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Decision 91-06-038 June 19, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ARDENWOOD/REED JOINT VENTURE,)
)
 Complainant,)
)
 vs.)
)
 PG&E, (U 39 G))
)
 Defendant.)

ORIGINAL

Case 90-12-061
(Filed December 20, 1990)

Richard E. Locke, Attorney at Law, for Pacific Gas and Electric Company, defendant.

OPINION

Statement of Facts

Pacific Gas and Electric Company (PG&E) is a California corporation principally engaged in the provision of public utility gas and electric service throughout most of Northern and Central California.

In 1984, Kaiser Development Company, for itself and as agent for Local Improvement District (LID) 25, requested that pursuant to Section C of PG&E's Rule 15, PG&E install a gas system consisting of gas distribution mains and related facilities extending from PG&E's existing mains to and within the tract of land comprising LID 25, situated in the area of Newark Boulevard in the City of Newark in Alameda County. Kaiser also asked PG&E to install gas service stubs from these new distribution mains to or near the property line or proposed curbs of various lots in LID 25.

PG&E worked with Kaiser to design the gas system to serve known projected gas loads within LID 25. The plans were submitted to and approved by Kaiser. Contracts requiring substantial

refundable advance payments were signed September 26, 1984. The gas system installation was thereafter completed pursuant to the contract, and accepted by Kaiser. On June 30, 1986 the rights for refunds and all other interests in the system were assigned and transferred by Kaiser to LID 25. As LID 25 is a subordinate instrumentality of the City of Fremont, Fremont acts as administrator of LID 25. The district lies on the border of Newark and Fremont.

Within LID 25 Ardenwood/Reed Joint Venture owns a 7.5 acre parcel at Highway 84 and Ardenwood Boulevard. The Joint Venture, with Hathaway Development Company's Jon Anderson as development manager, is now constructing a retail shopping center, day care center, car wash, etc., on the site. The developers had paid a substantial assessment fee estimated to be approximately \$1 million to LID 25, and accordingly when it came time to develop their property they were surprised to learn that there was no gas extension to the site.

PG&E told Anderson that the original assessment district customer had required facilities to be initially extended only to serve then known projected gas loads, priority areas required by the District, and that the original assessment district work did not include an extension to the Joint Venture's site. As the development expanded, PG&E would extend facilities in response to service requests and in conjunction with its filed tariff. The initial ballpark estimate of the costs to the Joint Venture to extend gas service was \$50,000.

The Joint Venture meanwhile had obtained some assessment district engineering drawings which showed a gas line extension across Ardenwood Boulevard to its property, and based on these drawings felt that PG&E should be required to document why it did not install the gas line as these drawings indicated; or, if it could not document the omission, PG&E should be required to install the line and collect from LID 25.

PG&E's position was that this was a matter between LID 25 and the Joint Venture, that PG&E provides gas facilities at the request of a contractor or interested party willing to pay installation costs, and that in this instance no advance payment or request was made to PG&E by Kaiser to extend service to the Joint Venture property when the 1984 Kaiser contracts were made and the project completed and accepted.

Unsatisfied with a Consumer Affairs Branch finding that PG&E had met its contractual obligations to Kaiser and was in the present situation, adhering to its filed tariff, Ardenwood/Reed filed the present complaint.

Meanwhile, contact was made with Fremont to see if LID 25 funds could be used to finance the cost to install gas service. The City, reviewing the old LID 25 improvement plans, concluded that the district's intent had been to provide gas service to all parcels within the district, but that since the plans at that time had shown no point of connection to the Joint Venture's parcel, PG&E had quite appropriately not provided service and that the district had not been billed for such a service installation. In addition, although the responsibility to assure that the assessment levied reflected the improvements made was that of the property owner, the property owner had not at that time voiced concern over the omission. It then developed that the City, because of some confusion on one of the original drawings, agreed that the assessment district would be willing to pay for the gas main extension to the Joint Venture's project, since it was a refundable item anyway. However, the City, as administrator for the district, required that the Joint Venture pay for the extension and then seek reimbursement from LID 25 which the City would approve.

It was also decided that it would be less expensive to bring service out of the City of Newark, in an improved area under the Highway 84 freeway to the project, some 900 feet, rather than the approximate 2500 feet from the main on Kaiser Drive within the

LID. The off-site costs for this alternate route were approximately \$40,000.

A duly noticed public hearing was held in San Jose on March 19, 1991 before Administrative Law Judge (ALJ) John B. Weiss. Despite notice and a telephoned reminder the day before to Anderson setting the hearing time back 30 minutes, which Anderson agreed to, the complainant did not appear for the hearing. After waiting another 15 minutes, the ALJ proceeded with the hearing, taking defendant's exhibits and the testimony of defendant's witness. At conclusion of the hearing the matter was submitted for decision.

Discussion

The reason that this complaint went to hearing was the insistence of Ardenwood/Reed that PG&E be made to prove why it had not installed a connecting gas main, as certain of the district's drawings assertedly showed were intended. However, as Exhibit No. 9, the February 11, 1991 letter from Fremont's Public Works Department to PG&E (with copy to Anderson) set forth, a connected gas service was not shown on the final improvement plans. As these plans did not show any point of connection to the Joint Venture's parcel, it would not have been possible nor would it have been reasonable to expect PG&E to supply a connection based on the improvement plans, nor did PG&E bill the district for any such connection.

The Joint Venture's assessment agreement was with the improvement district, not with PG&E. Kaiser, acting for the district, signed off and accepted the installation contracted for in 1984. It included no stub to the Joint Venture's parcel. That ended PG&E's obligation to provide service under that contract.

That Ardenwood/Reed desired a gas main extension in 1990 to serve its parcel is an entirely separate matter as far as PG&E is concerned, and PG&E's obligation is to provide such an extension pursuant to its Rule 15, which requires the party seeking the extension to advance the costs if it wants the service.

That LID 25 will reimburse Ardenwood/Reed upon submission of a paid invoice is not PG&E's concern. It is strictly between the district and the Joint Venture. PG&E has acted reasonably in this matter and has worked to help the Joint Venture in obtaining consideration and a favorable response from Fremont. If Ardenwood/Reed wants the gas extension to be built, it must be conditioned upon payment by it to PG&E of the advances applicable under PG&E's rules.

Findings of Fact

1. PG&E and Kaiser, acting as agent for LID 25, entered into contracts for PG&E to install gas distribution mains and related facilities constituting a gas system, and to install gas service stubs within a tract known as LID 25 on the borders of Newark and Fremont in Alameda County.

2. Those 1984 installation contracts were completed with Kaiser accepting the work and signing off for the contracts.

3. The 1984 improvement district plans under the PG&E contract did not include provision of service to complainant's parcel in the tract and no service was provided. Plans included service only to known projected gas loads.

4. Complainant paid LID 25 substantial improvement district assessment fees and believed those included fees for gas service, although it failed to note omission on the plans of the improvement district for service to its parcel.

5. Subsequently, when ready to develop its parcel, complainant discovered its parcel was not provided with gas service.

6. PG&E has been ready and willing to extend gas service to complainant's parcel but only under provisions of its Rule 15 which requires the party seeking such service to advance the costs.

7. Complainant, on the basis of some improvement district plans, contends that PG&E should make the installation and collect

from LID 25, or prove that it was not required to include complainant's parcel in the 1984 installation.

8. Fremont, administrator today of LID 25, concedes that some confusion attends the issue of gas service to complainant's parcel, apparently derived from some of the improvement districts' internal plans, but compounded by the failure of the parcel owner at the time the installation was made to have noted the omission of service to complainant's parcel, and has agreed to reimburse complainant after complainant pays for the presently sought extension.

9. PG&E has acted reasonably and pursuant to the terms of its filed tariff.

10. Ardenwood/Reed should advance the costs of the sought after installation pursuant to the provisions of Rule 15 of PG&E's tariff if it wants PG&E to extend service.

Conclusions of Law

1. The complaint should be denied.
2. The gas main extension should be built by PG&E conditioned upon advance to PG&E of the applicable advances due under Rule 15.

ORDER

IT IS ORDERED that the complaint is denied.

This order is effective today.

Dated June 19, 1991, at San Francisco, California.

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


Norman D. Shumway, Executive Director

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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