

ORIGINAL

Decision 82 04 007

APR 6 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CARLTON HILLS SCHOOL, SANTEE
SCHOOL DISTRICT,

Complainant,

vs.

SAN DIEGO GAS & ELECTRIC COMPANY,
a California corporation,

Defendant.

Case 10984
(Filed May 18, 1981)

William S. Cannon, Attorney at
Law, for Santee School District,
complainant.

Maya Sanchez, Attorney at Law,
for San Diego Gas & Electric
Company, defendant.

O P I N I O N

This is a complaint by Carlton Hills School (School) against San Diego Gas & Electric Company (SDG&E). School contends that SDG&E assessed improper charges for the emergency replacement of a primary underground service. SDG&E asserts the charges were proper ones. The amount in dispute is \$7,962.63. The Commission received \$276.80 of that amount as a disputed bill deposit. The remainder was paid to SDG&E.

A duly noticed public hearing was held in this matter before Administrative Law Judge Donald B. Jarvis in San Diego on October 14, 1981, and it was submitted on October 29, 1981.

Statement of Facts

Construction of School was completed in 1960. A primary underground electrical service was installed at that time. The installation, hereafter described, provides for pole metering which met acceptable construction standards at that time. It would not meet these standards today. The primary underground service has an uncommon configuration which is at the root of the problem.

The primary underground service is connected to a high voltage overhead transmission line. At School, there are two distribution poles which have a connecting platform between them at the top. The platform houses three transformers which reduce the voltage of the electricity passing through them from 12,000 to 4,000 volts. Immediately below the platform on one of the poles are metering terminals. Further down on the same pole is a meter which reduces the voltage so that the electricity consumed is calculated at a ratio of the 4,000 volts. Electricity at 4,000 volts is carried down the pole in wires encased in conduit. At the base of the pole the conduit is undergrounded in a trench. There is a pull box in the underground trench outside one of School's buildings. From the pull box the underground conduit enters the building where it is brought above ground into a receptacle, called the main switchboard. The nature of the main switchboard is a matter of dispute. From the main switchboard there is conduit which takes electricity to a transformer which reduces it to 240 volts from whence it is distributed among School's buildings. When the service was originally constructed School installed all of the above-described facilities to a point 10 feet above the base of the pole. Facilities above 10 feet from the base of the pole were installed by SDG&E.

In February of 1979 a disaster occurred which caused the failure of the primary underground service. School's transformers were also damaged. SDG&E replaced the service and rented transformers to School. On March 16, 1979, SDG&E billed School \$9,003.83 as the cost of restoring power, sale of 528 feet of cable, and for rental of three-100 kV transformers. School paid this amount to SDG&E. It questioned the billing and asked SDG&E to review it. On May 15, 1980, SDG&E submitted a revised invoice for \$9,280.63, an increase of \$276.80. School presented an informal complaint to the Commission staff, which was unable to resolve the dispute. School filed this complaint on May 18, 1981. At the same time it transmitted \$276.80 as a disputed bill deposit.

Contentions of the Parties

A. School's Contentions

School contends that the point of termination of SDG&E's service is the receptacle within the building. The wires and conduit from the pole are an underground service lateral. School argues that under SDG&E's tariff Rule 16¹ it should only be charged for the length of cable exceeding 100 feet. School also contends that SDG&E should not have used overtime labor in restoring service and it should only have to pay for labor at the ordinary rate.

¹/ Unless otherwise noted, all references to Rules pertain to SDG&E's tariff.

B. SDG&E's Contentions

SDG&E contends that School installed the primary service in accordance with its own plans. School's installation did not provide a terminating enclosure. Therefore, under SDG&E's rules, the point of termination of SDG&E's service is at the top of the pole. The service from the top of the pole to the receptacle in the building is a service entrance conductor. School is not entitled to any free footage. SDG&E argues that the replacement of the primary service was done at the request of School. It was acting as a private contractor but did the work because of the nature of the customer. SDG&E asserts that, in view of the emergency nature of the repairs, the overtime labor was warranted. It contends its billing was proper.

Material Issues

The material issues presented in this proceeding are:

1. Where is the point of delivery for the purpose of applying SDG&E's tariff under the facts of this case?
2. What is the proper application of SDG&E's tariff under the facts of this case?
3. Was the use of overtime labor in making the emergency repair proper?

Discussion

It is well-established that ambiguous tariff provisions are to be construed strictly against a utility and any doubt resolved in favor of the customer. (Civil Code § 1654; Transmix Corp. v Southern Pacific Co. (1960) 187 CA 2d 257, 267; Southern Pacific Co. v US Steel Corp. (1964) 229 CA 2d 94, 100; United States v Interstate Commerce Comm. (D.C. Cir. 1952) 198 F 2d 958, 966 fn. 5, cert. denied, 344 US 893; see also, 14 Cal. Jur. 3d, Contracts § 157.) Before this decision our most recent expression on this principle was in D.93365, issued July 22, 1981 in C.10831 Ellickson v General Telephone. There we noted (pp. 9-10):

"...since the tariff provisions are unclear, we must find for Ellickson. It is not fair to apply unclear tariff provisions against the ratepayer. The tariff is the contract that governs when, how, and at what price a utility provides service. The tariff language is set by General and the Commission, as the regulator approving tariffs; thereafter the individual seeking service comes as a new party. He was not a party when the tariff or contract was drawn. To bind him with uncertain or unclear language that has considerable economic impact, and to which he was not a party to the making, is onerous and unjust. These circumstances illustrate why utility tariffs must be carefully drafted. What confidence can the public have if, when questions such as this arise, its members are told: well, although it is not clear, the intention of the utility and the Commission is, reading between the lines, you really do fall in this category. Simply put, a utility's tariffs, or contract with the public under which it holds out service, must be clear."

The characterization of the cable in dispute relates to the question of where is the point of delivery? SDG&E contends that the point of delivery is at the top of the pole at the 4,000-volt metering facilities. School argues that it is the main switchboard in the building. The term "point of termination" or "termination facilities" is used to refer to the point of delivery. If the point of delivery is atop the pole, the cable and conduit from the pole to the building are defined as a service entrance conductor. If the point of delivery is the main switchboard, the cable and conduit would be classified as a service lateral.

A SDG&E service planning supervisor testified in behalf of its position. He acknowledged that the configuration involved was unusual. He testified that, in his opinion, the main switchboard was not the point of termination because it did not have the required "meter sockets, meter and instrument transformer housings, service termination equipment all at that point in the building to be the point of connection." He cited Rule 16A2a in support of this position. The planning supervisor also testified that "The point of delivery is where we deliver our product, and that would be at a meter." He also stated that, in his opinion, SDG&E would "not be responsible for energized metered customer-owned conductors."

A utility consultant, called as a witness by School, testified that, in his opinion, the location of the meter is not determinative of the point of delivery and it was not necessary to have meter sockets, etc., in order to have a point of termination.

The appendix to Rule 15 contains definitions. Included is the following:

"Service Wires or Connection:

"The group of conductors, whether overhead or underground, necessary to connect the service entrance conductors of the customer to the utility's supply line, regardless of the location of the utility's meters or transformers."

SDG&E's rule clearly states that a point of delivery need not be at a meter. The testimony of SDG&E's planning supervisor is contrary to the published rule and is entitled to little weight on this point.

Rule 16A2a provides that:

"Miscellaneous Service Equipment

"a. Equipment Furnished by Customer

All service switches, connectors, fuses, meter sockets, meter and instrument transformer housings, service termination equipment, wireways and similar devices, irrespective of voltage, required in connection with service and meter installations on the customer's premises will be furnished and installed by the customer in accordance with the utility's requirements. Such facilities will be owned and maintained by the customer. The customer will provide a suitable means for the utility to place its seals on covers of service enclosures and instrument transformer enclosures which protect unmetered energized conductors installed by the customer. Such seals shall be broken only by a representative of the utility."

As indicated, SDG&E contends that the main switchboard is not the point of termination because it does not contain meter sockets, meter and instrument transformer housings, and service termination equipment. The planning supervisor cited Rule 16A2a in support of this position.

Rule 16A2a states that all of the enumerated items which may be required in connection with a service installation will be furnished and installed by the customer. The rule does not state that all the listed items are required. Nor does any other rule in the tariff. A plain reading of Rule 16A2a does not support SDG&E's position. Furthermore, even if it could be so construed, Rule 16A2a would be ambiguous. Under the principles previously discussed it must be construed in favor of School against SDG&E. We hold the point of termination to be the main switchboard.

SDG&E's tariff was amended in 1977 to include Rule 16B3c which provides that:

"Replacement or Reinforcement of Existing
Underground Service Connections from Over-
head System.

"(I) Replacement or reinforcement of
existing underground service
connections from an overhead
system will be made in accordance
with B.2.d. above."

The rule is silent with respect to who constructed or owned the service connection to be replaced. It applies to all existing underground service connections from overhead systems. Replacement is to be made in accordance with Rule 16B2d, the pertinent parts of which are as follows:

"(2) Primary Service (over 2,000 volts)

"Where an applicant requests electric service in excess of 2,000 volts, such service will be furnished under the following conditions:"

* * *

"d. Replacement or Reinforcement of Existing Underground Service Connections

"(1) When an existing customer-owned service lateral requires replacement or reinforcement due to added loads, etc., such replacement or reinforcement will be accomplished under the provisions of b. above and the following conditions: . . ."

Rule 16B2b provides that:

"The utility, at its expense, will furnish, install, own and maintain the underground service lateral to the applicant's termination facilities where the length of the service lateral on the applicant's property is 100 feet or less except as provided in (c) below. Where the distance is over 100 feet, the utility will furnish, install, own and maintain the service lateral for the entire length and the applicant shall pay to the utility the cost of the conductors and the conduit for the length exceeding 100 feet except as provided in (c) below."

School was entitled to have SDG&E provide 100 feet of cable in the replacement project.

SDG&E acted as a contractor for School in connection with the project. School contends that there was an unnecessary use of overtime labor in connection with the project and it should not have to pay for labor at that rate.

The record indicates that a disaster occurred at School which knocked out School's electrical system, including transformers within School. In view of the public nature of School's function, SDG&E promptly moved to restore power, acting as School's contractor, including the temporary renting of transformers to School. In this connection, the utility consultant who testified on behalf of School stated:

"Q. In your estimation, as a planner, would overtime have been necessary in order to complete this job or would the transformers that were installed have allowed for the School to have power necessary to open and function?"

"A. After the temporary transformers had been placed in service and the School reenergized [sic], the need for overtime to replace the underground service lateral would be at the utility's discretion.

"My feeling would be that if they felt it was necessary to replace those conductors on a priority basis, then that would be a decision they would make and incur the expense for that."

We find that School has failed to establish that there was an unnecessary use of overtime labor when SDG&E responded to the emergency and restored power.

In sum, we hold that School was entitled to have SDG&E provide 100 feet of cable and the labor in connection therewith. The amount charged for labor should be calculated on the basis of 428/528 which results in a factor of 81.1%. The correct amounts are as follows:

Cable 428 ft. U11-1	\$ 179.52
Labor	3,498.61
Labor Indirects	1,923.54
Work Equipment	694.18
Meals	76.68
Sub-total	<u>6,372.53</u>
Profit @ 16%	1,019.60
Transformer Rental	152.50
Sales Tax on Material	<u>13.28</u>
Total Billing	\$7,557.91

School is entitled to the refund of the disputed bill deposit of \$276.80 and reparation in the amount of \$1,445.92. No other points require discussion.

Findings of Fact

1. Construction of School was completed in 1960. A primary underground electrical service was installed at that time. The installation provides for pole metering which met acceptable construction standards at that time. It would not meet these standards today. The primary underground service has an uncommon configuration. It is connected to a high voltage overhead transmission line. At School, there are two distribution poles which have a connecting platform between them at the top. The platform houses three transformers which reduce the voltage of the electricity passing through them from 12,000 to 4,000 volts. Immediately below the platform on one of the poles are metering terminals. Further down on the same pole is a meter which reduces the voltage so that the electricity consumed is calculated as a ratio of the 4,000 volts. Electricity at 4,000 volts is carried down the pole in wires encased in conduit. At the base of the pole the conduit is undergrounded in a trench. There is a pull box in the underground trench outside one of School's buildings. From the pull box the underground conduit enters the building where it is brought above ground into a receptacle called the main switchboard. From the

main switchboard there is conduit which takes electricity to a transformer which reduces it to 240 volts from whence it is distributed among School's buildings. When the service was originally constructed School installed all of the above-described facilities to a point 10 feet above the base of the pole. Facilities above 10 feet from the base of the pole were installed by SDG&E.

2. In February of 1979 a disaster occurred which caused the failure of the primary underground service. School's transformers were also damaged. SDG&E replaced the service and rented transformers to School.

3. On March 16, 1979, SDG&E billed School \$9,003.83 as the cost of restoring power, sale of 528 feet of cable, and for rental of three-100 kV transformers. School paid this amount to SDG&E. It questioned the billing and asked SDG&E to review it. On May 15, 1980, SDG&E submitted a revised invoice for \$9,280.63, an increase of \$276.80. School presented an informal complaint to the Commission staff, which was unable to resolve the dispute. School filed this complaint on May 18, 1981. At the same time it transmitted \$276.80 as a disputed bill deposit.

4. The appendix to Rule 15 contains the following definition:
"Service Wires or Connection:

"The group of conductors, whether overhead or underground, necessary to connect the service entrance conductors of the customer to the utility's supply line, regardless of the location of the utility's meters or transformers."

5. Rule 16A2a provides that:

"Miscellaneous Service Equipment

"a. Equipment Furnished by Customer

All service switches, connectors, fuses, meter sockets, meter and instrument transformer housings, service termination equipment, wireways and similar devices, irrespective of voltage, required in connection with service and meter installations on the customer's premises will be furnished and installed by the customer in accordance with the utility's requirements. Such facilities will be owned and maintained by the customer. The customer will provide a suitable means for the utility to place its seals on covers of service enclosures and instrument transformer enclosures which protect unmetered energized conductors installed by the customer. Such seals shall be broken only by a representative of the utility."

This rule does not state that all the listed items are required. Nor does any other rule in SDG&E's tariff. Were it to be so construed, it would be ambiguous.

6. Rule 16B3c provides that:

"Replacement or Reinforcement of Existing Underground Service Connections from Overhead System.

"(1) Replacement or reinforcement of existing underground service connections from an overhead system will be made in accordance with B.2.d. above."

7. Rule 16B2d provides that:

"(2) Primary Service (over 2,000 volts)

"Where an applicant requests electric service in excess of 2,000 volts, such service will be furnished under the following conditions:"

* * *

"d. Replacement or Reinforcement of Existing Underground Service Connections

"(1) When an existing customer-owned service lateral requires replacement or reinforcement due to added loads, etc., such replacement or reinforcement will be accomplished under the provisions of b. above and the following conditions: . . ."

8. Rule 16B2b provides that:

"The utility, at its expense, will furnish, install, own and maintain the underground service lateral to the applicant's termination facilities where the length of the service lateral on the applicant's property is 100 feet or less except as provided in (c) below. Where the distance is over 100 feet, the utility will furnish, install, own and maintain the service lateral for the entire length and the applicant shall pay to the utility the cost of the conductors and the conduit for the length exceeding 100 feet except as provided in (c) below."

9. The point of delivery or terminating point for service at School is the main switchboard. Under SDG&E's tariff, School was entitled to have SDG&E provide 100 feet of cable in the replacement project.

10. SDG&E responded promptly to School's request for restoration of service after the disaster occurred. In view of the emergency which existed, there was no unnecessary use of overtime labor.

11. The proper amount to be charged School should be based on 428 feet of cable installed, which is 81.1% of applicable items. The correct amounts are as follows:

Cable 428 ft. U11.1	\$ 179.52
Labor	3,498.61
Labor Indirects	1,923.54
Work Equipment	694.18
Meals	76.68
Sub-total	5,372.53
Profit @ 16%	1,019.60
Transformer Rental	152.50
Sales Tax on Material	13.28
Total Billing	\$7,557.91

12. No discrimination will result from the payment of reparation in this matter. School is entitled to the refund of the disputed bill deposit of \$276.80 and reparation in the amount of \$1,445.92 with interest at the rate of 7% per annum from April 18, 1979. (Public Utilities Code 734; Cal Const, Art. XV, Sec. 1.)

13. The 16% profit represents that profit which would be earned by an independent, nonutility contractor and is not related to SDG&E's return on equity authorized by this Commission for utility operations. The amount of profit was not a contested item in this proceeding.

Conclusions of Law

1. Any ambiguities in SDG&E's tariff must be strictly construed against the utility and in favor of the customer.

2. The disputed bill deposit of \$276.80 should be returned to School.

3. School should be awarded reparation in the amount of \$1,445.92 with interest at the rate of 7% per annum from April 18, 1979 to the date of payment.

4. Since SDG&E has received a profit from School for certain nonutility work performed by SDG&E, SDG&E should not also be permitted to capitalize as utility rate base any portion of that work and thereby earn a second profit from its general body of ratepayers in the form of a rate of return.

O R D E R

IT IS ORDERED that:

1. The deposit of \$276.80 made by Carlton Hills School, Santee School District, shall be disbursed to the complainant.

2. San Diego Gas & Electric Company (SDG&E) shall pay to Carlton Hills School, Santee School District, as reparation the sum of \$1,445.92, with interest at the rate of 7% per annum from April 18, 1979 to the date of payment.

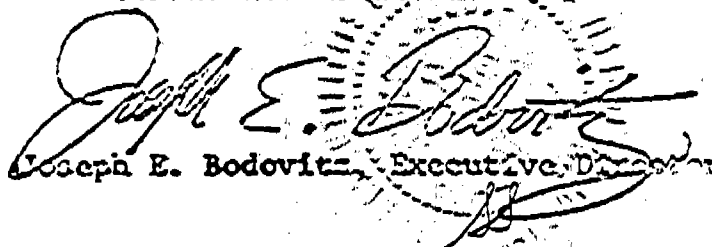
3. SDG&E shall record all items on which it charged Carlton Hills School, Santee School District, a profit, plus the profit itself as miscellaneous operating income and shall not include any such items in utility rate base accounts.

This order becomes effective 30 days from today.

Dated April 6, 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

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


Joseph E. Bodovitz, Executive Director