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Decision 92-01-047 January 21, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Arthur Kundé & Sons, Inc. to deviate from mandatory requirements for underground utility extensions in Kenwood, Sonoma County, California.

ORIGINAL

Application 91-06-031 (Filed June 17, 1991)

O P I N I O N

1. Summary

Applicant Arthur Kunde & Sons, Inc. (Kunde) has filed Application (A.) 91-06-031 to deviate from mandatory requirements for undergrounding utility extensions. For the reasons set forth below, Kunde's application is dismissed for lack of prosecution.

2. Background

On June 17, 1991, applicant Kunde filed an application to deviate from the Commission's undergrounding requirements. Kunde seeks a deviation from California Public Utilities Code (320 in order to extend an overhead powerline to the other side of a pond. This proposed overhead extension is located near a scenic highway. On July 19, 1991, within the protest period provided by Rule 8.3 of our Rules of Practice and Procedure, the California Department of Transportation (CalTrans) sent a letter objecting to Kunde's application since the line extension would be visible from a scenic highway and no significant environmental impacts would result from the undergrounding.

On July 29, 1991, the assigned administrative law judge (ALJ) issued a ruling which deemed Kunde's application incomplete in that it failed to comply with Rules 43.1 through 43.8 which set standards for the filing of applications for exemption from the rules for undergrounding electric lines. The ruling set forth various deficiencies in the application, and advised applicant that it could confer with John Dutcher of the Commission Advisory and

Compliance Division (CACD) in preparing a completed application. The ruling set forth Dutcher's address and telephone number.

Since the July 19, 1991 CalTrans letter was not sent to applicant, a copy of the CalTrans letter was attached to the ALJ ruling, and applicant was instructed to include any response it wished to make to CalTrans' comments in its amended application. The ALJ ruling did not specify a date by which Kunde was to file an amended application.

Since Kunde had not filed an amended application by October 1991, the assigned ALJ issued a ruling on October 25, 1991 which notified Kunde that if it did not file an amended application in accordance with the ALJ's July 29 ruling by November 25, 1991, the ALJ would recommend to the Commission that the application be dismissed.¹ A copy of the October 25, 1991 ruling was served on Kunde by registered mail, return receipt requested. The return receipt indicates that Kunde received the ruling on October 28, 1991. Kunde did not file an amended application by November 25, 1991.

3. Discussion

The October 25 ALJ ruling, which Kunde received on October 28, 1991, stated that if Kunde did not file an amended application by November 25, 1991, the ALJ would recommend to the Commission that the application be dismissed. Kunde did not file an amended application by November 25. Since Kunde has had since July 29, 1991 (the date of the first ruling advising that the application was incomplete and should be amended) to file an

¹ At the time the October 25, 1991 ruling was issued, the assigned ALJ was also in receipt of a September 6, 1991 letter from CACD to Pacific Gas and Electric Company (PG&E) and an October 4, 1991 letter from PG&E to CACD on matters related to Kunde's application. Copies of that correspondence were attached to the October 25 ruling.

amended application, and did not do so, we dismiss this application for lack of prosecution. Since applicant has had nearly four months to comply with the ALJ ruling, this order should be effective immediately.

Findings of Fact

1. Applicant Kunde filed A.91-06-031 to deviate from mandatory requirements for undergrounding utility extensions on June 17, 1991.

2. On July 29, 1991, the assigned ALJ issued a ruling which deemed Kunde's application incomplete, and advised Kunde to file an amended application consistent with the ruling.

3. By October 1991, Kunde had not yet filed an amended application. Therefore, on October 25, 1991, the assigned ALJ issued a ruling notifying Kunde that if it did not file an amended application in accordance with the ALJ ruling by November 25, 1991, the assigned ALJ would recommend that the Commission dismiss Kunde's application.

4. A copy of the October 25, 1991 ruling was served on Kunde by registered mail, return receipt requested. The return receipt indicates that Kunde received a copy of the ruling on October 28, 1991.

5. Kunde did not file an amended application by November 25, 1991.

Conclusions of Law

1. Kunde did not comply with the assigned ALJ ruling and did not file an amended application by November 25, 1991. Since Kunde has had nearly four months to file an amended application, and did not do so, A.91-06-031 should be dismissed for lack of prosecution.

2. Because Kunde has had nearly four months within which to file an amended application, this order should be effective today.

ORDER

Therefore, IT IS ORDERED that:

Application 91-06-031, Arthur Kunde & Sons, Inc.'s application to deviate from mandatory requirements for undergrounding utility extensions, is dismissed for lack of prosecution.

This order is effective today.

Dated January 21, 1992, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director