COM/PME/ss

Mailed

DEC 7 1992

Decision 92-12-016 December 3, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY for Authority to Underground the Replacement Electrical Facilities in the Fire Devastated Area of the Oakland/Berkeley Hills.	ORIGINAL Application 92-01-016 (Filed January 16, 1992)

O P I N I O N

Summary of Opinion

By this application, Pacific Gas and Electric Company (PG&E) "on behalf of the cities of Oakland and Berkeley" (Cities) seeks authorization to install underground electric facilities to replace the overhead facilities that were destroyed in the devastating fire that swept the hillside areas of the cities of Oakland and Berkeley (the fire area) on October 20-23, 1991.

This Opinion refuses to grant the specific relief sought by PG&E and the Cities. It does, however, authorize PG&E to install underground electric facilities with the Cities bearing the costs that would normally be borne by a Developer of a new subdivision under PG&E's Rule 15.1 -- Underground Extensions Within New Residential Subdivisions and Residential Developments (Rule 15.1).

Background

On October 20, 1991, a fire started in a heavily wooded, long-established suburban residential area of Oakland and Berkeley, California commonly known and referred to as the Oakland/Berkeley Hills. By the time the fire was finally "tapped out" three days later, 26 people had died and 150 had been injured as a result of fire-related causes, over 1,600 acres of residential real estate had been consumed, 3,000 homes and apartments had been destroyed or rendered uninhabitable, scores of motor vehicles had been demolished, and an incalculable number of animals, both

domesticated and wild, had been killed. The cost of this tragedy has been estimated to be in excess of $1.5 billion. Simply put, it was reported to be the worst residential area fire in U.S. history.

Within hours after the fire had been brought under control, PG&E crews entered the fire area and began to clear away the debris of the then totally destroyed overhead electric distribution system and began to rebuild the overhead electric service distribution network in order to restore power to those structures which survived the fire and to make power available for clean up and rebuilding efforts. Within four months, the overhead distribution system had been replaced and service was available to all who desired power. While it is recognized that some power/telephone poles, wire or other facilities might have to be moved or relocated to accommodate new construction, the system is permanent and is essentially in its final configuration (Stipulation, paragraph 6). This rebuilding of the overhead system is expected to cost approximately $5.3 million, according to the Stipulation, which has or will be booked to PG&E's Catastrophic Event Memorandum Account (C.E.M.A.), and PG&E will file an application with the Commission at a later time seeking to recover these expenditures from its ratepayers (Stipulation, paragraph 7 discussed further, below) through a rate increase.

Statement of PG&E's Case as Filed

By this application, Pacific Gas and Electric Company (PG&E) "on behalf of the cities of Oakland and Berkeley" seeks authorization to install underground electric facilities to replace the overhead facilities that were destroyed in the devastating fire that swept the hillside areas of the cities of Oakland and Berkeley (the fire area) on October 20-23, 1991. Specifically, PG&E requests a Commission order finding that it is appropriate to record in the C.E.M.A. costs of expedited undergrounding of the new facilities in the fire area, and that it is appropriate for all PG&E ratepayers to bear the costs of expedited undergrounding of

the replacement electrical facilities. On January 16, 1991, the cities of Oakland and Berkeley filed a joint Petition to Intervene in this proceeding, which petition was thereafter granted.

Notice of the filing of the application was published in the Commission's Daily Calendar on January 17, 1992. By Ruling dated and served January 30, 1992, the Presiding Administrative Law Judge directed PG&E to prepare a notice of filing of the application containing the information referred to in California Public Utilities (PU) Code § 454(a) and Rule 24 of the Commission's Rules of Practice and Procedure, and to serve such notice on all its ratepayers through a service bill insert. This was thereafter done. Several protests to the application were timely filed.

On January 21, 1992, Pacific Bell (PacBell) filed Application (A.) 92-01-021 requesting the Commission to authorize a rate increase for PacBell of $9,249,317 for the recovery of costs associated with the installation of underground facilities in areas of Oakland and Berkeley affected by the October 20, 1991 fire. PacBell requested that rate increase be made effective 60 days from the date of approval of the application and remain in place for one year. Notice of the filing of PacBell's application was published in the Commission's Daily Calendar on January 22, 1992, and was served on all PacBell subscribers through the use of a service bill insert which complied with § 454(a) of the PU Code and Commission Rule 24. Several protests to PacBell's application were timely filed.

PacBell's and PG&E's applications were informally associated for prehearing procedural purposes, but not formally joined or consolidated. On April 27, 1992, PacBell filed a "Withdrawal of PacBell's Application No. 92-01-021." Though Pac Bell's notice of withdrawal did not state a reason underlying the withdrawal, an opening brief later filed by PacBell as an Interested Party in the present proceeding stated that its application was withdrawn "in response to substantial opposition to

the Application from ratepayers throughout the state." By Decision (D.) 92-06-041 issued June 12, 1992, A.92-01-021 was dismissed without prejudice. Following entry of the Order of Dismissal, PacBell advised that it desired to appear as (or remain) an Interested Party in the instant proceeding (A.92-01-016).

During the interval between the filing of the application in this proceeding and the present time, the Commission has received several hundred letters from PG&E customers, PacBell subscribers, residents both within and outside the area destroyed by the fire, state and local government officials, and representatives of emergency agencies such as fire, police, and civil disaster, each of whom expressed some opinion regarding undergrounding. These letters expressed every conceivable variation of response. Some were obviously the product of an organized campaign, some were simply a statement of position without elaboration, some were heart-rending pleas from those who had lost everything in the fire, some were from those residing in remote parts of the state totally unaffected by the fire, and some were obviously from those who should be kept away from sharp objects. While the range of response was wide, to the extent that any common thread ran through them, it is safe to say that the majority of those who would benefit from undergrounding supported it while most of those who would derive no benefit, but would merely pay, were opposed.

Procedural History

Prehearing Conferences (PHC) in this matter were held on March 27, April 15, and May 5, 1992. At the first two of these conferences, the parties indicated that although attempts to reach agreement on the facts were moving slowly, progress was being made, and the parties were hopeful that a stipulation of facts could be reached so as to enable the issues in this proceeding to be decided by the Commission as a matter of law and/or policy. After the third PHC, a "Stipulation of Facts" (Stipulation) signed by

representatives of PG&E, the cities of Oakland and Berkeley, the Commission's Division of Ratepayer Advocates (DRA), Toward Utility Rate Normalization (TURN), Claremont-Rockridge Neighborhood Association, Montclair Phoenix Association, and North Hills Phoenix Association was reached.

Following the submission of the Stipulation, objections were filed by Thomas E. Farris, an interested party, and comments concerning the Stipulation were filed by California Farm Bureau Federation, also an interested party. After reviewing these objections and comments, we find that accepting them as written does not render the Stipulation unacceptable nor affect its utilization as a factual basis upon which to base our decision in this proceeding. The Stipulation of Facts is accepted as submitted, and is made a part of the record.

On July 24, 1992, the cities of Oakland and Berkeley filed a Request for Official Notice, requesting the presiding administrative law judge to take Official Notice of the following:

1. Official Acts of the Department of Insurance, State of California relating to pending insurance claims of the fire victims (see Exhibit A to Request);

2. A series of reports that have been sent to the Oakland City Council from the Oakland City Manager since the fire (see Exhibit C to Request);

3. Selected emergency orders, ordinances, and resolutions of the City of Oakland (see Exhibit D to Request); and

4. The Executive Summary of the Office of Emergency Services dated July 11, 1990, which provides statistics on the Santa Barbara fire (of July 3, 1990) (see Exhibit E to the Request).

No objection to the Request for Official Notice was filed by any party. While not every item contained in said request is referred to herein, we find that each item has some relevance,

however slight or remote, and in the absence of objection, Official Notice is taken of each such item. The absence of a reference in this Opinion/Decision to any specific item so noticed should not be construed as a rejection of that item or that such item was not considered or weighed in the deliberation process; the omission is due solely to the fact that such reference was not necessary under the resolution here expressed.

Miscellaneous Matters

In letters to the Commission in support of the application, many correspondents, such as the Mayor of the City of Belvedere, California, in her letter of May 21, 1992 to the presiding administrative law judge, requested that the Commission "change Electric Rule 15.1 to include the generation of revenues for the undergrounding of utilities not only in the Oakland and Berkeley areas but also in communities that can demonstrate a public safety need to underground their utilities." While all these correspondents did not express their requests in language identical to that used by Mayor in her letter, their desire to seek modification or expansion of Rule 15.1 in this proceeding was evident. We are now considering the line extension rules of the electric and gas utilities in our Rulemaking 92-03-050. However, pursuant to § 783(d) of the PU Code, we are precluded from any rule revisions that could be made effective in time to affect this proceeding, even if we were so disposed.

This is not a rulemaking proceeding, but rather is an application for specific relief to address a problem in a particular geographical area. Under such circumstances, the action sought by the Mayor and the other correspondents referred to cannot be granted as requested. We will continue to consider the necessity or desirability of modifying the undergrounding rules, and should we at some point deem it appropriate, we will institute a proceeding appropriate to that purpose.

Local Ordinance Enactment

Shortly after the fire, the City of Oakland adopted a series of local ordinances designed to reduce fire risk in the fire area. One such ordinance, Emergency Order (E.O.) No. 6, contains a requirement that all new construction of structures and service upgrades to existing structures located within the fire area to include underground electrical service laterals from the structure to the property line. Prior to the adoption of this requirement, new construction in the fire area could use overhead electrical service laterals from the structure to the connection with PG&E's overhead system (Stipulation, paragraph 9). Further reference to this ordinance appears later in this opinion.

As noted in the introductory paragraph to this opinion, by this application, "PG&E requests a Commission order finding that it is appropriate to record in the Catastrophic Event Memorandum Account (CEMA) the costs of expedited undergrounding of the new facilities in the Fire Area, and that it is appropriate for all ratepayers to bear the costs of undergrounding of the replacement electrical facilities." The cost of the requested undergrounding would be in addition to that incurred in the replacement of the overhead system referred to above. Thus, if the application were to be approved, the ratepayer would have to pay for both the replacement overhead system and the additional cost of converting that new overhead system to an underground system less the salvage value, if any, of the overhead facility which would have to be dismantled. However, such "double payment" by the ratepayer would be avoided if the residents reimbursed the ratepayers for the cost of the overhead system, as suggested by the Neighborhood Associations (Opening Brief, p. 18).

While we recognize the heavy personal losses and hardships suffered by those who resided in the fire area and appreciate that many are in no financial position to participate in underwriting the undergrounding on an assessment district or

similar basis, and while we are fully cognizant of the fact that substantial savings would be realized by placing all utilities, including electric, telephone, cable television, and other communications facilities, underground in the fire area before the houses, streets and sidewalks are reconstructed or replaced, and while we, as a matter of public policy strongly encourage such undergrounding, we must, for the reasons hereinafter stated, deny PG&E's application to pass the full costs of undergrounding its facilities in the fire area on to its ratepayers statewide, no matter how nominal the increase to the individual ratepayer or how short the time the ratepayer would have to pay the increase in rates.

Authority to Underground

For over twenty-five years, the clear and unambiguous policy of the Commission has been to underground utility facilities whenever and wherever possible. It is the stated policy of this Commission that facilities serving all new residential housing developments be undergrounded. As noted by counsel for the cities in his brief (at pp. 14-17), in 1965, we instituted an investigation (Case 8209) aimed at determining what should be done to "stimulate, encourage, and promote the undergrounding, for aesthetic as well as economic reasons, of electric and communications services and facilities." In D.73078, 67 CPUC 490 (1967), the Commission established an official policy regarding undergrounding, stating: "It is the policy of this Commission to encourage undergrounding." (emphasis added.) Id. at 512. Recognizing the public's "demand [for] undergrounding of new and existing overhead electric and communications facilities," Id. at 492, and acknowledging that the existing system did not provide enough incentive for individuals to engage in such conversion, the Commission ordered the utilities to promulgate a tripartite system for the funding of conversions from overhead to underground

electric and communications facilities. This rule was promulgated by PG&E as Rule 20.

Two years after issuing its original decision on conversion, the Commission addressed the issue of undergrounding in new construction. We reiterated that "[i]t is the continued policy of the Commission to encourage underground construction. . Underground construction should be the standard in California and all new residential subdivisions should be constructed underground." (D.76394, 70 CPUC 339 (1969) at 349.)

In view of our undergrounding policy, and because we believed that higher priority should be given to new underground construction than to the types of conversion covered by sections B and C of the conversion rule (PG&E Rule 20-B and 20-C), the Commission determined that "[t]he additional costs of electric utility undergrounding in residential subdivisions should be absorbed by the utilities except for the costs associated with trenching and backfilling." Id. at 355.

Soon after our initial decision establishing the requirements for new residential subdivisions, we issued D.77187, 71 CPUC 134 (1970) to resolve any doubts as to whether or not undergrounding of facilities serving new residential developments was mandatory. In that decision we resolved that issue in these words: "...it is in the public interest that undergrounding should be mandatory for all new residential subdivisions,..." Id. at 137.

In the interval since the above decisions were issued, we have had many opportunities to reexamine our basic undergrounding philosophy, and instead of changing our view or restricting the conditions under which undergrounding is to occur, we have expanded both. In 1976, we expanded the use of Rule 20-A funds, noting that "in Decision No. 73078 we set forth our policy of encouraging undergrounding. We reaffirm this policy regarding the undergrounding of distribution lines and expand it to cover the

undergrounding of all overhead lines regardless of voltage classification." (D.85497 at 7, 79 CPUC 503 (1976).)

Similarly, in 1981, the Commission adopted resolutions E-1930 and E-1931 requiring PG&E and Southern California Edison Company to expend more than their proposed budgets for Rule 20-A funds. We took this measure in order to "...maintain construction activity at the historical level..." (D.82-01-18, 7 CPUC2d 749 (1982) at 762). Shortly thereafter, the Commission revised its method for determining individual communities' budgets for conversions because under the existing method, newer communities were achieving undergrounding much more rapidly than older communities. At that time we noted that the new method "...will have the desired effect of speeding conversion in those communities which have the greatest amount to accomplish." Id. at 768.

In the Commission's most recent review of Rule 20, we addressed complaints that the method adopted in 1982 for distributing funds suffered from many of the same problems as the prior rule. Maintaining our consistent policy of encouraging undergrounding, we adopted a hybrid of the two prior rules: half of a communities' funds would be computed by the ratio of its overhead lines to overhead lines in the entire system, and the other half would be computed by the ratio of the total number of customers in a local community to the total number of customers in the entire system. (D.90-05-032, 36 CPUC2d 283 (1990) at 289.)

From the above discussion, it is clear that this Commission favors the undergrounding of utility facilities and encourages the utilities and communities involved to do so whenever and wherever possible. When it comes to the undergrounding of utility facilities, we are the "True Believers," and need not be persuaded to allow undergrounding. This case is no different, and we encourage the placing of utility facilities underground in the fire area at the earliest possible time. This, however, does not mean that the application is to be granted. The question which

remains to be addressed is at whose expense is this undergrounding, if it is to take place, to be undertaken?

Because of the existence of the policy to encourage and promote undergrounding, and the Commission's efforts to standardize the implementation of such a policy, the rules pursuant to which undergrounding is to be accomplished have developed along situational lines. The two most common situations in which undergrounding is involved are: (1) installation of facilities where none have existed before (new developments), and (2) installation of underground facilities to replace existing overhead facilities (conversions). Though sometimes numbered differently by different utilities, the rules dealing with these matters are usually quite similar, if not identical, and will be found in tariffs filed with the Commission by each utility. Since PG&E is the applicant herein and is the party that has requested that it be allowed to underground its electrical distribution system in the fire area, its tariffs are the ones that govern. If PG&E has a tariff on file which deals with undergrounding of electrical distribution systems, any undergrounding project undertaken by PG&E must comply with those tariffs unless we grant an exception.

PG&E's Tariff Rules

PG&E has three tariff rules on file with the Commission which deal with the subject of undergrounding of residential electric facilities: Tariff Rule 15.1; Tariff Rule 16; and Tariff Rule 20. We will examine the applicability of each rule in the light of the situation which exists.

Rule 15.1

PG&E Rule 15.1 is entitled "Underground Extensions Within New Residential Subdivisions and Residential Developments." It applies only to underground extensions of electric facilities within new residential subdivisions and residential developments. The Rule presumes the development of a residential subdivision of

five or more lots (subdivision) or a development consisting of five or more dwelling units in two or more buildings located on a single parcel of land (development) being developed by a single or common developer. Under the rule, the cost of undergrounding is, theoretically, the joint responsibility of PG&E and the developer. In actuality, in a new development under Rule 15.1, little or none of the cost of undergrounding will be borne by either PG&E or the developer, as each will pass its cost along to others; PG&E to its statewide ratepayers, and the developer to the homeowner by inclusion in the purchase price of the individual residential lot and structures(s), if any, thereon.

In the application now before us, the applicants and the neighborhood associations, as well as several individual homeowners affected by the fire, urge the Commission to consider the fire area to be a "new development" within the meaning of Rule 15.1, with the Cities of Oakland and Berkeley being considered the "developers."

Rule 16

PG&E Tariff Rule 16 deals solely and specifically with the construction and placement of the connection between PG&E's existing local electric distribution network, whether above or underground, and a customer's home, and specifies the respective obligations of PG&E and the customer with regard to the cost of such service connection. While each residence which is reconstructed in the fire area will at some time require a service hookup and Rule 16 will apply to such hookup when made, Rule 16 is not applicable to this proceeding because, by its terms, Rule 16 applies only to connections between PG&E's local distribution system and the customer's residence, not to undergrounding of the distribution system itself.

Assuming, but not conceding or finding, that the recently enacted City of Oakland Local Ordinance No. 6 is constitutional, the installation of any electrical service lateral running from a

new or upgraded structure which is required to be undergrounded would be governed by PG&E Rule 16.

Rule 20

PG&E Tariff Rule 20 is entitled "Replacement of Overhead with Underground Electric Facilities." In practice, Rule 20 is essentially three different Rules: Rules 20-A, 20-B, and 20-C, each having application under differing conditions and circumstances.

Rule 20-A: Rule 20-A provides that PG&E will, at its expense, replace existing overhead electric facilities with underground facilities along public streets and roads, and on public lands and across private property across which rights-of-way satisfactory to PG&E have been obtained by PG&E, provided that the governing body of the city or county in which such electric facilities are and will be located (a) has made certain specified findings, and (b) has adopted an ordinance creating an underground district requiring certain specified items. If all prerequisites of Rule 20-A are met, and if the city has a Rule 20-A allocation for undergrounding from PG&E, existing overhead electric facilities may be replaced at PG&E's expense.

Rule 20-B: In the event that the prerequisites to the application of Rule 20-A are not or cannot be met, Rule 20-B allows for the undergrounding of existing overhead electric facilities at the expense of an applicant if all property owners agree in writing to convert from overhead to underground facilities, suitable legislation is in effect requiring undergrounding, and the applicant furnishes certain structures and equipment to PG&E, transfers ownership of such structures and equipment to PG&E, and pays PG&E a non-refundable sum equal to the difference between the cost of the underground system less the structures and equipment furnished PG&E and the cost of an equivalent overhead system.

Rule 20-C: Finally, if neither Rule 20-A nor 20-B applies under the facts of a specific case, an existing overhead

facility may, pursuant to Rule 20-C, be replaced by underground facilities where PG&E and an applicant mutually agree to underground and the applicant pays, in advance, a sum equal to the estimated cost of the underground facilities less the estimated net salvage value and depreciation of the replaced overhead facilities.

Discussion

As noted earlier, within a short time following the fire, PG&E replaced the destroyed overhead electric distribution system with a new overhead system having virtually the same configuration as that prior to the fire. This was necessary to fulfill PG&E's obligation to provide and maintain service to those in the fire area who desired such service and to serve those outside the fire area who were served by facilities in the fire area. While some have argued that in view of the paucity of surviving homes which had a need for electric service, there was no need for immediate restoration of service to the entire fire area, we find such an argument unpersuasive.

According to Stipulation, paragraph 5, some homes within the fire area which were served by PG&E's overhead distribution system were not damaged by the fire. It would appear that, except for lack of electric service and possible access routes, these homes remained habitable. In addition, it is uncontested that PG&E had customers outside the fire area whose electric power needs were provided through a portion of the distribution system that was destroyed (Stipulation, paragraph 5). In each of these cases, PG&E had an absolute duty, as a public utility, to restore service to those deprived of it as soon as reasonably possible. In addition, PG&E had the obligation to make power available to those who desired to rebuild homes that were damaged or destroyed by the fire.

From the record before us, it appears that PG&E considered reconstruction of the overhead system in its former configuration to be the most effective and expeditious manner in

which its service obligation could be met. In order to convert from an overhead distribution system to an underground one, long-range engineering planning, extensive site preparation and considerable physical plant construction must have been completed before the first foot of cable can be buried. All this preparatory work takes considerable time. It is unquestioned that an underground system requires far more time to design and construct, and costs more than does an overhead system. In the case of restoring service by means of a new overhead system in the fire area, the time and cost savings were multiplied through the use of PG&E's pre-existing plans and facility location maps associated with the former overhead system. Acknowledging these realities, we do not here question PG&E's business decision to meet its service obligation by reconstruction of the overhead system.

PG&E's Request

The crux of PG&E's application is that even though it has in effect a tariff (Rule 20) that would allow the fire area to be undergrounded in the same manner as any other conversion it may undertake, the Commission should ignore that tariff and its restrictions and conditions, and authorize PG&E to: (1) proceed, on an expedited basis, with undergrounding of electric utility facilities in the fire area; (2) dismantle the brand-new overhead system, which because of the new undergrounding of facilities would become surplus property; (3) book all costs of dismantling the overhead system, less salvage value, plus all costs of undergrounding to a C.E.M.A.; and (4) thereafter recover all costs from its ratepayers statewide through a rate increase. PG&E argues that fairness dictates that the costs associated with such a project be spread over the ratepayers statewide because the increased cost of such a project to each individual ratepayer on a statewide basis is miniscule when compared to the cost to each ratepayer in the fire area if the project costs were recoverable from only that group of ratepayers. To illustrate its point, PG&E

has indicated that a rate increase sufficient to cover the costs of undergrounding facilities in the fire area would equate to an additional cost to statewide residential ratepayers of only $.05 per month per ratepayer for a period of approximately one year. On the other hand, it indicates that in view of the burdens the fire placed on ratepayers in the fire area, requiring the cost of undergrounding to be borne only by those in the fire area would create a burden impossible for those unfortunate individuals to bear. Assuming, but neither conceding nor finding that PG&E's figures are correct, we reject PG&E's request.

In essence, PG&E and the city intervenors are asking this Commission to grant them a benefit in the nature of undergrounding electric facilities in the fire area, at ratepayer expense, and we are not prepared to do this as requested.

Safety Considerations

In support of its argument for expedited undergrounding, the Neighborhood Associations point out that in the fire area, power poles felled by the fire blocked access to and from the fire area, thus preventing victims from leaving the fire area by car and preventing firefighters from moving their equipment freely within the fire area. The Neighborhood Associations also point out that downed power lines created a serious hazard and that loss of power occasioned by downed lines prevented the use of electric-powered equipment such as pumps and lights, and prevented the use of information facilities such as radio and television, all of which added to the dimension of this disaster.

We must acknowledge that these claims have merit, but, in the absence of evidence to support these claims on the issue, are not persuasive arguments for undergrounding; however, we must also acknowledge that: (1) PacBell is no longer seeking undergrounding of its facilities and in the absence of such undergrounding, telephone poles susceptible to falling may still be present; (2) cable television companies would, in the absence of agreeing to

underground, require some type of overhead structures to support their cables; and (3) the hazards referred to are not unique to the Oakland/Berkeley Hills area. The same potential hazards are present wherever overhead facilities exist. Allowing undergrounding in the Oakland/Berkeley Hills area based on claims of safety concerns would compel undergrounding with the same urgency and dispatch in each of the hundreds or thousands of other areas of the state where overhead electric distribution systems currently exist. If this became our policy, the statewide ratepayer would soon be financially overwhelmed and unable to bear the cost.

We recognize that present undergrounding procedures represent a slow, piecemeal solution to the problem, and we welcome ideas and suggestions on how the rate of undergrounding might be accelerated.

Conclusion

While we agree that undergrounding of electric facilities, as well as other utility facilities in the fire area is desirable, and are sympathetic to the financial hardship occasioned by the fire, we find no justifiable basis on which we could, in good conscience, burden ratepayers outside the fire area with all of the costs as requested by PG&E. This is especially true when there is in existence a new overhead facility adequate to service the needs of those in the fire area, the cost of which will be borne by ratepayers statewide.

However, we do believe that some ratepayer contribution is appropriate. Specifically, we believe that a ratepayer contribution derived through an analysis under Rule 15.1 is reasonable because this is the rule most applicable in this situation. The Fire Area resembles a new subdivision in the sense that thousands of new structures are being built from the ground up.

In this particular case, we place considerable weight on the magnitude of the destruction to utility facilities in the affected area. The fire not only destroyed 3,000 homes and apartments, but also entirely destroyed the overhead utility system that served most of the area before the fire. As opposed to the proposed decision, we find little material difference between the Fire Area and a typical new subdivision. Thus, we apply Rule 15.1. However, in applying Rule 15.1 in this situation, as opposed to applying Rule 15.1 to a typical new subdivision, we will apply the following two principles: 1) The Cities of Oakland and Berkeley must be willing to assume the role of developers within the meaning of Rule 15.1, and 2) the developers must be willing to reimburse ratepayers for the cost of an equivalent overhead system in addition to paying the developers share of the undergrounding cost.

We further premise our Rule 15.1 application here on our belief that the Fire Area meets the general criteria for underground service under Rule 15.1 as if PG&E were applying the rule to any typical new subdivision.

Under Rule 15.1 a central party, a Developer, pays for the costs of the trenching and conduit, plus a fixed advance ($15.73 per foot) which is later refunded as services are connected. Ratepayers bear any remaining costs not covered by the Developer. We believe that the Cities of Oakland and Berkeley can assume the role of Developer. If Rule 15.1 were applied in the manner requested, according to Exhibit C to the Stipulation, the cost to Oakland/Berkeley as developers would be $9.6 million and PG&E's share of the $22.4 million estimated cost of undergrounding would be $12.8 million, which PG&E would then pass along to its ratepayers. It must be kept in mind that following the fire, the overhead system that was destroyed had negligible, if any salvage value, and has already been completely replaced by a new overhead system.

There is no question that Berkeley and Oakland now have reasonable service from a brand new overhead system replicating if not even improving the service available prior to the Fire. Therefore, we believe their offer to pay for the new overhead system is reasonable and would allow us to apply Rule 15.1 consistent with its application to a new development.

Under this approach, the Cities/residents would bear that portion of the undergrounding costs that would normally be borne by the Developer under Rule 15.1. As shown in the Stipulation, this amount totals $9.6 million -- $3.3 million as a refundable advance to PG&E, plus $6.3 million for trenching and conduit. The Cities shall have the responsibilities that a developer would have under Rule 15.1, but may agree with PG&E to allocate the work in a manner that PG&E and the Cities agree is most efficient and economic.

Rule 15.1 contains a provision that allows the developer to recover the advance when new services join the system. Given the complexities of handling such refunds when thousands of residents are involved, and in light of the above cost sharing, it is reasonable to waive this provision, and deny recovery of the advance by the Cities.

In addition to the Rule 15.1 contribution, the Cities/residents would reimburse ratepayers for the cost of an equivalent overhead system. This cost is estimated at $2.7 million. This amount does not include PG&E's return on this estimated investment which should be attributable to the developers, in this case, the Cities. The return figure is not in the record. We, therefore, shall also order the Cities to pay the return on the $2.7 million equivalent overhead replacement system calculated at PG&E's currently authorized cost of capital through the date the Cities pay PG&E for the replacement overhead system and undergrounding. PG&E should account for the estimated return in its C.E.M.A. filing, and later recover the costs from the Cities.

The allocation of the cost of the replacement system and the new underground facilities can then be summarized as follows:

	Cities/Residents	Ratepayers
Overhead	$2.7 million	$0[1]
Underground	$9.6 million	$12.8 million
TOTAL	$12.3 million	$12.8 million

Pacific Bell withdrew its application for undergrounding its rebuilt facilities. However, our interpretation here that the fire area qualifies as a new subdivision for underground electric service for PG&E is equally applicable to Pacific Bell. We expect Pacific Bell to participate with PG&E in placing the telephone facilities underground since undergrounding is mandatory in new subdivisions. It would be absurd to require undergrounding of electric service while tacitly allowing telephone facilities to remain overhead. Moreover, we note that if Pacific Bell were not to participate, the ratepayers' contribution would increase by $3.4 million.

Our expectation that Pacific Bell underground its telephone facilities along with PG&E does not prejudge or determine at this time whether Pacific Bell can recover its costs of undergrounding from its ratepayers. The Commission can address Pacific's recovery of undergrounding costs for the Fire Area assuming that Pacific Bell files an appropriate application with the Commission. This Opinion, therefore, does not address any ratemaking issues for Pacific Bell. If Pacific Bell does not participate, the ratepayer contribution will go up by approximately $3.4 million.

---

1 Although the cost of the overhead system to ratepayers is shown as zero for the purposes of this application, ratepayers are responsible for all reasonable costs booked to C.E.M.A. that are not paid for by the Cities.

PG&E is obligated to proceed with undergrounding when it receives payment in full from the Cities, and may agree to proceed in phases if subsequently agreed to by both PG&E and the Cities. PG&E and its ratepayers should not be placed in the position of being lenders to the Cities. The Cities may need to form an assessment district and/or borrow their contribution from a financial institution. Future Rule 20A allocations may be set aside by the Cities for making payments to PG&E. However, such reallocation of 20A funds, if the Cities choose to use them to make payments, must be requested in an advice letter filing made with the Commission.

Given the time that has elapsed and the uncertainties surrounding the estimates in the Stipulated Facts and questions as to Pacific Bell's participation, all costs for both the overhead and underground facilities, should be recorded in the C.E.M.A. for future review by the Commission. The Commission can address cost recovery then. The Cities' contribution should also be recorded in the C.E.M.A. to reduce the total costs in the account.

Because of the differences between this situation and that of a normal Rule 15.1 application, we assume that Cities waive their option as a Developer to install the system themselves or to competitively bid the project. This also seems prudent in terms of timely construction of the system and the great efforts already spent by PG&E on the proposed project.

We are reacting to a unique set of factual circumstances in this application. Accordingly, this decision shall not be construed as a precedent.

Comments Received

Subsequent to the distribution of the ALJ's Proposed Decision, comments were received from the Cities, the Neighborhood Associations, PG&E, DRA, and individual who appeared as an Interested Party in the proceeding, and a non-party individual living outside the affected area.

In its comments, PG&E notes that contrary to the assertion in the proposed decision, it had not put forth the arguments discussed in the proposed decision under the heading "Safety Considerations." Further, PG&E noted that there was no discussion of safety matters in the stipulation of facts on which the proposed decision is based, and for that reason should be stricken from the decision.

We note that the discussion upon which the ALJ's "Safety Considerations" are based was put forth by the Neighborhood Associations in their brief, not PG&E, and have made the appropriate change in the decision. We refused, however, to strike the safety discussion. While the stipulations on which the decision is based admittedly do not contain a discussion of the inherent safety or lack thereof of overhead utilities, we think the discussion both appropriate and supportable, and we take official notice of the fact that downed poles and wires, whether electric, telephone or television cable, negatively affected firefighting efforts in the fire area.

Except as noted above, we do not believe the comments require any changes in the decision as proposed by the ALJ.

Findings of Fact

1. In October 1991, a fire devastated a large area of Oakland and Berkeley, California, known as the Oakland/Berkeley Hills, and destroyed PG&E's overhead electric distribution system in the fire area.

2. Within a few months after the fire, PG&E replaced the destroyed overhead electric distribution system with a new overhead electric distribution system configured substantially the same as the system it replaced.

3. The costs of cleanup of the destroyed system and the installation of the replacement system have been or will be booked by PG&E to a C.E.M.A. to be recovered from its ratepayers statewide through a future rate increase.

4. Installation of underground facilities in the fire area will cost less if installed before, rather than after, reconstruction of the homes, roads, and sidewalks destroyed in the fire.

5. Commission policy favors undergrounding of utility facilities.

6. PG&E has on file with the Commission tariffs dealing with undergrounding of its facilities.

7. PG&E has on file with the Commission tariff rules which deal with conversion of overhead electric facilities to underground.

8. PG&E requests that it be authorized to underground its electric distribution facilities in the fire area on an expedited basis, and be allowed to book the costs of such undergrounding into a C.E.M.A. for future recovery in a statewide rate increase.

9. None of the filed tariffed rules for undergrounding clearly apply to the installation of underground facilities in the Fire Area. However, since the rebuilding effort in the Fire Area resembles a new subdivision in many ways, it is reasonable to use Rule 15.1 as the basis for cost-sharing between the Cities of Oakland and Berkeley (along with the Fire Area residents) and the ratepayers. The Cities will be considered the "developer" for the purposes of interpreting Rule 15.1 in this situation.

10. Our interpretation that the Fire Area qualifies as a new subdivision for underground electric service for PG&E is equally applicable to Pacific Bell.

11. In light of the cost estimates and cost sharing established in applying Rule 15.1 herein, it is reasonable to waive the provision under Rule 15.1 that allows the developer to receive a refund on the advance made for the undergrounding project.

12. According to the filed "Stipulation of Facts" the cost of an equivalent overhead replacement system costs $2.7 million. Groups representing the residents of the fire area have proposed

that they reimburse the ratepayers for the cost of an equivalent overhead system.

13. Using Rule 15.1 as the basis for determining the Cities' share of the undergrounding and adding the cost of the new overhead system results in a total contribution by the Cities of $12.3 million. In addition, the Cities are required to pay PG&E the return on the costs of the equivalent overhead replacement system calculated as discussed in the decision.

14. PG&E's estimated cost of undergrounding, as shown in the Stipulation of Facts filed May 27, 1992, is $22.4 million. This cost estimate will increase by approximately $3.4 million if Pacific Bell does not participate in the undergrounding project and share in the trenching costs.

15. Given the time that has elapsed, the above estimate is not certain, and the undergrounding costs may be higher than those indicated in the Stipulated Facts.

16. This project does not qualify under Rule 20A, but, the Cities, for purposes of meeting their cost obligations to PG&E for undergrounding, may set aside 20A funds provided the requested reallocation is made by PG&E in an advice letter filing with the Commission.

17. The Cities have waived competitive bidding by virtue of their negotiations with PG&E and the proposed Stipulation.

18. We are reacting to a unique set of circumstances in this application. Accordingly, this decision should not be construed as a precedent.

Conclusions of Law

1. PG&E acted properly in restoring its overhead electric distribution system promptly following the Oakland/Berkeley Hills fire.

2. PG&E's cost of replacement of the overhead electric distribution system has been or will be booked to a C.E.M.A. and ultimately passed on to PG&E's ratepayers statewide.

3. Conversion to an underground electric distribution system in the fire area would require the recently completed replacement overhead facility to be dismantled.

4. PG&E Tariff Rule 15.1 deals with electric line extensions to new developments.

5. The Cities can act as a proxy for a developer under Rule 15.1.

6. PG&E Tariff Rule 16 applies only to undergrounding of service laterals connecting a structure to electric distribution systems and has no application to the undergrounding of overhead electric distribution systems.

7. PG&E Tariff Rule 16 does not apply to this situation.

8. PG&E Tariff Rule 20 deals with conversion of overhead distribution systems to underground distribution systems.

9. PG&E Tariff Rule 20 does not apply to this situation.

10. The granting of PG&E's application as filed, to underground electric facilities in the fire area on an expedited basis and to book all costs of such conversion to a C.E.M.A. for future recovery from all ratepayers, is not in the public interest.

11. PG&E's application should be rejected as filed, but it is reasonable to provide some ratepayer subsidy for the undergrounding.

12. PG&E can reasonably allow the cities to act as a proxy for a Developer and apply Rule 15.1 as discussed.

13. The Cities have waived competitive bidding under Rule 15.1 by virtue of their negotiations with PG&E.

14. The Cities'/residents' contribution will total $12.3 million if the Cities serve as a proxy for the developer under Rule 15.1 and bear the cost of the replacement overhead system.

15. This undergrounding project does not qualify under Rule 20A. Any reallocation of 20A funds for the Cities to meet their payment obligations to PG&E shall be requested by an advice letter filing made by PG&E.

16. It will be the sole responsibility of the Cities to arrange for any cost-sharing by the Fire Area residents.

17. PG&E's cost of the restoration of service following the fire (including the cost of the overhead system) and the cost of the undergrounding project, less the contribution by the Cities, and other amounts discussed herein, shall be recorded in the Catastrophic Event Memorandum Account for later review by the Commission and recovery in accordance with Resolution E-3238.

18. This decision shall not be construed as a precedent.

O R D E R

IT IS ORDERED that

1. Pacific Gas and Electric Company (PG&E) shall install underground electric facilities in the Fire Area upon receipt of $12.3 million from the Cities of Oakland and Berkeley. The Cities shall receive credit against this amount in accordance with the amounts specified herein for work they perform or pay for directly to parties other than PG&E.

2. Failure by the Cities to pay the required contribution within 180 days of the effective date of this decision, or as otherwise agreed to as discussed herein, shall render this decision void and PG&E's application shall be deemed to have been denied with prejudice.

3. Except to the extent granted herein, Application 92-01-016 is denied.

This order is effective today.

Dated December 3, 1992, at San Francisco, California.

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

I will file a written dissent.

/s/ NORMAN D. SHUMWAY
Commissioner

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

NEAL J. SHULMAN, Executive Director

pb

H-4a

Norman D. Shumway, Commissioner, Dissenting:

The fire which swept the Berkeley and Oakland hills was an urban tragedy of immense proportions and I sympathize deeply with those who suffered such horror. But neither sympathy -- nor politics -- is a proper basis for deciding the ratemaking issue presented by this application, nor particularly, for mandating a financial subsidy for a few to be paid by utility ratepayers at large. I therefore dissent from the majority's determination that the utility service territory in the east bay hills qualifies as a new development under PG&E's Rule 15.1 and that all PG&E ratepayers should have to ante up the estimated cost of more than $12.8 million dollars for undergrounding the utility distribution system there.

I am troubled by several aspects of the majority decision, including the broad interpretation of PG&E's Rule 15.1 and the lack of distinguishing criteria upon which to base future application of the rule. In spite of the disclaimer as to precedential effect in the majority decision, the windfall mandated by the decision will spawn more such applications in the aftermath of future disasters. Moreover, while I agree with the majority that it would be absurd to underground PG&E's distribution system but maintain telephone poles and lines above ground, I am not convinced that the majority decision precludes that result.

The Commission's policy requiring the undergrounding of new development and the conversion of existing overhead systems to underground systems is clear and sound policy. I recognize that such conversion is a gradual process, considering the extent of the existing overhead distribution system and the cost of undergrounding (which includes dismantling the above ground

system). Nonetheless, slow but steady progress is being made in PG&E's service territory by the application of PG&E's Rule 20 (which governs conversion) and similar rules in the service territories of other electric utilities in this state. What the majority decision does is to ignore Rule 20 and, through unwarranted interpretation of Rule 15.1, grant a preference which will permit the east bay hills area to be undergrounded sooner than otherwise would have occurred.

The position of the Neighborhood Associations is that the lot owners who will benefit from undergrounding should reimburse ratepayers at large for the cost of the installation and dismantling of the new overhead system. This is certainly more equitable than the cities' original demand that ratepayers at large bear all costs: installation, dismantling and undergrounding. I am glad that the majority decision rejects the cities' position. In my view, however, because a new overhead system now exists in the east bay hills area, undergrounding of utility service there should not proceed on an expedited, preferential basis, but in accordance with Rule 20.

NORMAN D. SHUMWAY
Commissioner

December 3, 1992
San Francisco