PG&E requested a new easement from Carrs even though it claimed to already have a valid easement across Carrs' property.

Carr testified that PG&E mentioned the clearance problem in a letter of January 29, 1987 but had made no measurements of the actual clearance until February 12, 1987, when PG&E measured 12' vertical clearance with an ambient temperature of 40 to 50 degrees fahrenheit (F). A subsequent measurement by PG&E on May 27, 1987 indicated 11'9" to 11'10" at 60 to 70 F.

PG&E presented two witnesses, Paul Buckley, a new business representative, and Gary Hall, the Santa Rosa service planning supervisor, who is also Buckley's second level supervisor.

Buckley testified that in his capacity he acts as a liaison for customers, coordinating with the various departments at PG&E so that the customer does not have to deal separately with seven to ten different departments. Buckley first met Carrs around April or May 1986, and visited the site when the foundation layout

had been completed. At that time he told Carrs that PG&E has an unrecorded easement for the line and prefers that no construction occur under the line, but since there are no restrictions on the easement, the only practical restriction on construction is the GO 95 clearance. Carr had informed him early in the construction phase that the vertical clearance was alright. On February 19, 1987 Buckley sent a letter to Carr asking that construction stop until the clearance problem was resolved.

Hall testified further about the clearance problem. A letter of February 18, 1987 from Carr to Sil Cincera of PG&E stated that Carr had measured the clearance and found it to be at least 12' on February 15, 1987. Later on June 1, 1987 the clearance was measured at 11'10" at 70 F by PG&E and a California Department of Industrial Relations, Division of Occupational Safety and Health representative. Hall further testified that at the time the easement across Carrs' property was obtained in 1948 it was customary for PG&E to try to not encumber the property with building restrictions. When PG&E relocates a line where it has an existing easement, it asks that the party requesting relocation grant PG&E a new easement to replace the existing easement.

Hall testified that PG&E has no guidelines on GO 95 clearances relative to ambient temperature to assist parties in determining whether a clearance of 12' or more will become less than 12' at certain higher ambient temperatures. PG&E apparently has not attempted to tabulate such guidelines that would differentiate type of line, span length, and ambient temperature relative to sag. Hall assumed that since Carr is an engineer who had designed part or all of the house and garage, he knew what he was doing regarding line clearance.

Discussion

The Commission has authority under Public Utilities Code Sections 1801 through 1808 to award compensation to public utility customers for reasonable advocate's fees, reasonable expert witness

fees, and other reasonable costs of participation or intervention in any proceeding of the Commission to modify or influence a rate.

Carr's request for compensation for attorney fees could be considered by the Commission if the case dealt with modifying or influencing a rate. Since it clearly does not deal with rates, Carr is not entitled to consideration for compensation of attorney fees.

The Commission under Public Utilities Code Section 734, 735, and 736 may order a public utility to make reparations; however, the Commission is without authority to award damages (Pacific Tel. & Tel. (1971) 72 CPUC 505.) Carr's request for compensation of his cost of providing his own electricity is a request for damages and hence is not within our jurisdiction.

The issue of whether PG&E has a valid easement across Carrs' property has been adequately addressed by PG&E and not refuted by Carr. PG&E has a documented easement from an earlier owner of the property. The easement was "unrecorded", so it is uncertain whether a title search would reveal its existence. However, we believe that a reasonable person would be aware that such an easement may exist by virtue of the physical existence of the line. We conclude that PG&E has a valid easement for the line in the original location. Since the relocation was necessary in order to maintain GO 95 clearance requirements, PG&E is reasonable in requesting that Carr grant PG&E a similar easement for the relocated line. The new easement will replace the existing easement, should not contain building restrictions, and should be recorded.

The relevant issue for the Commission to address is whether PG&E's charges for relocation of the line are proper, and whether they are the responsibility of Carrs. To do this we must consider how PG&E handled this service matter. GO 95 must be complied with, and PG&E is correct in requiring 12' clearance under all conditions. But, did PG&E act properly in assuming that since

Carr is an engineer he would know how much the line sag would change with ambient temperature, and with changing load conditions due to changing electrical demand caused by air-conditioning and other causes?

Both PG&E and Carr measured the clearance at 12' a few days apart in February, 1987. Although PG&E made Carr aware of the concern over the clearance, it apparently did not make Carr specifically aware that its concern was not reduced or eliminated by the February measurement.

We believe that a reasonable person might have assumed, as Carr did, that the clearance was adequate, although minimal, since both PG&E and he measured it at 12'. PG&E apparently knew that subsequent measurements would be less than 12' in warmer weather, but did not communicate this to Carr when notifying him of clearance problems. PG&E electric service people should be knowledgeable about sag from extensive experience. Carr is a Civil Engineer, not an Electrical Engineer and certainly not an experienced line engineer. Designing a house and garage does not imply expertise on line design.

Suppose a slightly different condition existed. If the clearance had been 12'4" in February, would Carr have been expected to know if the clearance would still be 12' or more at 105 F ambient temperature? We think not. Based on Hall's testimony it is not clear that PG&E would be able to answer that question without waiting to take later measurements. Additionally, what should Carr assume as a worst condition regarding ambient temperature and load on the line? Is the load expected to be greater on a weekday, weekend, or holiday for the same ambient temperature? Carr cannot be expected to have the level of expertise to answer these questions.

We believe that PG&E's approach to this problem put Carr at an unreasonable disadvantage and risk. Had Carr been made aware of the nature of the problem he might have had an opportunity

to alleviate it without incurring the costs of relocation of the line. We conclude that it is not reasonable for PG&E to assume that Carr is an expert on line sag, and therefore PG&E did not act reasonably in dealing with Carr on this matter. Carr should not be held responsible for the costs of relocating the line. PG&E should withdraw the \$1,350.42 bill for relocation and refund the portion of the bill already paid.

Findings of Fact

1. Carrs filed a complaint against PG&E seeking reimbursement for the cost of providing their own electricity, for attorney fees, and for the cost of relocating the line at their new house in Santa Rosa.

2. The relief requested does not affect a rate.

3. PG&E has an unrecorded easement for the line at the Carrs' property.

4. The line clearance from Carrs' house was measured at 12' on February 12, 1987, 11'9" to 11'10" on May 27, 1987, and 11'10" on June 1, 1987.

5. The required clearance for the line under GO 95 is 12'.

6. PG&E notified Carr of the required GO 95 clearance.

7. PG&E did not make Carr aware of the change in clearance due to line sag from changing ambient temperature and other changing conditions.

8. PG&E assumed that Carr understood the conditions that cause changing clearance since he is an engineer.

9. Carr cannot be expected to be an expert on line clearance by virtue of being a Civil Engineer.

10. PG&E did not adequately carry out its responsibility in informing Carr about the GO 95 clearance required.

Conclusions of Law

1. The Commission does not have authority to award attorney fees to Carrs in this matter.

2. The Commission does not have authority to award monetary damages to Carrs for providing their own electricity.
3. The required clearance under GO 95 must be maintained.
4. Carrs should not be responsible for the cost of relocating the line to conform to GO 95.
5. Carrs should grant PG&E a new easement for the relocated line to replace the existing easement.

ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company shall withdraw the bill for relocation of the 12,000 volt transmission line at the Kenneth E. and Judith A. Carr (Carrs) property at 4717 Guenza Road in Santa Rosa and refund the amount of that bill paid to date by Carrs.

2. Except to the extent granted, the complaint in Case 87-10-031 is denied.

This order becomes effective 30 days from today.

Dated JUN 17 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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

Victor Weisser

Victor Weisser, Executive Director

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