

SEP 9 1991

Decision 91-09-027 September 6, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joseph T. Nardo, )  
Complainant, )

**ORIGINAL**

vs.

Case 91-03-047  
(Filed March 21, 1991)

Southern California Edison )  
Company, )  
Defendant. )

Joseph T. Nardo, complainant, for himself.  
James P. Scott Shotwell and Frank J. Cooley,  
Attorneys at Law, for Southern California  
Edison Company, defendant.

OPINION

Summary

Complainant Joseph T. Nardo filed complaints against General Telephone Company of California (GTE) and against Southern California Edison Company (Edison) alleging lack of reasonable care in the installation of telephone and electrical service lines to his building in Santa Barbara. Upon written request of complainant, the complaint against GTE was dismissed on April 19, 1991, by Decision (D.) 91-04-038. A hearing on the complaint against Edison was held on July 11, 1991, in Santa Barbara. Edison moved to dismiss the complaint on grounds that it failed to state facts upon which relief can be granted by the Commission. Edison's motion is granted. Case 91-03-047 is dismissed.

Background

Nardo owns a building located at 922 State Street in Santa Barbara. His building stands side by side with a second

building owned by Mike Rizer, located at 924 State Street. Rizer's building, in turn, adjoins a third building on State Street.

Edison's electrical service to both the Nardo and Rizer buildings had for decades been provided by way of an electrical terminating facility, or "pull box," affixed to the side of the third building. Nardo and Rizer each was responsible for the electrical wiring that ran from this pull box, over the third building, over the corner of a fourth building, and into their individual meter panels.

At Rizer's request, Edison in 1987 upgraded the electrical service to the Rizer building to permit increased power usage. Because of right-of-way concerns in stretching wires across other buildings, Edison decided to run its service conductor underground from a main conduit along the nearest cross street (Carrillo Street) and State Street to the front of Rizer's building.

In conjunction with this service upgrade, Edison ran an alternative service point for the Nardo building. Edison advised Nardo that he was not required to switch his service to the new service point, but the utility recommended it because of the age and lesser capacity of Nardo's existing electrical service.

Nardo and Rizer conferred with Edison several times during this period to plan the new service. The two owners, who have been neighbors for 30 years, agreed to share costs of connecting their service. They agreed to run their wiring up the side and over the roof of the Rizer building to their meter panels in the back of the buildings. However, complications arose. First, the owners learned that the conduits they were installing on the facade of the Rizer building caused an encroachment on city property. They would be required to obtain city permission or design a non-encroaching connection. Second, Rizer would grant Nardo a permissive use, but not an easement, for that portion of Nardo's line that crossed Rizer's property.

Because of these problems, Edison agreed to relocate the new service terminating points. One would remain at Rizor's property but would be moved to a point where the owner's hookup would not be an encroachment. Another service point would be located at Nardo's property, thus avoiding the need to cross Rizor's property. The changes cost Edison approximately \$2,000.

Rizor connected to his new service in 1987. Nardo connected to his new service point on March 8, 1989. Nardo spent \$6,011.40 to make electrical modifications at his building and to connect to the new service terminating point.

#### Positions of the Parties

Nardo alleges that Edison failed to act with reasonable care in installing the alternative service points. He testified that it was Edison's original service points that encroached on city property. He believes that Edison's placement of the original service points caused Nardo and his neighbor to disagree on the easement for service to Nardo's building. Compounding these problems, he states, was the frustration of having to deal with utility and city bureaucracies.

Edison's planning manager Duane H. Terrill and his predecessor John G. Britton testified that the original service point installations had been planned in meetings with Nardo and Rizor. Terrill and Britton presented evidence showing that the utility's service points did not encroach on city property, and that it was the responsibility of the owners to connect to the service points in a manner that would comply with city codes. Even so, they added, when problems developed with the new service point locations, Edison at its own expense changed the locations as an accommodation to these customers.

Edison's witnesses state that Nardo was advised on several occasions that he was not required to use the alternative service point. He could have continued to receive service through the existing connection, although that connection was an older one.

and could not support increased power needs. Witness Terrill stated that Nardo waited 18 months to connect his building to the new service point.

**Discussion**

Nardo's complaint alleges that "Edison failed to act with reasonable care in [running its] newly underground secondary service line from the back alley and terminating [it] into junction boxes below the street surface." (Complaint, Section (F), Paragraph 1.) The complaint, however, does not identify any specific duty that Edison breached.

Nardo's claim, in essence, seeks reparation for the expenses associated with Nardo's decision to switch to Edison's alternative service point. These expenses include wiring running from Edison's alternative service point to the Nardo property and the meter. Under the utility's tariff Rule 16, however, Nardo is required to furnish the wiring running from the service point to the meter.<sup>1</sup> Moreover, under Rule 16, Edison is under no obligation to place a customer's service point at any particular

location. Edison's obligation is to provide service to the customer at the point of service delivery at the point of termination of the Company's service conductors on the customer's overhead support or within the customer's underground terminating enclosure, whichever is applicable, to the customer's meter switch.

1 Rule No. 16, Section (A) (2) (c), provides: "For each service connection, overhead or underground, the customer shall furnish at his own expense a set of service entrance conductors which shall extend from the point of service delivery at the point of termination of the Company's service conductors on the customer's overhead support or within the customer's underground terminating enclosure, whichever is applicable, to the customer's meter switch." (Emphasis added.)

location.<sup>2</sup> Edison installed the alternative service point at Nardo's property line, a customary practice for service to zero-lot-line buildings like Nardo's.

Edison's first installation of the alternative service points proved unsatisfactory to Nardo. Even if the utility was at fault in this installation--and we do not find that to be so on this record--Edison cured the defect by relocating the service points. At the time of the first installation and at the time of the relocated installation, Nardo still had the option of continuing to receive service from his existing service point, rather than incurring the cost of changing to the new installation point. Most of the \$6,011 cost incurred by Nardo was attributable to his decision to connect to the alternative service point in order to receive enhanced electrical service for his building.

#### Conclusion

Under Rule 56 of the Rules of Practice and Procedure, Edison timely moves that the complaint be dismissed for failure to state any violation upon which this Commission may act.<sup>3</sup> Rule 9 requires that a complaint set forth:

<sup>2</sup> Rule No. 16, Section (B) (2) (a) (1), provides: "In areas where the Company maintains an underground distribution system individual service connection (service laterals) will be underground, using the shortest practicable route to the applicant's termination facilities, which shall be at a location satisfactory to the Company." (Emphasis added.)

<sup>3</sup> Alternatively, Edison moves that the complaint be dismissed because it is barred by the doctrine of res judicata. Edison alleges that Nardo brought a substantially similar claim before the Small Claims Court of Santa Barbara Municipal Court. (Case No. 111743, January 3, 1991.) That claim was decided in favor of Edison. Nardo alleges that he did not have the opportunity to present his claim in full in that forum, and that therefore res judicata should not apply. Since we dismiss this complaint on other grounds, we do not reach the question of whether the claim is barred because of the prior adjudication.

"...any act or thing done or omitted to be done by any public utility including any rule or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission."

Neither the complaint nor the complainant's evidence at hearing alleges any violation of Edison's tariff provisions, any provision of law, or any order or rule of the Commission.<sup>5</sup> In the absence of such allegation, we grant Edison's motion. The complaint is dismissed.

#### Findings of Fact

1. Joseph T. Nardo owns a building located at 922 State Street in Santa Barbara. The building stands side by side with a second building owned by Mike Rizor, located at 924 State Street.

2. For many years, Edison's electrical service to both the Nardo and Rizor buildings terminated at a "pull box" affixed to the side of a third building adjoining the Rizor property.

3. At Rizor's request, Edison upgraded the electrical service to the Rizor building in 1987 by running an underground connection terminating at the front of the Rizor building.

4. Edison's new underground connection also provided an alternative service point for the Nardo building.

5. Edison recommended that Nardo connect to the alternative service point because of the age and lesser capacity of the existing service point.

<sup>4</sup> See Public Utilities Code § 1702.

<sup>5</sup> See Farber v. P.T. & T. Co. (1967), 67 CPUC 386, 387-88. ("The complaint does not allege any violation of filed tariff provisions, any provision of law or any order or rule of the Commission. The complaint is dismissed for failure to state a cause of action within the jurisdiction of the Commission.")

6. Nardo was not required to connect to the alternative service point.

7. When Rizor and Nardo encountered problems in connecting to the new service points, Edison moved the service points to different locations at each of the properties.

8. Rizor connected to the new service point in 1987.

9. Nardo connected to the new service point on March 8, 1989.

10. Nardo spent \$6,011.40 to make electrical modifications and connect his building to the new service point.

11. Nardo on March 21, 1991, filed complaints against Edison and against GTE dealing with their new underground electrical and telephone service lines. At Nardo's written request, the complaint against GTE was dismissed on April 19, 1991, by D.91-04-038.

12. A hearing on the complaint against Edison was held on July 11, 1991, in Santa Barbara.

Conclusions of Law

1. Edison's obligations in providing an alternative service point are governed in part by its tariff Rule No. 16, Section (A) (2) (c), Revised Cal. PUC Sheet No. 11817-E.

2. Rule No. 16 provides, among other things, that the utility may select the location of a new service point and, thereafter, it is the obligation of the customer to connect wiring from the customer's building to the service point.

3. Neither Nardo's complaint nor his testimony at hearing alleges any violation of Edison's tariff provisions, any provision of law, or any order or rule of the Commission.

4. Edison's motion to dismiss for failure of the complaint to state a cause of action upon which the Commission may act should be granted.

ORDER

IT IS ORDERED that the motion of Southern California Edison Company to dismiss this complaint for failure to state a cause of action upon which the Commission may act is granted. The complaint is dismissed.

This order is effective today.

Dated September 6, 1991, at San Francisco, California.

PATRICIA M. ECKERT  
President  
JOHN B. OHANIAN  
DANIEL W. FESSLER  
NORMAN D. SHUMWAY  
Commissioners

I abstain.

/s/ G. MITCHELL WILK  
Commissioner

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

NEAL J. SHULMAN, Executive Director