

OCT, 6 1992

Decision 92-10-010 October 6, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOYCE NUGENT-ROSENTHAL,

Complainant,

vs.

PACIFIC GAS AND ELECTRIC COMPANY,

Defendant.

(U 39 E)

ORIGINAL

Case 90-03-013
(Filed March 8, 1990)

Joyce Nugent-Rosenthal, for herself, complainant.
Richard F. Locke, Attorney at Law, for Pacific
Gas and Electric Company, defendant.

OPINION

Summary

Complainant Joyce Nugent-Rosenthal (Nugent-Rosenthal) requests that Pacific Gas and Electric Company (PG&E) be required to underground approximately 780 feet of 12-kilovolt (kV) overhead line that it recently installed. She contends that PG&E conducted its activities in an unprofessional manner with no concern for her, her house and property, and installed its overhead power line without providing notification or obtaining an easement.

This decision concludes that since Nugent-Rosenthal is not the owner of the land, and PG&E reasonably presumed it had authorization from the corporation that owns the land, the petition should be denied.

Procedural Summary

After a prehearing conference on November 19, 1990, an evidentiary hearing was held on July 26, 1991, in San Francisco.

PG&E filed its brief on September 13, and Nugent-Rosenthal filed comments on November 19, 1991.

Summary of Facts

On November 21, 1987, Arthur J. Sussman made application to PG&E for electric service to be furnished to his house in Point Arena, Mendocino County. Both Sussman's house and Nugent-Rosenthal's house are located on land owned by the California Center for Rural Design (CCRD). Sussman, Nugent-Rosenthal, and six other individuals each own one share of CCRD and, as shareholders, were permitted to build a house at a designated location. The land is a heavily wooded redwood preserve, and a dirt road provides access to the houses.

PG&E's 12-kV overhead line terminated near one side of Nugent-Rosenthal's house. To provide service to Sussman, this line had to be extended past Nugent-Rosenthal's house and Kate Todd's house to reach Sussman's house.

Pursuant to the Sussman application and during the period the route of the extension was under consideration, Nugent-Rosenthal had several conversations with PG&E Service Representative Ken Bedsaul.

According to PG&E, the gist of those conversations was that Nugent-Rosenthal wanted to consider undergrounding her service line. These discussions also involved Nugent-Rosenthal's stated desire to have the Sussman extension begin at the pump pole away from her house and to stay on the far side of the road away from her house. In order to accommodate the potential undergrounding of her service pole and line, Bedsaul agreed that the Sussman line extension should not begin from the transformer pole closest to her house, but should start from a pole further away. This change lessens the visual impact of the line extension on her house and allows for the ultimate removal and undergrounding of the service pole if she later decides to do so. Bedsaul relayed these conversations to PG&E Service Representative Frank Collins when he

took over the job in early 1988. Bedsaul also testified that at no time did he discuss with Nugent-Rosenthal a route that would have gone from the pump pole to the water tank and along the water line to Sussman's house.

However, Nugent-Rosenthal's understanding was that the Sussman extension would traverse from the pump pole to the water tank and along the water line to Sussman's house leaving the trees beside the road untouched and in pristine state. And Nugent-Rosenthal contends that when PG&E changed the route, she should have been notified.

PG&E states that following receipt of Sussman's application for service, representatives of PG&E's Fort Bragg and Point Arena offices met with him and others at various times beginning in late 1987 and continuing through April 1989 to discuss how the electric service would be extended to his house.

Sussman originally submitted a preferred extension route which would have extended the 12-kV line directly from the last pole located approximately 90 feet from Nugent-Rosenthal's house. However, after discussions with PG&E personnel (Bedsaul and later Collins), it was agreed to begin the extension further back from Nugent-Rosenthal's house and add new poles and associated conductor beginning near the pump pole and then follow along the private road to Sussman's house. The route was staked out by Collins after a June 1988 field meeting at the site.

On February 10, 1989, Collins met again with Sussman and Nick King at the site to discuss the final construction route. King had been previously identified to Collins as the authorized representative of CCRD in reviewing the line extension. King and Louis Frazier are also shown as CCRD's agents on a 1987 application to Mendocino County for a use permit to legalize the houses on the CCRD land. At that meeting, King requested that one pole be moved from the uphill side of the road to the downhill side of the road in order to reduce the number of redwood trees which would have to

be cut. Collins again staked the route showing the new pole location. Construction began six or eight weeks later.

By this last change, the affected pole was moved approximately 28 to 30 feet closer to the Nugent-Rosenthal house. However, the pole and conductor at this point are still some 130 feet away from her house. There remain a significant number of trees standing as a buffer between Nugent-Rosenthal's house and the relocated pole which effectively shields the pole from view of the house. In addition, PG&E installed a vertical set of conductors rather than the usual horizontal conductor design. This design minimizes tree cutting and tree trimming even though it is not PG&E's preferred design due to greater difficulty in maintaining the system.

Collins testified that the relocation of the pole meant that nine larger redwood trees on the immediate uphill side of the road were saved and only five smaller trees on Nugent-Rosenthal's side of the road had to be removed. He testified that this relocation was done to minimize the visual impact. Further up the road, an additional clump of trees was removed to allow for the conductor to run to the next pole. This clump of trees would have been removed whether the route change of February 10, 1989 had been made or not. Collins also testified that during this process, he met personally with not only Sussman and King, but also Louis Frazier, Kate Todd, and Mel Johnson - all but Johnson were officers of CCRD. Furthermore, all were present at the prior June 1988 field meeting, and they all agreed on the proposed route and indicated that their main concern was preservation of as many trees as possible. He also testified that he never met Nugent-Rosenthal, who lived in Southern California and rented out her house on the CCRD land. At no time did Collins receive a complaint from any CCRD member, including Nugent-Rosenthal, concerning the route chosen. Construction of the project commenced in March 1989 and

was completed in April 1989. A sketch of the line extension is shown in Appendix A.

Discussion

The gravamen of the complaint suggests that PG&E had an obligation to notify Nugent-Rosenthal of any changes in the proposed route for providing electric service to Sussman.

PG&E argues that in providing this service, it followed the provisions of its Electric Rules 15 and 16 in consulting with the applicant Sussman and making the necessary inquiries regarding ownership of the land and the house to be served.

PG&E points out that the undisputed legal owner of the land is CCRD. CCRD as a corporation is represented by its various officers. In this case, King (Treasurer), Sussman (Vice-President), Frazier (President), and Todd (Secretary) were all intimately involved in the line extension routing. All approved the route and their stated concern was to minimize tree cutting and tree trimming. King was identified and represented to PG&E personnel as the spokesperson for CCRD and its members. PG&E contends that it was reasonable under all the circumstances for its representatives to rely on King's apparent, if not actual, authority to represent CCRD in this matter.

Nugent-Rosenthal presented no evidence to show that PG&E's reliance on King as the spokesperson for CCRD was unreasonable. She simply argues that PG&E conducted its activities in an unprofessional manner with no concern for her or her house by not informing her and the other members of CCRD of the final route.

We agree that this complaint case may have been avoided had PG&E informed Nugent-Rosenthal of the final route selection. But she was aware of the Sussman request for service and she knew that the line would be extended from a point close to her house. Since she was not resident on the site, she should have requested CCRD and PG&E to keep her informed on all route changes. In the absence of any such request, PG&E had no duty to seek approval from

her. PG&E reasonably presumed that King was the authorized spokesperson for CCRD.

Regarding undergrounding the line extension, since this is not service to a new subdivision there is no requirement that PG&E underground the line at its expense. (Rule 15.D.2.)

Lastly, we are not persuaded that PG&E violated its rules by constructing this line extension without an easement. PG&E's Rule 15 - Electric Line Extensions states:

"...The utility will construct, own, operate and maintain lines only along...public lands and private property across which rights of way satisfactory to the Utility may be obtained...." (Rule 15, Section A, emphasis added.)

Therefore, if PG&E chose to install the extension on CCRD land without an easement, that is PG&E's prerogative. We find no violation of Rule 15.

In summary, we conclude that PG&E reasonably relied on the apparent authority of King to represent CCRD, and PG&E has not violated any of its rules for overhead line construction. The evidence shows that PG&E made every effort to accommodate CCRD's concern that the least number of redwood trees be cut so that Sussman may receive service. The complaint should be denied.

Findings of Fact

1. CCRD owns the land on which the houses of Nugent-Rosenthal, Todd, and Sussman are built.
2. On previous occasions, King and Frazier have acted as the agents and on-site representatives of CCRD for matters related to the land.
3. The evidence (Exhibit 18) shows that Frazier and King acted as the agents for CCRD in the matter of a use permit from the County of Mendocino to legitimize the eight existing houses on CCRD land.

4. Relying on the apparent authority of King, PG&E located its overhead line generally following the dirt road which provides access to the houses of Nugent-Rosenthal, Todd, and Sussman.

5. The route was selected to minimize the number of redwood trees that PG&E would have to cut to provide service to Sussman.

6. CCRD has not in any way indicated its dissatisfaction with the routing or construction of PG&E's overhead line extension.

Conclusions of Law

1. Nugent-Rosenthal has not established that King was not authorized to act on behalf of CCRD with regard to the overhead line extension.

2. Based on prior dealings with CCRD, PG&E acted reasonably in accepting King as having apparent authority to approve the routing of the overhead line extension.

3. Rule 15 does not prohibit PG&E from constructing an overhead line without an easement from the landowner; therefore, PG&E has not violated its rules.

4. Rule 15 does not require undergrounding of the line extension to serve Sussman.

5. PG&E had no duty to seek Nugent-Rosenthal's approval prior to extending its overhead line.

6. The complaint should be denied.

ORDER

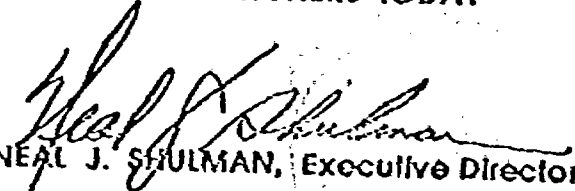
IT IS ORDERED that the complaint of Joyce Nugent-Rosenthal against Pacific Gas and Electric Company is denied.

This order is effective today.

Dated October 6, 1992, at San Francisco, California.

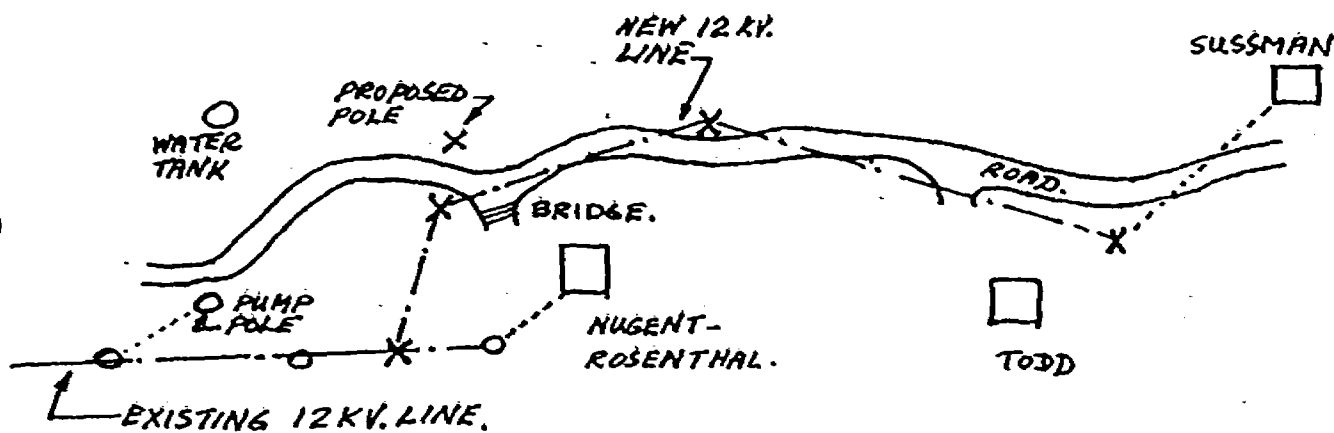
DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director
DB

APPENDIX A

FORESTED HILL



O EXISTING POWER POLE.

X NEW POWER POLE.

(END OF APPENDIX A)