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Decision 92-04-022 April 8, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

William M. Moores, Complainant, vs. Pacific Gas & Electric Company, Defendant.	Case 91-03-061 (Filed March 29, 1991)

William M. Moores, for himself, complainant.
Michael W. Foster, Attorney at Law, for Pacific Gas and Electric Company, defendant.

O P I N I O N

In this proceeding, William M. Moores (complainant), a real estate developer, seeks to recover from Pacific Gas and Electric Company (PG&E or defendant) the sum of $10,566, which represents the aggregate of five separate items he claims are owed to him as refunds on amounts deposited with PG&E for work to be performed by PG&E, or as refunds for overcharges paid by him to PG&E for work performed for him by PG&E.

Background

During the 1970s and 1980s, complainant was developing a real estate subdivision in an area known as Irish Beach in Mendocino County, California. The claims here prosecuted involve two separate portions of that subdivision, Unit 7 and Unit 9.

Specifically, the individual items making up the aggregate claim are as follows:

a. $755 electric hookup refund on Lot No. 30 in Unit 7.

b. $6,336 refund for inspection and labor overcharges in connection with the installation of a splice box in Unit 9.

c. $2,250 refund representing 75% of the cost of a second splice box located in Unit 9.

d. $1,000 refund of deposit in connection with line extension job in Unit 9.

e. $225 refund representing overcharge in connection with inspection time for PG&E Inspector Perry on September 5 and 6, 1989.

PG&E denies liability for any of the above individual claims and/or the aggregate claim, and alleges that complainant has been credited with all amounts to which he is entitled, and that all charges made by PG&E for services rendered by its employees are fair and reasonable in amount. In order to resolve this matter, we must examine each item individually in turn.

Discussion

Item a. $755 Hookup Refund

On December 11, 1978, complainant entered into an Underground Line Extension Agreement (Exhibit 16) with PG&E concerning the extension and provision of electrical service by PG&E to Unit 7, Irish Beach. This agreement required complainant to provide PG&E with a nonrefundable amount of $1,485.12 and a refundable advance of $31,820.30 against the projected costs of construction of the electrical line extension. The agreement also incorporated a refund provision similar to that contained in PG&E Tariff Rule 15.1 then filed with this Commission. The refund provision contained in this rule is further discussed below.

On or about June 4, 1979, complainant and PG&E entered into a second agreement (Exhibit 9, pp. 5-7) which, by its terms, canceled and superseded the December 11, 1978 agreement. The later agreement provided for a nonrefundable advance of $1,485.12 and a refundable advance of $31,709.25, and, like its predecessor, contained the refund language found in PG&E Tariff Rule 15.1.

Under the terms of the June 4, 1979 agreement with PG&E, complainant, in connection with developing Unit 7, agreed to

construct and install, to PG&E's specifications, the necessary facilities for providing an electrical service line extension to Unit 7 and to each building lot in the development as it progressed. Upon completion of construction of the line extension facilities, PG&E was to inspect the construction. When PG&E had approved the construction, complainant was to convey title to the electrical facilities to PG&E by deed. Thereafter, as each individual purchaser of a residence in the subdivision applied to PG&E for individual service, PG&E would refund to complainant the sum of $755, which represented the pro-rata amount it would have cost PG&E to install the extension and service to that lot had it done so itself. The claim under consideration here arises out of a refusal by PG&E to refund the agreed sum ($755) to complainant following a request for permanent electrical service hookup by a Richard Phillips, the purchaser of Lot No. 30 in Unit 7. PG&E claims the refund is barred by the 10-year refund limitation period contained in its Tariff Rule 15.1 and its successor, Rule 15, incorporated into the terms of the agreement between itself and complainant.

For the period December 9, 1969 through December 19, 1985, PG&E had on file with this Commission a tariff rule (Rule 15.1) governing underground electric line extensions (Exhibit 14). This rule contained the following provision:

"D. Refund of Advance

"The refundable advance determined in accordance with Section C.2 or C.3 will be subject to refund as follows:
...

"6. No payment will be made by the Utility in excess of the refundable amount advanced by the developer nor after a period of 10 years from the date the Utility is first ready to render service from the extension, and any unrefunded amount remaining at the end of the 10 year period

will become the property of the Utility."
(Emphasis added.)

On December 19, 1985, the above-quoted portion of PG&E Tariff Rule 15.1 was superseded by PG&E Tariff Rule 15 (Exhibit 13), which contains conditions on refunds virtually identical to that part of Rule 15.1 quoted above (Exhibit 13, p. 3, Section B.3.c.(6)). In this particular case, the differences between the language of the two versions are of no consequence to the outcome of the claim.

From a review of the contract terms and the above-referenced provisions of the tariff rules in effect throughout the period pertinent to this controversy, it appears that the answer to whether complainant is entitled to a refund is dependent upon two dates. First, the date PG&E was "first ready to render service from the extension," and second, the date service to Phillips' lot was established (date of hookup). If these two dates are within 10 years of each other, complainant is entitled to a refund.

In regard to the date of hookup, the evidence (Exhibit 20) indicates that on April 17, 1989, Phillips requested PG&E to provide permanent service commencing May 31, 1989. It is noted that Phillips' application for permanent service indicates that temporary service was then in place. While there is evidence (Exhibit 9, p. 4) that the permanent service hookup was not actually made to Phillips' property until some time subsequent to May 31, 1989, the exact date the permanent hookup was made cannot be established from the record. Since this information was within PG&E's knowledge and control and should have been available from its records but was not produced at the hearing, we must, for the purpose of resolving this particular issue, establish a controlling date from the evidence of record. For this purpose, we adopt as the controlling date May 31, 1989, the date Phillips requested permanent service to commence. Thus, for purposes of determining whether a refund was due or was barred by the 10-year limit

contained in PG&E's Tariff Rules 15.1 and 15, the cutoff date of the 10-year period is May 31, 1989.

The date the 10-year refund limitation period commences is, pursuant to the terms of both the June 4, 1979 agreement and the applicable tariff rule, the date PG&E was "first ready to render service from the extension." It is this date which is at the center of this portion of the controversy that the parties disagree upon.

Unfortunately, the phrase "first ready to render service from the extension" as used in Tariff Rules 15.1 and 15 here involved and in the June 4, 1979 agreement between PG&E and complainant is not defined, nor does it appear that the parties agree as to when that event occurred or was to occur. PG&E claims that the date it was "first ready to render service from the extension" was June 18 or 19, 1978 (both dates have been used in the testimony) when the line extension was energized for the first time. PG&E argues that from that time forward, it had the capacity to render service to Unit 7 from the extension, and for that reason, the 10-year period should be measured from June 18 or 19, 1978. Further, they argue, since more than 10 years have elapsed between June 18 or 19, 1978 and the date of Phillips' hookup, which we have established as May 31, 1989, no refund was due complainant.

Complainant, on the other hand, argues that PG&E was not "ready to render service from the extension" on June 18 or 19, 1978 as PG&E claims, because the energizing of the line on June 18 or 19, 1978 was strictly temporary in nature and was not for the purpose of servicing Unit 7, but was for cable protection only, as admitted by PG&E. In addition, complainant claims that even if PG&E was entitled to use the line extension in June or from December 11, 1978, when it assumed ownership of the line extension facilities (see Exhibit 16, p. 4), it still could not render service from the line extension to Phillips' property until an

electric meter had been installed on the premises and inspected and approved by the county building inspector (see Exhibit 9).

In a June 19, 1978 letter to complainant, PG&E advised:

> "As you know, the 12,000 volt lines were recently energized for cable protection. The lines have been de-energized, and will remain that way until, and if, we assume ownership of your facilities." (Exh. 17.)

Title to the line extension facilities was not conveyed from complainant to PG&E until December 11, 1978, as noted above. If we accept PG&E at its word as expressed in that letter, PG&E was not ready to "render service from the line extension" until December 11, 1978 at the earliest.

Once again, however, this information does not resolve our dilemma as it does not prove when PG&E was ready to render service from the extension. For our purposes in establishing this critical date, we will accept as the date PG&E was first ready to render service from the extension, the statement of Kenneth L. Bedsaul, District Representative of PG&E, contained in a letter to complainant dated October 4, 1989 (Exhibit 9, p. 4). In refusing a refund in connection with Phillips' hookup, Bedsaul wrote:

> "Our records indicate that the date service was available to this project [Unit 7] was June 4, 1979. In accordance with your electric contract for this service, the ten year expiration for refunds ended on June 4, 1989."

While Bedsaul's letter continued that Phillips' hookup was not made until after June 4, 1989, and thus outside the 10-year limitation period, we have already stated that for purposes of this proceeding, we have established May 31, 1989, the date Phillips requested the hookup to be effective, as the date on which the hookup occurred. Under these circumstances, the hookup was effectuated four days prior to the expiration of the 10-year period, and complainant is entitled to a refund in the amount of $755.

In view of our decision on this point, it is not necessary for us to consider further arguments regarding the Unit 7 refund issue.

Charges related to Unit 9, Irish Beach

The remainder of the claims listed above (Items b-e) arise in connection with Unit 9 of the development at Irish Beach.

Item b.

In this portion of his claim, complainant seeks recovery of $6,336 which he alleges are overcharges for inspection fees and labor performed by PG&E employees in connection with the installation of a splice box in Unit 9. Although precise figures were extremely difficult to establish in this case, a reasonable estimate of how complainant calculates this $6,336 figure is as follows: (1) $1,500 in excessive inspector travel time expenses, (2) $400 in inspection time allegedly not performed by Inspector Val Barron, (3) $2,900 in alleged miscalculations in number of hours worked by the inspectors, and (4) $1,368 overcharge in related Contributions in Aid of Construction (CIAC) "tax." We recognize that the total of these four items amounts to only $6,168; however, since we disallow recovery to complainant for any of these items, any difference in the alleged total and the sum of the individual items is of no significance. It merely illustrates the difficulty experienced in attempting to arrive at accurate facts and figures in this case.

In December 1988, PG&E and complainant entered into an agreement for the construction of an electrical line extension to service Unit 9 of the Irish Beach development (Exhibits 5 and 6). Pursuant to the terms of this agreement, complainant was to install the necessary facilities and upon a satisfactory inspection by PG&E, convey the facilities to PG&E by deed, and thereafter obtain reimbursement of the cost of installation. As part of the agreement, complainant made a deposit with PG&E to cover anticipated inspection costs with the understanding that upon the

successful completion of the inspection, the costs associated with the inspection process were to be calculated and that amount deducted from the deposit. The deposit surplus, if any, then was to be returned to complainant, or in the event the inspection fees exceeded the deposit, complainant was to pay the excess to PG&E. As part of the agreement, it was understood that the rate to be charged by PG&E for its inspectors was $45 per hour and the charge for any labor furnished by PG&E was $19.89 per hour. The $45 per hour inspector's rate was, by consent of both parties, later reduced to $25. The rate used to calculate PG&E's charges here in dispute was $25. In addition, the hourly rate which the parties agreed upon for laborers was, as noted, $19.89.

Following completion of the line extension installation, complainant requested an accounting of PG&E's charges for inspection and incidental labor. PG&E responded by letter dated July 5, 1990 (Exhibit 8) explaining various matters of concern between the parties. Among the items in the letter was a statement that inspection charges amounted to $10,004.86 plus CIAC (28%) of $2,801.36. Attached to the letter was an itemization of the number of hours expended by PG&E's inspectors. Complainant alleges that the number of hours PG&E claims its inspectors worked is in excess of that actually spent by the inspectors, and that a refund equal to the difference in charges based upon his figures and those of PG&E is in order. We reject this argument and hold that PG&E's figures are more credible.

Complainant's principal arguments are that PG&E charged for travel time consumed by employees traveling from remote locations rather than using personnel whose duty station was closer to Irish Beach, thus incurring unnecessary travel costs; that he did not agree to pay travel costs; and that inspectors did not work as many hours as claimed. PG&E, on the other hand, claimed that the hours for which PG&E charged were taken directly from PG&E's time records and those records were accurate. Further, PG&E

claimed complainant agreed to pay travel charges for PG&E's employees involved in this project, and finally that PG&E used the closest workers available.

The burden of proof is upon the complainant and, in our view, complainant has failed to carry that burden insofar as this portion of his overall complaint is concerned. With respect to the time spent by PG&E's employees, complainant's sole evidence was time records he kept of the time PG&E employees spent on his job, which differed from PG&E's records. He readily admitted, however, that his records were not entirely accurate in that they often failed to record entire days that inspectors actually worked (Exhibit 11, p. 2, para. 3). PG&E's witness, Mr. Caton, testified that all inspection hours reported and billed to complainant were taken directly from inspector time records (Tr. p. 168, Exhibit 26) and included travel time (Tr. p. 169). In our view, PG&E's evidence on this point is the more convincing.

With respect to whether complainant agreed to pay travel costs for PG&E's inspectors, the General Terms and Conditions (Exhibit 6) which accompanied the 1988 agreement between PG&E and complainant (Exhibit 5) provided that complainant shall pay "the costs of inspection, including...per diem, transportation, etc." (Exhibit 6, p. 20) in connection with the project. From this we conclude that complainant did, in fact, agree to pay such charges and is responsible for such payment.

With respect to complainant's claim that PG&E should not charge for the services of Inspector Val Barron because no such services were performed, we find no evidence to support complainant's allegation. To the contrary, we find Barron did perform the services for which PG&E charged complainant, and that PG&E was justified in making the charge that it did.

Caton, PG&E's employee, testified that PG&E inspector time records show Barron was on the jobsite [Unit 9] for three days and worked a total of 26 hours over those three days. Complainant

offered nothing in rebuttal other than his own statement that his records do not show Barron at the jobsite. Once again, we note that complainant admitted his time records were incomplete or inaccurate. At one point, complainant stated:

> "Our log did not show inspector time on 9/30, 10/1, 10/6, 10/9, or 10/13 but I have determined that Tim worked 9/30, 10/1, 10/9 and that Kent worked 10/6 and 10/13/90, so I have decided all these days in favor of PG&E's log and assumed our error." (Exhibit 11, p. 2, para. 3; Tr. pp. 62-63.)

We deem this to be an admission of the incompleteness and inaccuracy of complainant's time records and do not feel them of sufficient reliability to carry complainant's burden in regard to this issue.

At various times during the hearing on this matter, complainant suggested that work or inspection crews should have been provided from Point Arena instead of Fort Bragg, which he believes would have reduced costs. PG&E, in contravention, denied it had sufficient qualified personnel assigned to Point Arena to do this job. Since these two offices are approximately 18 miles apart, we find no significant savings to complainant would have resulted from using personnel from Point Arena if, in fact, such personnel were available.

The final claim under this item of the allegations is the $1,368 CIAC charge which complainant has denominated a "tax." Technically, this charge is not a "tax," but represents non-refundable contributions in cash or properties from individuals, governmental agencies, or others for construction or property additions (see "Dictionary of Acronyms and Other Frequently Used Terms," California Public Utilities Commission, 1991, p. 12). This charge is usually expressed as a percentage figure based on the cost of the project. In this case, the figure was 28%. Since we do not find complainant entitled to a refund of any portion of the

cost of construction, there is no basis for a reduction in the $1,368 CIAC charge associated with this project.

Item c.

Under this item, complainant seeks a refund of $2,250 representing 75% of the cost of a new splice box located in Unit 9. Complainant alleges that this splice box became necessary only because PG&E refused to place a splice box where complainant felt it should be located, and the standard length of cable (2,000 feet) was too short to connect Unit 9 with the splice box where PG&E located it, thus necessitating the second splice box. Complainant argues that had PG&E placed the splice box where he wanted it, a single splice box would have been adequate to serve Unit 9 and a water pumping facility to the east of Martin Road intersection, and a second box would have been unnecessary. Complainant further claims that in an August 15, 1989 meeting with PG&E representatives, PG&E agreed to reimburse him 75% of the cost of the splice box, which reimbursement would amount to $2,250.

PG&E, on the other hand, argues that in order to provide service to complainant's development, to the water facility, and to a future development scheduled to the northeast of Unit 9, the splice box had to be located at a point known as the "Martin Intersection" or "Martin Road Intersection." PG&E claims that Unit 9 could be serviced from a box situated at that location, regardless of whether the distance from that location to Unit 9 was 2,000', 2,244' or 2,800', as variously claimed by complainant, simply by utilizing a longer cable to serve Unit 9. PG&E also denies that it agreed to pay complainant 75% of the cost of the second splice box. In support of its position, PG&E notes that when the dispute as to the location of the splice box first arose, complainant filed an informal complaint with this Commission seeking a resolution, and that the Commission staff agreed with PG&E (Exhibit 22). Further, PG&E notes that complainant sued PG&E in Justice Court of California, Small Claims Division, County of

Mendocino, seeking to recover the amount here in dispute on the same claim pursued here, and that Judgment dismissing the complaint with prejudice and finding that PG&E owed no money to complainant on the complaint was entered by the Court on August 8, 1990, under Small Claims Case No. 903338-SC.

In response to these assertions, complainant argues that the staff determination in favor of PG&E is not binding on this Commission, and that the Small Claims Court judgment was based on a failure of complainant to prosecute that claim after the parties agreed that jurisdiction over the matter rested with this Commission and not the Small Claims Court.

We are of the opinion that the prior determination of the Commission staff is not binding on this Commission simply because it was a staff determination and not a Commission determination. No formal proceedings were undertaken, no evidentiary hearings were held, no witnesses were examined and subjected to cross-examination, and no decision was issued by this Commission. This is not to say, however, that we disagree with the conclusion reached by the staff. In fact, as discussed below, we agree entirely with it and come to the same conclusion.

Normally, a decision of a court having jurisdiction over a cause of action identical to and between the same parties as here presented would be binding upon this Commission on the basis of res judicata. Here, however, Exhibit 24, the sole evidence presented in connection with the Small Claims Court proceeding, does not contain sufficient information concerning the cause of action upon which that action was based for us to determine whether it was identical to the claim complainant now pursues before us. In addition, if the cause of the dismissal was an agreement that the court lacked subject matter jurisdiction, the judgment of the court would not be a decision on the merits, and that judgment would not bar our current consideration of the claim.

Consistent with PG&E's applicant-installed underground facilities agreements, the 1988 agreement between PG&E and complainant provided that complainant would pay the costs of the underground installation, and PG&E would reimburse him for "25 percent of the difference between the total estimated cost to install the extension and the [costs of an] equivalent overhead extension" (Exhibit 5, para. 4(b); Tr. pp. 78-79). The 1988 agreement did not provide for the design and construction of a second splice box, which became necessary due to the distance between two PG&E transformers--one serving the east end of Unit 9, and a second serving water pumping facilities east of the Martin Road intersection (Exhibits 3 and 25; Tr. pp. 78-87).

There is some dispute as to the distance between these two transformers; however, it appears that prior to the filing of the complaint, the parties were in general agreement that the distance was approximately 2,244'. One month prior to the hearing, complainant hired an engineer who estimated the distance to be approximately 2,880' (Exhibit 1; Tr. pp. 85-87). Whatever the actual distance, the parties agreed that a splice box would be necessary. Once the need for a splice box was established, PG&E designed the box as required by the General Terms (Exhibit 6). As part of its design, PG&E required the box to be placed at the Martin Road intersection (Tr. pp. 89, 174). This location was selected so that a single box could serve Unit 9, the water facility, and Martin's property to the north (Tr. p. 176). Complainant, however, wanted the splice box to be situated at a second location approximately 1,300' further west from the Martin Road intersection (Exhibit 1; Tr. pp. 107-110). A box at that location could serve only Unit 9 and the water facility and would be of no use in serving the Martin property to the northeast.

Because the parties were unable to resolve the location of the required splice box, complainant filed an informal complaint with the Commission (Exhibit 21). Following a staff investigation

and review of the project, the staff agreed with PG&E's position (Exhibit 22). Despite this ruling by the Commission staff, complainant installed a 2,000' length of cable in an easterly direction from Unit 9 which cable terminated approximately where complainant wanted the splice box to be installed. Because this cable could be connected or joined to another cable only in a splice box, complainant's actions necessitated either construction of a second box at the location where his cable ended, or the removal of the cable which could not thereafter be reused. The construction of a second splice box was the less expensive alternative. Thus, two splice boxes were ultimately constructed; one at the Commission-approved, PG&E-desired site, and one at the complainant-installed cable end, which was complainant's preferred location.

We find complainant's claim that PG&E agreed to reimburse him 75% of the cost of the second splice box illogical and unconvincing. First, from a purely logical viewpoint, it is difficult to conceive of PG&E agreeing to pay any portion of the cost of the second splice box when the Commission staff had rejected complainant's proposal to locate the splice box at that very location in favor of PG&E's proposal to locate it at the Martin Road intersection. Second, while complainant alleges that PG&E, in an August 15, 1990 meeting, agreed to reimburse him 75% of the cost of construction of the second box, an August 16, 1990 letter from PG&E to complainant (Exhibit 23, p. 2, penultimate para.; Exhibit 12, p. 3) clearly refutes this assertion. From this, we conclude that PG&E did not agree to reimburse complainant any portion of the cost of construction of the second (westernmost) splice box, and we refuse to order any such reimbursement.

Item d.

In this portion of his claim, complainant seeks refund of a $1,000 deposit made by him in 1975 in connection with the design

of a then proposed line extension to serve Unit 9 at Irish Beach. PG&E denies a refund is due.

In 1975, complainant and PG&E participated in discussions regarding the intended development of Units 5, 7, 8, and 9 at Irish Beach (see Exhibit 10). In furtherance of these discussions, an Underground Line Extension Agreement (Exhibit 15) was drafted for a proposed development that would consist of 53 lots and 24 condominiums in Unit 9. Complainant testified that at that time in 1975, he supplied a $1,000 engineering advance in connection with that project (Tr. pp. 66) with the understanding that it would be refunded or otherwise credited to amounts owing to him under the terms and conditions of the "final agreement." It is undisputed that the 1975 Line Extension Agreement (Exhibit 15) was never executed.

It is complainant's position that the $1,000 advance should be applied as a credit against his obligations under an Underground Line Extension Agreement regarding Unit 9 which was executed on December 11, 1988 (Exhibits 5 and 6), because that agreement is the "final agreement" for Unit 9 line extension construction within the meaning of the drafted, but unsigned, 1975 agreement. PG&E claims no refund is due under either of two theories: (a) The claimed refund is barred under the 10-year limitation on refunds contained in PG&E Tariff Rules 15.1 and 15 which were in effect during those times and were incorporated into the 1975 unsigned and the 1988 signed Underground Line Extension Agreements; and/or (b) claimant was given credit in 1975 for the $1,000 advance in the form of a credit against amounts owed PG&E for drafting services supplied in connection with an access road built in Unit 9 in 1975.

From our review of the evidence submitted, we find that the 1975 Underground Line Extension Agreement covering a 53 lot and 24 condominium project at Unit 9, Irish Beach was never executed, nor was the project, as then contemplated, ever built. Under such

circumstances, had PG&E not rendered any services in connection with this project, it is presumed, though we do not so find or hold, that complainant would be entitled to a refund of any monetary advances made to PG&E in connection with the project. On the other hand, had PG&E performed any services, complainant would have been entitled to a credit against the cost of those services to the extent of any advances made. PG&E claims that subsequent to the 1975 Line Extension Agreement falling through, complainant requested that PG&E design ducts and pole vaults for an access road to Unit 9 which complainant felt would be necessary in order to develop Unit 9 in the future, that PG&E prepared the necessary drawings for these ducts and pole vaults and delivered them to complainant on or about September 29, 1975, and the access road was thereafter built. PG&E claims the $1,000 advance was applied against the cost of the engineering drawings for the ducts and pole vaults.

We find that subsequent to the 1975 line extension project falling through, complainant requested PG&E to design ducts and pole vaults for a road to Unit 9 (Tr. pp. 67-68), which road was thereafter built. We further find that PG&E was justified in applying the $1,000 advance to the cost of design of these ducts and pole vaults. We also find that the December 19, 1988 Underground Line Extension Agreement (Exhibit 5) is not the "final agreement" pursuant to the 1975 negotiations, as complainant claims. The 1988 project is not, for purposes of refund, the same project the parties discussed in 1975, and no refund of the $1,000 advance is due complainant.

Item e.

Finally, though not set forth in the complaint, at hearing the complainant was allowed, without objection, to add a claim for refund of $225 which complainant alleges represents an overcharge in connection with inspection time for PG&E Inspector

Charles Perry on September 5 and 6, 1989. We find this claim also to be without merit.

Specifically, complainant contends that nine (9) hours (at $25 per hour) which Inspector Perry spent working with the PG&E engineering department to change the method for "landing lines on a streamlined pole," should not be billed to him as the time was spent straightening out an error in PG&E's drawings (Tr. pp. 51-52). At the hearing, Perry explained that the work relating to landing lines was not due to an error in PG&E's drawings, but to modifications in construction standards requiring stream line vault location changes to avoid General Order 128 inspection infractions (Tr. pp. 213-215). We find this testimony credible. Under such circumstances, the time spent must be considered to have been spent on work order changes, and as such, is chargeable to complainant.

Findings of Fact

1. On December 11, 1978, complainant and PG&E entered into an agreement for an Underground Line Extension in connection with a real estate development known as Unit 7, Irish Beach, in Mendocino County, California.

2. On June 4, 1979, complainant and PG&E entered into an Underground Line Extension Agreement which canceled and superseded their December 11, 1978 agreement.

3. Prior to the execution of the December 11, 1978 agreement, complainant installed certain underground facilities at Unit 7, and by deed dated December 11, 1978, conveyed title to the same to PG&E.

4. Pursuant to the June 4, 1979 agreement, PG&E was to refund to complainant $755 per lot as electrical service was permanently connected to such lot.

5. PG&E Tariff Rules 15.1 and 15 were each applicable for different portions of the period involved herein.

6. Both tariffs stated that the time period during which refunds might be obtained was limited to 10 years from the time PG&E was "first ready to render service from the extension."

7. PG&E was first ready to render service from the extension on June 4, 1979.

8. On April 17, 1989, Richard Phillips, the owner of Lot No. 30 in Unit 7, requested PG&E to hook up service to the house on said lot effective May 31, 1989.

9. PG&E actually made the hookup to Phillips' lot on some unspecified date subsequent to May 31, 1989.

10. For purposes of the action, the hookup is deemed to have been made on May 31, 1989, less than 10 years after PG&E was "first ready to render service from the extension."

11. On December 19, 1988, complainant and PG&E entered into an Underground Line Extension Agreement in connection with the development of Unit 9 at Irish Beach, under the terms of which complainant agreed to install certain electric facilities and upon inspection and acceptance by PG&E, transfer said facilities to PG&E.

12. As part of the agreement, complainant made a monetary advance to cover inspection costs.

13. The facilities were thereafter inspected and approved by PG&E and were subsequently conveyed by complainant to PG&E.

14. $1,500 in inspector travel time charged by PG&E, but challenged by complainant, was necessary and was accurately recorded by PG&E.

15. A $400 inspection time charge claimed on behalf of PG&E Inspector Val Barron, but challenged by complainant, was necessary and was accurately recorded by PG&E.

16. $2,900 worth of inspection hours charged by PG&E, but challenged by complainant, was necessary and time records in connection therewith were accurate.

17. There was no error in PG&E's calculation of the CIAC charge in the amount of $1,368.

18. Pursuant to agreement, complainant agreed to pay for one splice box in Unit 9.

19. PG&E and complainant disagreed where the splice box should be located in Unit 9, and complainant filed an informal complaint with this Commission to resolve the issue.

20. The staff of the Commission determined the splice box should be located at or near the "Martin Road Intersection" in Unit 9 as requested by PG&E.

21. PG&E thereafter constructed the splice box at or near the location specified by Commission staff.

22. The installation of a second splice box closer to the east end of Unit 9 was necessitated by complainant's installation of an underground line extension running in an easterly direction from Unit 9 toward the Martin Road intersection utilizing a cable of insufficient length to span the distance from Unit 9 to the splice box at the Martin Road intersection.

23. The entire cost of the second splice box should be borne by complainant, not PG&E.

24. In 1975, complainant deposited $1,000 with PG&E to cover anticipated engineering costs in connection with a development of 53 lots and 24 condominiums in Unit 9, for which an Underground Line Extension Agreement was prepared, but never signed.

25. The 53 lot, 24 condominium project in Unit 9 was never built.

26. Shortly after the Underground Line Extension Agreement concerning the 53 lot, 24 condominium development failed to materialize, complainant requested PG&E to prepare engineering drawings regarding ducts and pole vaults to be constructed under a roadbed leading to Unit 9.

27. PG&E prepared the drawings for the ducts and pole vaults, and the construction of the ducts and vaults was thereafter completed.

28. On December 19, 1988, PG&E and complainant entered into an Underground Line Extension Agreement in connection with Unit 9.

29. The December 19, 1988 agreement was not the "final agreement" referred to in the unsigned 1975 Underground Line Extension Agreement regarding the 53 lot, 24 condominium development planned for Unit 9.

30. More than 10 years have elapsed between the time complainant deposited the sum of $1,000 in connection with the 53 lot, 24 condominium development planned for Unit 9 and the signing of the Underground Line Extension Agreement for Unit 9 on December 19, 1988.

31. The 9 hours of inspection time (at $25 per hour) spent by Inspector Charles Perry on September 5 and 6, 1989, was necessitated by modifications in construction standards requiring stream line vault location changes to avoid General Order 128 inspection infractions.

32. The time spent by Inspector Perry should be considered to have been spent on change orders.

Conclusions of Law

1. Complainant's request for refund of $755 in connection with the Phillips service hookup in Unit 7 was timely and was not barred by the 10-year refund time limit contained in PG&E Tariff Rules 15.1 and/or 15.

2. Complainant is entitled to the $755 refund in connection with the Phillips hookup in Unit 7.

3. PG&E's charges of $1,500 for inspector travel time in connection with the underground line extension to Unit 9 were reasonable and necessary charges.

4. PG&E's charges of $400 for services of Inspector Val Barron in connection with the underground line extension to Unit 9 were reasonable and necessary charges.

5. PG&E's charges of $2,900 for inspector services in connection with the underground line extension to Unit 9 were reasonable and necessary charges.

6. PG&E's calculation of the CIAC charge in the amount of $1,368 was accurate and properly charged to complainant.

7. Complainant is not entitled to a refund for those items and amounts listed in Paragraphs 3, 4, 5, and 6 of these Conclusions of Law.

8. The placement by PG&E of a splice box at or near the Martin Road intersection in Unit 9 was appropriate and was sufficient to service Unit 9.

9. Complainant is not entitled to a refund of any portion of the cost of installation of the second splice box.

10. The $1,000 advance made by complainant in 1975 in connection with a proposed 53 lot, 24 condominium development in Unit 9 was properly applied against the cost of designing ducts and pole vaults under a road leading to Unit 9.

11. The December 1988 Underground Line Extension Agreement was not the "final agreement" referred to in the unsigned 1975 agreement.

12. Complainant is not entitled to have the 1975 $1,000 advance credited against complainant's 1989 Unit 9 project costs.

13. Complainant is not entitled to a refund of the 1975 $1,000 advance.

14. Complainant is not entitled to a refund of the $225 charge for services of Inspector Charles Perry.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is to refund complainant the sum of $755 with interest payable thereon from May 31, 1989 until paid.

2. All further claims set forth in the complaint are denied.

This order is effective today.

Dated April 8, 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