

Mailed

APR 22 1992

Decision 92-04-041 April 22, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

L. J. Keller,

Complainant,

vs.

Pacific Gas and Electric Company  
and Pacific Bell,

Defendants.

Case 91-10-065  
(Filed October 29, 1991)

L. J. Keller, for himself, complainant.  
Annie Tillery, Attorney at Law, for Pacific  
Gas and Electric Company, and Brad L.  
Walter, Attorney at Law, for Pacific Bell,  
defendants.

#### O P I N I O N

L. J. Keller, who has lived in his home in Tiburon for 37 years, complains against Pacific Gas and Electric Company (PG&E), Pacific Bell, and a local cable television company.<sup>1</sup> Complainant states that work in 1988 and 1989 on the overhead lines bordering his home--including addition of heavier and more numerous conductor lines, conductor boxes, and taller, wider poles and crossbars--has "substantially blighted" his views of Richardson Bay, Sausalito, Strawberry, and the Marin County hills. He asks that the overhead lines be restored to their former, less obtrusive

<sup>1</sup> The complaint listed "Viacom Cablevision" as a defendant. The Docket Office properly struck this defendant from the complaint because the Commission has no jurisdiction to regulate cable television companies.

configuration, or that the lines be placed underground in his neighborhood.

PG&E responds that reconductoring of overhead lines in complainant's neighborhood was necessary to supply power requirements for Tiburon and neighboring Belvedere, that the work was done pursuant to a grant of franchise from the Town of Tiburon, and that there was no economic alternative to reconductoring. It further alleges that it has worked with complainant and his neighbors in calculating the cost of undergrounding facilities in the neighborhood (\$493,000), but that not enough neighbors have agreed to share the cost in order to proceed with undergrounding.

Pacific Bell presents evidence that its part of the overhead lines--a heavier cable and larger cable boxes--was completed in the neighborhood more than 10 years ago, and that it has added no facilities to the system since that time.

Both PG&E and Pacific Bell have filed motions to dismiss on grounds that the complaint fails to state a cause of action cognizable by this Commission. Pacific Bell also urges dismissal on grounds that the complaint, as to it, is untimely.<sup>2</sup>

A hearing was conducted on February 14, 1992. Complainant presented photographs taken from the deck of his home and from the street showing that additional cables and larger hardware have been installed on poles across both streets (Hilary Drive and Rock Hill Drive) from his corner home. He introduced a recent Tiburon ordinance that speaks to the rights of persons to preserve their views and sunlight from unreasonable obstruction by

---

<sup>2</sup> Pacific Bell cites the three-year statute of limitations for complaints of rate discrimination in Public Utilities Code § 736.

the growth of trees.<sup>3</sup> Complainant also moved to have the assigned administrative law judge (ALJ) visit the area and inspect the overhead wire system, and this motion was granted.<sup>4</sup>

PG&E witness Tim N. Bedford, a gas and electric construction superintendent, testified that PG&E records show that the overhead line system was in place when complainant moved into his home in 1954. He said that PG&E reconductored, or replaced, power lines and hardware in 1988 and 1989. Two poles were replaced with poles 5 feet higher, he said, to comply with the Commission's General Order 95 clearance requirements and to support heavier lines. Bedford explained the necessity for reconductoring as follows:

"Service reliability is indexed in terms of average minutes of service outages for customers in a service area. A customer minute is defined as the amount of time all customers on a particular circuit are without service in one year. Before the reconductoring work was performed, the Tiburon and Belvedere Peninsula suffered service outages of 423 customer minutes per year, as compared to a system average of 120 customer minutes per year.

"...Since the reconductoring work has been completed on this circuit, the service reliability has improved substantially. The service outage average for the areas is now

---

3 Ordinance No. 379 N.S., Chapter 15, entitled "View and Sunlight Obstruction From Trees," was adopted by the Tiburon Town Council on December 3, 1991. It establishes binding arbitration for disputes involving the removal of trees that a homeowner alleges interfere with his view or with the sunlight.

4 The assigned ALJ drove to complainant's neighborhood on February 17, 1992, and inspected the area in and around complainant's home. The ALJ observed an older, well built-up neighborhood of attractive, well-maintained homes. The overhead wire system is highly visible, as are power and other lines stretching to individual homes.

approximately 28 customer minutes per year."  
(Ex. 4, p. 5.)

Asked if it would have been possible for PG&E to have improved service reliability in Tiburon/Belvedere without reconductoring in complainant's neighborhood, Bedford responded:

"No. The overhead line system in Mr. Keller's area is part of the larger primary circuit, specifically the Alto 1123 circuit, which transports electrical power to the Tiburon and Belvedere peninsula. The poles for this primary circuit...lie in a path that passes Mr. Keller's residence. In order for PG&E to improve service reliability, it had to reductor along the entire primary circuit line." (Ex. 4, pp. 5-6.)

William B. Cummings, Jr., a land agent for PG&E, testified that the reconductoring work was done in conformance with the utility's grant of franchise under Town of Tiburon Ordinance No. 31, granted March 23, 1965. PG&E notified Tiburon's Public Works Department before beginning work. Cummings, who is licensed to do realtor work, testified that, in his judgment, the overhead line system has not diminished the value of homes in complainant's neighborhood.

#### Discussion

The Commission's Consumer Affairs Branch (Branch) has on two occasions investigated and responded to complainant in his efforts to have PG&E reduce the number of lines in the overhead system near his home. Branch advised complainant that PG&E proceeded with its work under franchise authority from the Town of Tiburon, and that no violation of the law, of PG&E tariffs, or of Commission rules and regulations has been shown.

We can do no more than confirm Branch's conclusions. Complainant has presented no evidence of wrongdoing by PG&E or by Pacific Bell. The overhead line system was in place when complainant moved into his home in 1954. It was or should have been foreseeable that additional or larger conductors would be

required as the population and energy needs increased in Tiburon and Belvedere. Complainant may not have realized that the overhead lines near his home were part of a primary circuit serving much of the peninsula, but this information was available upon inquiry.

Complainant cannot seriously expect PG&E to dismantle the line system and impose a 15-fold increase in power outages in Tiburon and Belvedere. It follows that what he really seeks is to have the overhead system replaced with one that is underground. He would have this done at the expense of ratepayers in general, since efforts to persuade his neighborhood to bear the cost have been unsuccessful. If complainant's neighbors are unwilling to share the expense of undergrounding, it is not reasonable to ask that all ratepayers bear that burden on their behalf.

Complainant's reliance on Tiburon's "view ordinance" is unavailing. The ordinance deals primarily with removal of trees, and has little or no relevance to this proceeding. Even if it did, the proper forum for enforcing that law is Tiburon's binding arbitration procedure. Complainant's suggestion that the utilities failed to give proper notice of their reconductoring work has no merit, since the work was done pursuant to a valid franchise agreement. In any event, the evidence shows that notice of the work was provided to Tiburon's Public Works Department.

In short, complainant fails to state any basis upon which this Commission can act. Public Utilities Code § 1702 provides:

"Complaint may be made...by any...person  
...setting forth 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."

Complainant has not alleged or proved that reconductoring work on the overhead line system bordering his home was done in violation of any provision of the law or of any order or rule of

this Commission. It follows, therefore, that the motions by PG&E and by Pacific Bell to dismiss this complaint should be granted, and the complaint should be dismissed.

Findings of Fact

1. Complainant has resided at 699 Hilary Drive, at the corner of Hilary Drive and Rock Hill Drive, in Tiburon, since August 17, 1954.

2. Poles and overhead electrical and telephone wires were located across the street from complainant's home at the time complainant moved into the home.

3. Complainant alleges that PG&E, Pacific Bell, and a television cable company have added poles, overhead wiring, and related hardware during the past three years, substantially interfering with his view of Richardson Bay, Sausalito, surrounding hills, and sunsets.

4. The overhead line system along Hilary Drive in Tiburon is a joint use utility pole system constructed by PG&E and Pacific Bell. The utilities share the cost of installation and maintenance of the system.

5. PG&E's records show that the line system was originally constructed in 1954, at or shortly before the time that complainant moved into his home.

6. PG&E reconductored the overhead line system in complainant's area in 1988 and 1989. Two poles, one across the street from complainant's home and another further south, were replaced with poles of the same 45-foot height but with 3-inch greater diameters. Two other poles, located on Rock Hill Drive, were replaced with poles 5 feet higher than before. Additionally, copper conductors (or wires) were replaced with heavier aluminum conductors and new and larger insulator boxes were installed.

7. The reconductoring was performed to improve service reliability to the Tiburon and Belvedere peninsula.

8. Before the reconductoring, the Tiburon and Belvedere peninsula recorded service outages of 423 customer minutes per year (i.e., the amount of time all customers on a particular circuit are without electricity in one year). After reconductoring, service outage average for the area was reduced to 28 customer minutes per year.

9. The overhead line system in complainant's area is part of a larger primary circuit, called the Alto 1123 circuit, which transports electrical power to the Tiburon and Belvedere peninsula.

10. PG&E performed the reconductoring work in the vicinity of Hilary Drive and Rock Hill Drive pursuant to its grant of franchise under Town of Tiburon Ordinance No. 31, granted March 23, 1965.

11. The Town of Tiburon franchise grants PG&E the right to construct, maintain, and use any wires, poles, and equipment necessary for transmitting and distributing electricity to customers.

12. PG&E gave notice to the Public Works Department of the Town of Tiburon prior to the start of its reconductoring work performed in 1988 and 1989 in the area of complainant's home.

13. PG&E installed one additional pole near complainant's property in 1980.

14. Pacific Bell installed new cables and new transformer boxes in the area of Hilary Drive and Rock Hill Drive in 1980. It has done no further overhead line replacement since that time.

15. Complainant and others were unsuccessful in an effort to obtain a neighborhood financial commitment to pay for conversion of the overhead wire system to an underground system.

16. There is no evidence that complainant's property has diminished in value because of the overhead wire system.

#### Conclusions of Law

1. The complaint fails to allege or prove a violation of the law or of any order or rule of the Commission and, therefore, should be dismissed.

2. PG&E's motion to dismiss and Pacific Bell's motion to dismiss should be granted.

O R D E R

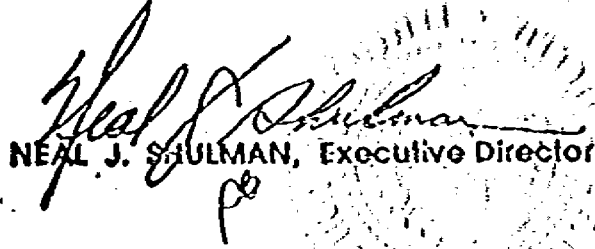
IT IS ORDERED that the motion to dismiss filed by Pacific Gas and Electric Company and the motion to dismiss filed by Pacific Bell are granted. Case 91-10-065 is closed.

This order becomes effective 30 days from today.

Dated April 22, 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