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Decision 82 07 038 JUL 21 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Great Western Cities, Inc., Complainant, vs. Southern California Edison Company, Defendant.	Case 10953 (Filed February 17, 1981)

Memel, Jacobs, Pierno & Gersh, by Thomas A. Pistone, Attorney at Law, for complainant.
Frank J. Cooley, Attorney at Law, for defendant.

O P I N I O N

Complainant Great Western Cities, Inc. (GWC) alleges that it has requested, and defendant Southern California Edison Company (Edison) has refused, the construction of overhead electrical extensions to Tracts 2811, 2812, and 2887, located in California City, Kern County, California. GWC contends that the conditions set forth in Edison's tariff Rule 15.C.1.a.(1)[1/] are clearly and unquestionably satisfied in this case and that it is, therefore, entitled to the overhead extension of electrical service.

1/ Rule 15.C. is entitled "Overhead Extensions to Serve Residential Subdivisions or Developments". Subparagraph 1.a.(1) provides that overhead extensions may be constructed when the lots within the residential subdivision or the development existed as legally described parcels before May 5, 1970, and significant overhead lines exist within the subdivision or development.

The complaint further alleges as follows:

1. Tracts 2811, 2812, and 2887 are located within a relatively small development within California City, known as "First Community" of which GWC is the developer.
2. California City was incorporated in 1965, and, with a few exceptions not pertinent to this dispute, all relevant tract maps, including those of Tracts 2811, 2812, and 2887, were recorded before 1966.
3. First Community is and has been a clearly defined, master-planned and integrated development from its inception and a map of the entire planned First Community, showing its boundaries and all planned construction, was filed with the Kern County Planning Department in June 1960, long before any development was actually begun.
4. Significant overhead electrical lines already exist within the First Community development, providing electrical service to more than 70% of the development. Tracts 2811, 2812, and 2887 are among the few remaining areas of the development which have not yet obtained overhead electric lines.
5. Extension of overhead utility lines into Tracts 2811, 2812, and 2887 will not cause any further construction of overhead lines beyond the boundaries of First Community since First Community is a clearly defined development, with fixed boundaries, beyond which GWC has not recorded tract maps and/or does not wish to extend overhead utility lines.

6. GWC has been careful and diligent in complying with all Commission rules in constructing utilities and has constructed utility lines underground in all cases in which the conditions of tariff Rule 15.C. 1.a.(1) have not been satisfied.

7. GWC has no obligation to provide utilities to purchasers of property in First Community, but it has provided for the construction of roads and water service to the entire development. If overhead construction is permitted, GWC wishes to provide electric service to the few remaining areas of First Community, such as Tracts 2811, 2812, and 2887 which do not have such service. Otherwise, it will be the responsibility of each individual owner in such areas to obtain electric service, and such service would have to be run underground at a tremendous increase in cost to such property owners.

8. Most individuals who purchased property in Tracts 2811, 2812, and 2887 did so prior to enactment of the mandatory undergrounding rules by the Commission and the then current real estate public reports made no mention of such requirements. Such property was purchased with the understanding that overhead electrical extensions would be available and with the contemplation of being able to obtain such overhead extensions.

9. Because overhead utility lines are the norm in the First Community development, and already exist throughout most of the First Community development, they present no esthetic problems, do not run contrary to any local policies or ordinances, and they meet with local approval.

10. If Edison is permitted to refuse to construct overhead extensions to the few remaining areas of the First Community development which are without electric service, a patchwork pattern of overhead and underground utilities will exist side by side which can result in a situation where one property owner is required to put utilities underground while other property owners on the same street are permitted to have overhead facilities.

GWC seeks an order requiring Edison to construct overhead utility lines to Tracts 2811, 2812, and 2887.

In its answer, Edison admits that it has refused to construct overhead electrical extensions to the subject tracts but denies that it has violated, misinterpreted, or misapplied any provision of tariff Rule 15.

Edison alleges the following affirmative defenses in support of its position:

1. In Decision (D.) 76394 dated November 4, 1969, the Commission stated its policy of favoring undergrounding in Finding of Fact 1 wherein it stated: "Underground should be the standard for all extensions." In D.77187 dated May 5, 1970, the Commission, after affirming its Findings of Fact in D.76394, stated that:

"The Commission further finds and concludes that it is in the public interest that undergrounding should be mandatory for all new residential subdivisions, but that such a mandatory requirement should not apply to those subdivisions for which a master plan, preliminary map or tentative map has been filed with the appropriate local authorities pursuant to the Subdivision Map Act on or prior to the effective date of this order and where an agreement is entered into with a utility for electric service within two years after the effective date of this order."

2. The Commission has granted only very limited exceptions to the mandatory undergrounding requirement. In D.77187, the Commission made an exception for developers who had made substantial financial commitments and whose developments had progressed to the point where plans could not be changed without serious financial impact. All others who did not fall within this exemption but who felt they should likewise be exempted from the mandatory underground requirement could file a complaint with the Commission seeking relief. However, the Commission emphasized that only exceptional circumstances would thereafter justify the granting of any further exemptions.

3. GWC does not qualify for an exemption under Rule 15. In order to be allowed overhead extensions, the subdivision or development must have been legally described as such before May 5, 1970 and must have significant existing overhead lines within the subdivision or development according to Rule 15.C.1.(a)(1). GWC appears to have misconstrued the meaning of "subdivision or development" as used in Edison's tariff schedules in order to support its argument.

4. Rule 1 of Edison's tariff schedule defines tract or subdivision as follows:

   "Tract or Subdivision: An area for family dwellings which may be identified by filed subdivision plans, or as an area in which a group of buildings may be constructed about the same time, either by a large-scale builder, or by several builders working on a coordinated basis."

A residential development is defined in in Rule 15.1 as:

"...five or more separately metered single family and/or multifamily domestic accommodations..."

The Commission has upheld Edison's interpretation of its rules with respect to the definition of development in D.82455 dated February 13, 1974 in Finding of Fact 7, which states:

"a. In applying this rule, Edison in effect interprets 'new . . . residential subdivision of five or more lots' to include new residential developments of five or more separately metered dwelling units on a single premise and has done so, it appears, during the entire period Rule No. 15.1 has been in effect.

"b. With this interpretation it would follow from Section D.1. of Edison's Rule No. 15, quoted hereinabove (mimeo p.2), that line extensions to serve new apartment buildings such as complainant's must be made underground.

"c. Edison's interpreting Rules Nos. 15 and 15.1 in this way is consistent not only with underground construction, rather than overhead, being the standard for electric line extensions but with the line extensions to serve individuals being the only classification of extensions expressly exempted from the mandatory undergrounding requirement."

5. If GWC feels that the application of the rule is either impractical or unjust based upon its special circumstances, GWC should apply for a deviation of Rule 15 as provided for by Rule 15E-7.

In view of the foregoing, Edison contends the complaint is without merit and should be dismissed.

After due notice, a public hearing was held before Administrative Law Judge (ALJ) William A. Turkish in Los Angeles on May 18, 1981.

Under Rule 79 of our Rules of Practice and Procedure and in response to a petition filed by GWC, we directed the filing of a proposed report by ALJ Turkish. The proposed report was issued September 11, 1981. Exceptions to the report were filed by GWC and a reply to the exception was filed by Edison.

David Lloyd, director of legal services for GWC, and Larry Knoph, vice president of GWC, testified in GWC's behalf. Daniel C. Sanborn, a rate structure engineer employed by Edison, testified in Edison's behalf.

The testimony of GWC's witnesses essentially was an elaboration of the allegations contained in the complaint. According to one witness for GWC, the dates of recording of the tract maps, which are in issue here, were as follows:

Tract 2811 was recorded on September 4, 1964.
Tract 2812 was recorded on April 24, 1964.
Tract 2887 was recorded on October 1, 1965.

Three other tracts in the development were recorded after May 5, 1970. He stated that all the remaining tracts within the First Community development with the exception of those three tracts were recorded before May 5, 1970.

GWC's other witness testified about his experience working with land developers and on the history of the First Community development and its location within the incorporated city of California City. He further testified that the factors which make a project a "development", as that word is understood in the building industry, within the financial community, among government agencies, and county planning commissions are as follows:

1. Single ownership of unsubdivided property.
2. The property is master-planned for the benefit of expanding development and construction in an orderly manner.
3. The master plan is approved by a local government agency.
4. The master plan provides for traffic patterns consistent with the densities that are proposed by the master plan.
5. The master plan provides for the appropriate sizing of water mains and sewer lines.
6. The property is promoted, advertised, and sold as an integrated development.
7. The streets, water, sewer, and power lines are then constructed according to the master plan.

According to the witness, First Community conforms in all ways to this definition of a "development". The property was acquired by a single owner/developer in 1958 and GWC subsequently acquired the land in 1969. The master plan was approved by the County of Kern and filed in that county's Recorder's Office. The master plan designated areas for residential, commercial, industrial, and recreational activities within the development. After the approval and filing of the master plan, the developer then recorded individual tract maps within the First Community development over a period of 10 years as the individual tracts were developed. The water system was constructed to serve all of the First Community development to its outer boundaries. Then the major streets, arterial and feeder streets, and cul-de-sacs were built to a size not to merely accommodate that particular individual tract being constructed but to accommodate the entire traffic flow into the center of the community. All the roads and water system within the development, with the exception of two small tracts, are entirely in place.

The witness sponsored and explained Exhibit 5 which indicates that the majority of tracts within the development have all or partly overhead power lines, while a small number of recorded tracts, including the three tracts in issue here, have, as yet, no power at all. The exhibit also shows several small tracts, recorded after May 5, 1970, which contain underground power.

The witness testified that, on the average, 60% or more of the lots within Tracts 2811, 2812, and 2887 had been sold to individuals in 1964 and 1965 when overhead extensions were permissible. He pointed out, however, that GWC has no contractual or other obligation to extend electric service into Tracts 2811, 2812, and 2887, but will do so only if it is allowed to construct overhead lines. Otherwise, it would be financially unfeasible to do so and the existing property owners will have to bear the cost of underground line extensions. According to the witness, local officials are all for putting the power into the three tracts by means of overhead lines.

Upon cross-examination, the witness acknowledged that there may be more than one definition of the word "development" in the industry. He also acknowledged that GWC currently owns approximately 9% of the total number of lots available in Tracts 2811, 2812, and 2887 and thus has a substantial economic stake in whether overhead or underground electric service is to be provided to those tracts. He estimated underground electric service would be about three times the cost of overhead electric service when one considers that television cable and telephone lines could share the electric overhead poles as well. He admitted that undergrounding would be an added feature in selling lots within the three tracts (which would increase the price of the lots as well), but he felt the price of the lots could only be increased to a point where the lots would be priced out of the market.

Edison's Presentation

Edison's witness testified that, in his opinion, First Community is not a development for the purposes of Rules 15 and 15.1. He based his opinion on discussions with people who have been in Edison's tariff applications section for a long time as well as his review and understanding of the Commission decision which established Rule 15.1.[2/] He testified that although he was not aware of any Commission decision in which the Commission addressed the question of what a development under Rule 15.C.1.(a)(1) was or how it was defined, the term "development" was defined in Edison's

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2/ Rule 15.1., effective March 23, 1975, promulgated in response to D.82455 and entitled "Underground Extensions Within New Residential Subdivisions", makes reference to residential developments as follows:

> "Extension of underground...lines...to furnish... electric service within a new...subdivision of five or more residential lots, or within a new residential development having five or more separately metered single-family and/or multi-family domestic accommodations..."

tariff Rule 15.C.[3/] in 1970. He testified that although this "definition" is not currently in its tariffs, Edison still defines the term "development" as it was defined in 1970 and that this interpretation was upheld by the Commission in D.82455. In the witness' opinion, First Community does not conform to that definition.

3/ Former Rule 15.C., effective May 26, 1970, provided as follows:

"C. Overhead Extensions to Serve Subdivisions or Tracts, Housing Projects and Multi-Family Dwellings.*

"* Not applicable to line extensions within a new single-family and/or multi-family residential subdivision of five or more lots (subdivision) and in a new residential development consisting of five or more dwelling units in two or more buildings located on a single parcel of land (development) unless a master plan, preliminary map or tentative map has been filed for the subdivision or development with the appropriate local authorities pursuant to the Subdivision Map Act on or prior to May 5, 1970, and where an agreement has been entered into with the utility for electric service prior to May 5, 1972."

Discussion

The central issue here is whether or not the area known as First Community located within California City is a development within the meaning of Edison's Rule 15.C.1.a.(1) and thus entitled to overhead line extensions to and within Tracts 2811, 2812, and 2887, which are all located within the First Community area boundaries.

It is undisputed that First Community is a master-planned and integrated community of approximately 12 square miles and that the master plan was filed in the Kern County Recorder's Office in approximately 1960. Within the First Community boundaries are approximately 55 separate tracts or subdivisions, the tract maps of which were filed and recorded with the county at various times between 1958 and 1971. The three subdivisions, which are the subject of this hearing, were recorded in 1964 or 1965.

Rule 15.C.1.a.(1) sets forth two requirements as a qualification for overhead line extensions. First, the lots within the residential subdivision or development must have existed as legally described parcels before May 5, 1970. GWC clearly meets this requirement since the three tracts or subdivisions at issue here were legally described tracts on maps filed before May 5, 1970. It is the second requirement of Rule 15.C.1.a.(1) which poses the problem. This requirement is that, in addition to existence as a legally described residential subdivision or development before May 5, 1970, significant overhead lines exist within the subdivision or development. GWC reads the expression "subdivision" and

"development" in the disjunctive and does not interpret the words as being synonymous. Thus, although GWC construes the first requirement as being satisfied because subdivision maps for Tracts 2811, 2812, and 2887 were recorded before 1970, it ignores the three individual subdivisions in construing the second half of the requirement and instead relies on the larger First Community "development" for satisfying the requirement since more than 70% of the total land area within the First Community "development" already has existing overhead electrical extensions.

GWC argues that the individual tracts which lie within the boundaries of First Community are nothing more than arbitrary units formed and drawn along arbitrary lines within the "development" and should be viewed in the context of the master development of which they are a part. We reject this argument because GWC attempts to qualify the subdivisions as part of the larger First Community "development", rather than as separate subdivisions, in order to satisfy the second part of the requirement of Rule 15.C.1.a.(1); while at the same time GWC ignores the larger First Community "development" and relies on the smaller subdivisions to satisfy the first part of the requirement. It is obvious that neither the individual subdivisions nor the larger First Community "development" viewed separately could satisfy both parts of the requirement in Rule 15.C.1.a.(1). The three subdivisions clearly meet the first requirement but fail in the second requirement since there are no overhead lines existing within the subdivisions. If we consider the First Community "development" as an entity,

the second requirement is clearly met since significant overhead lines do exist within its boundaries. However, First Community fails to meet the first requirement because not all of the lots within the "development" existed as legally described parcels before May 5, 1970.

Edison's tariff Rule 15.C.1.a.(1) became effective December 12, 1973 as a result of D.81620 in Case (C.) 8993 dated July 24, 1973. C.8993 was a reopened proceeding which had its origin in a prior series of hearings commencing in the late 1960s dealing with the undergrounding of electric and telephone line extensions. All California electric and communications public utilities were named as respondents in that proceeding.

Before 1969, there had been an increasing trend toward the installation of underground electric and telephone lines in new residential subdivisions. Undergrounding was not then mandatory under the utilities' tariffs.

D.76394 included a finding that undergrounding should be the standard for extensions by electric and telephone utilities. The extension rules promulgated by that decision did not, however, clearly make undergrounding mandatory for new residential subdivisions.

On February 20, 1970, the Commission amended its then pending investigation (C.8993) into nonresidential extensions to develop an updated record relative to the necessity for mandatory requirements of underground extensions for new residential subdivisions. D.77187 made it mandatory that those extensions be underground unless a deviation from that requirement was authorized by the Commission.

Before D.81620 was issued in 1973, electric and telephone rules permitted overhead lines where, before May 5, 1970, suitable subdivision maps had been filed with local authorities, and an agreement for electric service existed with the electric utility before May 5, 1972. Further, the Commission interpreted the rules as permitting overhead service where the lots existed as legally described parcels before May 5, 1970 and significant overhead lines already exist within the subdivision or development. The Commission's findings noted that most of the previous deviations granted from the mandatory undergrounding provisions of electric and telephone utility rules for line extensions to serve residential subdivisions had been for large-lot subdivisions and that automatic exemption of large-lot subdivisions from mandatory undergrounding rules provided by the tariff revision changes ordered in D.81620 would not result in overhead lines where undergrounding was feasible. Edison's Rules 15.C.1.a. and 15.B. are the direct result of D.81620.

Before D.81620 the term "development" was used by various electric utilities and telephone utilities to denote different things. Among telephone utilities, it related to the anticipated density of a newly developed area. If the expected density exceeded a minimum size, it was classified as a residential subdivision. If less, it was classified as a real estate development. Edison's current Rule 15.C, which is entitled "Overhead Extensions to Serve Residential Subdivisions or Developments", does not specifically define a subdivision or development although the term "subdivision" is defined in Rule 1.

However, in D.77187, the Commission ordered each electric utility respondent in C.8993 to revise its tariff sheets and add the following to the end of the existing Section C of Rule 15 which was entitled "Overhead Extensions to Serve Subdivisions or Tracts, Housing Projects and Multi-family Dwellings":

> "*Not applicable to line extensions within a new single-family and/or multi-family residential subdivision of five or more lots (subdivision) and in a new residential development consisting of five or more dwelling units in two or more buildings located on a single parcel of land (development) unless a master plan, preliminary map or tentative map has been filed for the subdivision or development with the appropriate local authorities pursuant to the Subdivision Map Act on or prior to May 5, 1970, and where an agreement has been entered into with the utility for electric service prior to May 5, 1972."

Since D.77187 was issued on May 5, 1970, the term "development" has been defined by electric utilities as consisting of five or more dwelling units in two or more buildings located on a single parcel of land. Following D.82455, this reference to residential developments was moved from Rule 15 to Rule 15.1. In 1974 the Commission upheld Edison's tariff and interpretation of the term "development" in D.82455 and we again affirm that interpretation. Thus, GWC's claim of improper tariff interpretation and application by Edison is incorrect.

Finally, we wish to point out to GWC that it has been the intent of this Commission for many years, as clearly indicated in our many decisions relating to line extensions, that mandatory undergrounding of utility lines is the standard in California, with very few exceptions. Those few exceptions, as far as residential subdivisions are concerned, were meant only for those subdivisions or developments (as described above) containing lots which existed as legally described parcels before May 5, 1970 that already contained significant overhead lines, or those subdivisions or developments of which the maps or plans had been filed before May 5, 1970 and an agreement for electric service was entered into with the utility before May 5, 1972. Another exception was where the minimum parcel size within the subdivision or development was 3 acres or larger and certain other conditions existed. Aside from those automatic exceptions, an individual could obtain an exemption from the mandatory undergrounding upon a showing of unusual circumstances.

Thus, our decisions clearly reflect the policy of narrowing the scope of exceptions to the mandatory undergrounding rules, rather than enlarging them. Adopting GWC's rationale would defeat the clear intent and requirements of the tariff in that GWC could bootstrap itself into an exemption for the remaining undeveloped tracts of First Community.

Since we believe Edison's interpretation of its tariff rules to be correct, and there is no tariff ambiguity, GWC's complaint should be denied.

Exceptions and Reply to
The ALJ's Proposed Report

As previously stated, exceptions to the proposed report were filed by GWC with reply to the exceptions filed by Edison. GWC takes exception to Findings of Fact 8 and 9 and to the Conclusion of Law contained in the proposed report.

Finding of Fact 8 stated:

"8. First Community is not a development within the context of Rule 15.C.1.a.(1) or Rule 15.1." (Mimeo. page 19.)

Finding of Fact 9 stated:

"9. Edison's interpretation of its tariff Rule 15.C.1.a.(1) on the meaning of the term 'development' is consistent with Rule 15.1 and with previous Commission decisions which limit exemptions to the mandatory undergrounding of line extensions of electric and telephone utilities in California." (Mimeo. page 19.)

The Conclusion stated:

"The Commission concludes that GWC does not meet the requirements of Edison's filed Rule 15.C.1.a.(1) for the construction of overhead line extensions within Tracts 2811, 2812, or 2887, and that the complaint should be denied." (Mimeo. page 20.)

In support of its exceptions, GWC merely reiterates the same arguments put forth by it at the hearing and again in its post-hearing brief. Those arguments were rejected by the ALJ in his proposed report, and we ratify his conclusions. GWC focuses its argument on the proper definition of the term "development", but it fails to offer any convincing evidence other than the statement put forth by its witness at the hearing that "First Community conforms in

all ways to the definition of a 'development'" as that word is understood in the building industry, within the financial community, among government agencies, and county planning commissions." This same witness admitted that there may be more than one definition of the term "development" in the industry.

With respect to GWC's argument that its definition of "development" is recognized among governmental agencies, we call attention to California Business and Profession Code Section 11003.1 which defines the term "real estate developments" under California's real estate law and which states in relevant part:

> "'Real estate developments' referred to in Section 11003 are developments:
>
> "(a) Which consist or will consist of separately owned lots, parcels or areas with either or both of the following features:
>
> "(1) One or more additional contiguous or noncontiguous lots, parcels or areas owned in common by the owners of the separately owned lots, parcels or areas.
>
> "(2) Mutual, common or reciprocal interests in, or restrictions upon, all or portions of such separately owned lots, parcels or areas, or both, and
>
> "(b) In which the several owners of the separately owned lots, parcels or areas have rights, directly or indirectly, to the beneficial use and enjoyment of the lots, parcels or areas referred to in paragraph (1) of subdivision (a) above or any one or more of them or portions thereof or interests therein, or the interests or restrictions referred to in paragraph (2) of subdivision (a) above. . . ."

Under the facts presented by GWC in this case, the area under consideration would not qualify as a development under the above code section. We cite this definition to GWC, not as binding on the Commission in interpreting Edison's tariffs but to refute the contention of GWC that its own definition is recognized among governmental agencies. We are not aware of any statutory authority which supports GWC's definition. Since we reject the exceptions to Findings of Fact 8 and 9, we likewise reject GWC's exception to the conclusion contained in the ALJ's proposed report since it is based in part upon Findings of Fact 8 and 9.

GWC proposes the following substitute or additional Findings of Fact:

1. The lots on which GWC seeks to construct overhead electrical extensions are all lots which existed as legally described parcels prior to May 5, 1970 [Proposed Report, pages 13 and 14].

We reject this proposed Finding of Fact as a substitute for Findings of Fact 8 and 9. We also reject it as an additional finding since Finding of Fact 5 says substantially the same thing.

2. The lots on which GWC seeks to construct overhead electrical extensions are all located within the First Community development [Proposed Report, page 13].

We reject this proposed Finding of Fact as a substitute for Findings of Fact 8 and 9. We also reject it as an additional finding since Finding of Fact 4 says substantially the same thing.

3. Significant overhead extensions exist within the First Community development as a whole, which is comprised of the 55 recorded tracts within the development [Proposed Report, pages 14 and 15].

We reject this proposed finding as a substitute for Findings of Fact 8 and 9. We will, however, accept the finding as an additional finding, modified and renumbered as follows:

"10. Overhead extensions exist within a majority of the approximately 55 separate subdivisions contained within the boundaries of First Community. The tract maps of these subdivisions were recorded at various times between 1958 and 1971 and the overhead extensions within those subdivisions having such overhead extensions were installed when overhead extensions were permissible."

4. Of the 55 tracts within the First Community development, all but three tracts were recorded prior to May 5, 1970 [Proposed Report, page 7].

We reject proposed Finding of Fact 4 as a substitute for Findings of Fact 8 and 9, but we accept such proposed finding as an additional finding, modified and renumbered as follows:

"11. Of the 55 subdivisions within the area known as First Community, all but three subdivisions were recorded prior to May 5, 1970."

5. The three tracts within the First Community development which were not recorded prior to May 5, 1970 were tracts which originally were not planned for construction. Subsequent to May 5, 1970, construction was planned for the three tracts in question, and electrical extensions on those three individual tracts were constructed underground.

We reject this proposed Finding of Fact either as a substitute for Findings of Fact 8 and 9 or as an additional finding as we do not find it relevant to the issues here.

6. First Community is a "development" as that word is used in the building industry, financial community, by governmental agencies, and county planning commissions.

We reject this proposed finding either as a substitute for Findings of Fact 8 and 9 or as an additional finding for reasons discussed earlier.

7. First Community is a development within the context of and under a proper interpretation of Rule 15.C.1.a.(1).

We reject this finding either as a substitute for Findings of Fact 8 and 9 or as an additional finding for the reasons discussed earlier.

We reject GWC's Conclusion of Law as it is not supported by any Findings of Fact.

Findings of Fact

1. GWC is a developer of an area known as "First Community" located within California City, California.

2. GWC acquired its properties within the First Community boundaries from its original owner-developer in 1969.

3. The master plan for First Community was prepared and filed with the Kern County Recorder's Office in June 1960.

4. Subdivisions or Tracts 2811, 2812, and 2887 are separate subdivisions within the boundary lines of First Community.

5. Subdivision maps for Tracts 2811, 2812, and 2887 were filed with the Kern County Recorder's Office on September 4, 1964, April 24, 1964, and October 1, 1965, respectively.

6. Tract 2811 consists of 500 lots of which GWC owns 53. Tract 2812 consists of 621 lots of which GWC still owns 46. Tract 2887 consists of 653 lots of which GWC still owns 60.

7. Tracts 2811, 2812, and 2887 do not contain any overhead lines within their boundaries.

8. First Community is not a development within the context of Rule 15.C.1.a.(1) or Rule 15.1.

9. Edison's interpretation of its tariff Rule 15.C.1.a.(1) on the meaning of the term "development" is consistent with Rule 15.1 and with previous Commission decisions which limit exemptions to the mandatory undergrounding of line extensions of electric and telephone utilities in California.

10. Overhead extensions exist within a majority of the approximately 55 separate subdivisions contained within the boundaries of First Community. The tract maps of these

subdivisions were recorded at various times between 1958 and 1971 and the overhead extensions within those subdivisions having such overhead extensions were installed when overhead extensions were permissible.

11. Of the 55 subdivisions within the area known as First Community, all but three subdivisions were recorded prior to May 5, 1970.

Conclusion of Law

The Commission concludes that GWC does not meet the requirements of Edison's filed Rule 15.C.1.a.(1) for the construction of overhead line extensions within Tracts 2811, 2812, or 2887, and that the complaint should be denied.

O R D E R

IT IS ORDERED that Case 10953 is denied.

This order becomes effective 30 days from today.

Dated JUL 21 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

Commissioner Leonard M. Grimes, Jr., being necessarily absent, did not participate.

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

Joseph E. Bodovitz, Executive Director

Exceptions and Reply to
The ALJ's Proposed Report

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