ALJ/ks/jn *

Decision 82 11 023 November 3, 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ANDREW K. THANOS, JR., Complainant. vs. PACIFIC GAS AND ELECTRIC CO. and PACIFIC TELEPHONE AND TELEGRAPH CO., Defendants.	Case 82-02-04 (Filed February 23, 1982)

Andrew K. Thanos, Jr., for himself, complainant.
Robert B. McLennan, Attorney at Law, for Pacific Gas and Electric Company, and Margaret deB. Brown, Attorney at Law, for The Pacific Telephone and Telegraph Company, defendants.

O P I N I O N

This is a complaint by Andrew K. Thanos, Jr. (Thanos) against Pacific Gas and Electric Company (PG&E) and The Pacific Telephone and Telegraph Company (PT&T). The complaint seeks an order requiring PG&E and PT&T to replace, at their expense, existing overhead utility lines with underground ones.

A duly noticed public hearing in this proceeding was held before Administrative Law Judge (ALJ) Donald B. Jarvis in San Francisco on April 27, 1982. The matter was submitted subject to the filing of transcript which was received on May 10, 1982.

Background

Thanos lives at 745 Newhall Road in Hillsborough. In this area Newhall Road is the boundary line between Hillsborough and Burlingame. Newhall Road runs generally in a north-south

direction. Thanos resides on the west side. Willow Avenue, which runs in an east-west direction is situated entirely in Burlingame. Willow Avenue ends at Newhall Road across the street from the northerly end of Thanos' property.

Thanos' property was part of a subdivision known as Newhall Manor. In March 1940, Lot 11 of Newhall Manor was an oblong one, approximately 600' x 50', which paralleled the west side of Newhall Road. The subdivision map shows a public utility easement crossing Lot 11 from Newhall Road to Lot 23. In June 1940, Lot 11 was subdivided into 10 lots. The subdivision map shows the public utility easement in the same location. However, as a result of the subdividing of Lot 11 the situs of the easement was now in the middle of newly created Lot 7. Thanos is the present owner of Lot 7.

In 1948, Thanos' predecessor in interest built a house on Lot 7. The breezeway for the house was constructed on the public utility easement. PG&E and PT&T lines have been located over the breezeway since this house was built. Thanos bought the house in 1972.

In 1976, PG&E notified Thanos that the overhead lines crossing his property were being upgraded to a capacity of 12,000 volts. Thanos, who did not like the wires over his house, requested that the poles be moved to the south end of the lot. PG&E told Thanos that it would not pay for relocating the poles and gave him an estimate of the cost if he wished to pay for the relocation. Thanos declined to spend the money for relocating the poles. The matter lay dormant for four years. In the course of relandscaping the property Thanos inquired about undergrounding the lines. Thanos' inquiry led to his discovery of PG&E's Rule 20, which provides for underground conversion of overhead lines. PG&E estimated the cost of conversion to be $30,000.

PG&E's Rule 20-A[1] provides for an annual budgeted amount, established by formula, for cities and unincorporated areas to be used for replacement of overhead with underground distribution facilities in accordance with the Rule. Thanos was advised by the Hillsborough city manager that at that time (1980) there was approximately $24,000 available for underground conversions and more money was expected in 1981. In January 1981, Thanos contacted PG&E to inquire about the use of Rule 20-A funds to underground the wires at his house. PG&E told Thanos that the proposed project did not fall within the guidelines of Rule 20-A but undergrounding could be done at his expense under Rule 20-C. At the time of hearing Hillsborough had $39,704 of Rule 20-A funds available to it.

In addition to the esthetics of his property, Thanos is concerned about a power line breaking and damaging his house or causing electric shock. There are trees on the property and Thanos is also concerned about a neighborhood child climbing a tree and coming into contact with a power line. Thanos contacted his neighbors for support. On September 12, 1981, Thanos and four neighbors petitioned the town council to adopt an ordinance creating an underground district "for the purpose of undergrounding the present overhead utility lines in the front and back of 745 Newhall Road and in the back of 731 Newhall Road."[2] The town council considered the petition at its meeting on November 9, 1981. It also

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[1] Rule 20-A is mandated on PG&E and all other electric utilities in California by Electric and Communications Service Connections and Conversion of Overhead to Underground Facilities (1967) 67 CPUC 490. PT&T's Rule 32-A, hereafter discussed, is similarly mandated by that decision.

[2] By the time of the petition to the town council Thanos was aware that Commission policy required conversion of all overhead utility lines to underground ones in the proposed district. Underground Facilities case, Appendixes D and E, supra, 67 CPUC at pp. 519, 520.

had under consideration another proposal for a project on Reservoir Road. The town council was aware that PG&E disputed that the Newhall Road project was eligible for Rule 20-A funds. The town council did not pass an ordinance creating an underground district. Instead, it passed a resolution giving first priority to the Newhall Road project, provided that the Commission ruled that Rule 20-A applied to the project or granted a variance. The town council indicated that it would pass an ordinance creating an underground district, upon a favorable ruling by the Commission.

The facilities which Thanos seeks to have undergrounded are the poles and wires that begin with the pole on Newhall Road in front of Lot 7, the wires which cross Lot 7 over the public utility easement to a pole at the back of Lot 7, and then continue to a pole on Lot 8, adjacent to the last. These wires include the following:

1. Two No. 6, copper distribution conductors, 12,000 volts phase-to-phase, are at the top of the poles.
2. Below the No. 6 wires is a secondary level of 120/240 volt 3 wire single-phase conductors used to serve Lots 7 and 23.
3. There is a transformer on the pole at the rear of Lot 8, and an overhead service drop from the pole to the house on Lot 8.
4. At the communications level is a PT&T telephone line which has a ringing current of 48 volts direct current.

Contentions of the Parties

a. Thanos' Contentions

Thanos contends that the proposed project meets the requirements of Rules 20-A and 32-A. He also takes the position that if the project does not come within the ambit of these rules, the Commission should grant a variance and order PG&E and PT&T to underground the utility wires in question using funds allocated under those rules. Thanos argues that in determining whether a variance should be granted, the Commission should look to matters of safety rather than esthetics.

b. Contentions of PG&E and PT&T

PG&E and PT&T contend that the proposed project does not meet the requirements of Rules 20-A and 32-A. They argue that these rules were adopted in accordance with a statewide policy dealing with esthetics and should not be diverted to projects that do not come within their criteria. PG&E and PT&T assert that there is no safety problem in the area. They also contend that if the project is mandated, additional overhead facilities will be required on the Burlingame side of the street.

Material Issues

The material issues presented in this proceeding are: (1) Does the proposed project meet the requirements of Rules 20-A and 32-A? (2) If it does not, should the Commission waive the rules and mandate the project using funds thereunder? (3) Should matters other than esthetics be considered in determining whether Rules 20-A and 32-A should be waived?

Discussion

a. Rules 20-A and 32-A

Rules 20-A and 32-A are almost identical. For brevity we will discuss the issues in context of Rule 20-A with the understanding that the analysis also applies to Rule 32-A.

Rule 20-A provides that:

"REPLACEMENT OF OVERHEAD WITH UNDERGROUND FACILITIES

"A. The Utility will, at its expense, replace its existing overhead electric facilities with underground electric facilities along public streets and roads, and on public lands and private property across which rights-of-way satisfactory to the Utility have been obtained by the Utility, provided that:

"1. The governing body of the city or county in which such electric facilities are and will be located has:

"a. Determined, after consultation with the Utility and after holding public

hearings on the subject, that such undergrounding is in the general public interest for one or more of the following reasons:

"(1) Such undergrounding will avoid or eliminate an unusually heavy concentration of overhead electric facilities;

"(2) The street or road or right-of-way is extensively used by the general public and carries a heavy volume of pedestrian or vehicular traffic;

"(3) The street or road or right-of-way adjoins or passes through a civic-area or public recreation area or an area of unusual scenic interest to the general public.

"b. Adopted an ordinance creating an underground district in the area in which both the existing and new facilities are and will be located requiring, among other things, (1) that all existing overhead communication and electric distribution facilities in such district shall be removed, (2) that each property served from such electric overhead facilities shall have installed in accordance with the Utility's rules for underground service, all electrical facility changes on the premises necessary to receive service from the underground facilities of the Utility as soon as it is available, and (3) authorizing the Utility to discontinue its overhead service.

"2. The Utility's total annual budgeted amount for undergrounding within any city or the unincorporated area of any county shall be allocated in the same ratio that the number of customers in such city or unincorporated area bears to the total system customers.

The amounts so allocated may be exceeded where the Utility establishes that additional participation on a project is warranted. Such allocated amounts may be carried over for a reasonable period of time in communities with active undergrounding programs. In order to qualify as a community with an active undergrounding program the governing body must have adopted an ordinance or ordinances creating an underground district and/or districts as set forth in Section A.1.b. of this rule. Where there is a carry-over, the Utility has the right to set, as determined by its capability, reasonable limits on the rate of performance of the work to be financed by the funds carried over. When amounts are not expended or carried over for the community to which they are initially allocated they shall be assigned when additional participation on a project is warranted or be reallocated to communities with active undergrounding programs.

"3. The undergrounding extends for a minimum distance of one block or 600 feet, whichever is the lesser."

b. Section A.1.a.

Section A.1.a. of Rule 20-A requires a determination by the city or county governing body, after consultation with the utility and public hearings, that one of three specified reasons exists for a project. PG&E and PT&T contend that there was no consultation within the meaning of the rule and that none of the three criteria exists in this case.

The only evidence dealing with consultation was the testimony of the city manager who stated that:

"There were telephone conversations with both the Telephone Company and PG&E.

"Both indicated that their interpretation was that Newhall Road was not eligible for funds, and that was reported to the city council." (RT 11.)

This conduct does not meet the requirements of Rule 20-A.

> ". . . The procedure followed by the city is scarcely the act of asking advice or of deliberating together we intended in using the word 'consultation' in the rule. We envisioned a negotiated, planned, and coordinated approach concept involving the city and the utilities involved, not a unilateral decision concept." (Santa Rosa v PT&T (1977) 81 CPUC 593, 599.)

Assuming, arguendo, that consultation had taken place it appears that the project does not meet any of the criteria of Section 1.

Thanos contends that the action of the town council involves a finding that the project meets the criteria of Rule 20-A and that the Commission is bound by this finding. There is no merit in this contention. A similar contention was rejected in the Santa Rosa case.

One criterion is that undergrounding will "avoid or eliminate an unusually heavy concentration of overhead electric facilities."

As indicated, the poles involved have at the top two No. 6 conductors and a secondary level of 120/240 volt 3 wire single-phase conductors used to serve Lots 7 and 23. This is a commonplace pole configuration throughout PG&E's service area. If the 48-volt PT&T telephone line at the communications level of the pole is included, it is still a commonplace configuration.

Thanos argues that while the configuration may ordinarily be commonplace, it is an unusually heavy one because it is over the breezeway of his house. PG&E and PT&T contend that the breezeway is illegally constructed on a public utility easement, contrary to a Hillsborough ordinance: the wires existed before the breezeway was built: and, in any event, there is no unusually heavy concentration of facilities.

A portion of a Hillsborough ordinance was received in evidence which provides that:

> "No residence, auxiliary building, swimming pool, or other structure shall be constructed over any recorded public utility easement nor shall any structure be constructed nearer than five feet from any rear lot line."

The record does not disclose whether the ordinance was in effect when the breezeway was built. Furthermore, assuming it was, there is no evidence indicating whether the building permit was granted contrary to the ordinance or a waiver was granted. In the circumstances, the ordinance is not determinative of any of the issues presented here. (Salinero v Pon (1981) 124 CA 3d 120, 133.)

Casting aside the ordinance, it would distort the meaning of Rule 20-A to hold that the wires here involved are an unusually heavy concentration because they run over the breezeway of Thanos' house. This is particularly so, in the light of the fact that the utility easement and wires were in existence before the breezeway.

> ". . . The words 'unusually heavy concentration,' particularly in the context they are used in Rule ...[20-A], are in no way vague or ambiguous. They mean exactly what they say - an uncommonly ponderous or cumbersome mass of wires. To find, particularly in this suburban, rather rustic area, that two cables of this size and one wire constitute an 'unusually heavy concentration' is a perversion of the clear meaning of the words and grossly distorts the intent behind the rule." (Santa Rosa v PT&T, supra, at p. 600.)

Another criterion in Section 1 is that: "The street or road or right-of-way is extensively used by the general public and carries a heavy volume of pedestrian or vehicular traffic." The parties agree that the project does not meet this criterion.

The remaining criterion in Section 1 is that: "The street or road or right-of-way adjoins or passes through a civic area or public recreation area or an area of unusual scenic interest to the

general public". Again, there is no contention that this criterion is applicable to the project.

In sum, the project does not meet the requirements of Section 1. There was no consultation within the meaning of Rule 20-A. It does not meet any of the required criteria.

c. Section A.1.b.

Section A.1.b. requires the adoption of an ordinance creating an underground district which provides for the removal of all existing overhead facilities.

PG&E and PT&T contend that the project does not meet the requirements of Section A.1.b. because: (1) Hillsborough has not adopted the requisite ordinance, and (2) the project will not result in the removal of all overhead facilities.

PG&E and PT&T argue that the resolution passed by the town council assigning first priority to the project and indicating an intent to form an underground district is not the equivalent of an ordinance creating such district. This position is legally correct. It would not be fatal to the complaint if the project otherwise met the criteria of Rule 20-A. The Commission could issue a conditional order effective upon the enactment of a proper ordinance creating an appropriate underground district.

The contention that the project will not result in the elimination of all overhead facilities raises an interesting question. PG&E and PT&T contend that an underground district which only applies to one side of a street does not meet the requirements of Rule 20-A. They argue that an appropriate project for Newhall Road would involve the creation of a joint district with participation of Hillsborough and Burlingame. The record also indicates that if the project were mandated the undergrounding of wires in Hillsborough would necessitate the addition of another pole on Willow Avenue in Burlingame.

In the Santa Rosa case the Commission held that:

> "Aesthetics is not served by shipping wires back and forth across a street, or by the removal of some wires only. The task of conversion of existing aerial facilities to underground statewide is an enormous one. The potential cost will be in billions of dollars. Funds from the utilities involved, which ultimately means from the ratepayers in the entire state, must be utilized evenly in all areas of the state so as to obtain the maximum aesthetic and other benefits attendant on undergrounding for all the general public. Where conversion is important enough aesthetically to be determined to be in the general public interest, all aerial facilities in the proximate vicinity must come down. Utility conversion funds are limited and cannot be permitted to be extracted from one utility to reflect purely local considerations, politics, or interests by the device of creation of artfully gerrymandered districts designed to circumvent the fundamental objective of complimentary undergrounding implicit in our order in Decision No. 73078, and leave another utility's aerial facilities standing in the proximate vicinity." (81 CPUC at pp. 601-02.)

There may be exceptional situations where permitting an underground district to encompass only one side of a street or municipal boundary might be esthetically in the general public interest. That kind of a situation does not exist under the facts of this case.

d. Section A.2.

Section A.2. deals with the allocation of funds under Rule 20-A. It also contains a provision requiring the adoption of an ordinance as required in Section A.1.b. This question has already been considered and the discussion need not be repeated.

e. Section A.3.

Section A.3. requires that: "The undergrounding extends for a minimum distance of one block or 600 feet, whichever is the lesser."

It is conceded that the proposed project does not extend for 600 feet. Thanos contends that the project covers a block. He bases this contention on a portion of a letter sent by Hillsborough to the Commission, that was received in evidence and stated:

> "This project is less than 600 feet in length but it does connect a block which is presently undergrounded (Windsor Drive) and will extend it across Newhall Road."

Thanos argues that the town council has determined that the project constitutes a block in adopting the resolution supporting the project. There is no merit in this contention.

In common usage the word block is defined as:

> "17. U.S. a. A small section of a city, town, etc., enclosed by neighboring or intersecting streets... b. The length of one side of such a section." (Random House Dictionary of the English Language, Unabridged Edition, 1966, p. 159.)

Section 5870 of the Streets and Highways Code defines the word block as follows:

> "(a) 'Block' means property facing one side of any street between the next intersecting streets or between the terminus of a dedicated right-of-way of a street and an intersecting street."

The proposed project does not extend on Newhall Road between two intersecting streets. It does not extend for a block within the meaning of Rule 20-A.

f. Variance

Thanos argues that even if the project does not meet the requirements of Rule 20-A, the Commission should authorize a variance from the rule and order PG&E and PT&T to do the requested undergrounding using Rule 20-A funds. Thanos asserts that in considering the matter of a variance the Commission should look to -

questions of safety as well as esthetics. PG&E and PT&T contend that Rule 20-A funds may only be used for esthetic purposes and that the overhead wires involved are safe.

Originally, Thanos wanted the wires removed because of esthetics. He has also developed concerns over the safety of their location. Thanos fears that if a falling tree severs one of the power lines an energized wire could land on the breezeway or the roof of his house and cause a fire or land in water and electrocute someone in his yard. He is also concerned that a child climbing one of the trees on the lots involved might come into contact with one of the power lines and be electrocuted.

On January 4, 1982 there was a significant flow of water through Thanos' property because of a storm. In the middle of the night during a storm on March 31, 1982, a cypress tree on Thanos' property was blown down. In falling, the tree knocked down the two No. 6 conductors and other wires. There was a great blue flash which scared Thanos' family and neighbors.

The record indicates that when the town council adopted its resolution it did so on the basis of safety rather than esthetics.

The evidence clearly establishes that all of the overhead wires here involved meet the standards contained in General Order (GO) 95. An engineer, who is a PG&E senior commercial analyst, testified that the wires here involved were energized only from the Newhall Road side. Were a PG&E line to break or fall any line from the break to the rear of the lots would be dead because it would have no source of energy. The line from the break to the street would be energized for the short time necessary for protective devices to take effect.

Matters of safety are considered separately under Public Utilities (PU) Code §§ 761, 768, and GO 95, and are independent of Rule 20-A. The record clearly establishes that the poles and wires:

here involved meet the safety requirements set forth in GO 95. PG&E acknowledges that if new facilities were installed today they would be positioned elsewhere. The difficulty in this case is that the utility poles and wires were in place before Thanos' predecessor in interest built the house and breezeway. The equities with respect to the replacement of the wires are with PG&E and PT&T.

Having determined that the facts of this case do not warrant the exercise of the Commission's safety jurisdiction, we return to the question of whether a variance of Rule 20-A should be granted.

Rule 20-A was mandated in the Underground Facilities case. That decision set forth the nature of the proceeding as follows:

> "Nature of Proceeding
>
> "The Commission on June 22, 1965, instituted this investigation to determine what revision of existing rules, what new rules, or new rates would be required to stimulate, encourage, and promote the undergrounding, for aesthetic as well as economic reasons, of electric and communications services and facilities. However useful and often necessary had been the seemingly total preoccupation with the engineering and commercial aspects of our utilities, the time had long passed when we could continue to ignore the need for more emphasis on aesthetic values in those new areas where natural beauty has remained relatively unspoiled or in established areas which have been victimized by man's handiwork."

In the Santa Rosa case we held that Rule 20-A funds must be used for esthetic projects of general public interest.

> ". . . Funds from the utilities involved, which ultimately means from the ratepayers in the entire state, must be utilized evenly in all areas of the state so as to obtain the maximum aesthetic and other benefits attendant on undergrounding for all the general public. . . ." (81 CPUC at p. 602.)

Rule 20-A was mandated in 1967. Since that time, the Commission has never permitted a variance in the criteria for use of Rule 20-A funds. It is not appropriate to do so in this case.

The project does not meet any criterion of Rule 20-A. The existing facilities meet the requirements of GO 95. Thanos has esthetic and safety concerns about the wires over his property. If the project were mandated it would, at best, benefit only Thanos and his neighbors. The Commission will not order the use of Rule 20-A funds for such purpose.

Findings of Fact

1. Thanos lives at 745 Newhall Road in Hillsborough. In this area Newhall Road is the boundary line between Hillsborough and Burlingame. Newhall Road runs generally in a north-south direction. Thanos resides on the west side. Willow Avenue, which runs in an east-west direction is situated entirely in Burlingame. Willow Avenue ends at Newhall Road across the street from the northerly end of Thanos' property.

2. Thanos' property was part of a subdivision known as Newhall Manor. In March 1940, Lot 11 of Newhall Manor was an oblong one, approximately 600'x 50', which paralleled the west side of Newhall Road. The subdivision map shows a public utility easement crossing Lot 11 from Newhall Road to Lot 23. In June 1940, Lot 11 was subdivided into 10 lots. The subdivision map shows the public utility easement in the same location. However, as a result of the subdividing of Lot 11 the situs of the easement was now in the middle of newly created Lot 7. Thanos is the present owner of Lot 7.

3. In 1948, Thanos' predecessor in interest built a house on Lot 7. The breezeway for the house was constructed on the public utility easement. PG&E and PT&T lines have been located over the breezeway since the house was built. Thanos bought the house in 1972.

4. On September 19, 1967, the Commission entered Decision (D.) 73078 in Case 8209 (Underground Facilities (1967) 67 CPUC 490). That decision requested all electric and telephone utilities to adopt various tariff provisions relating to the undergrounding of utility lines for esthetic purposes.

Under D.73078, PG&E and PT&T adopted Rules 20-A and 32-A, respectively.

5. In 1976, PG&E notified Thanos that the overhead lines crossing his property were being upgraded to a capacity of 12,000 volts. Thanos, who did not like the wires over his house, requested that the poles be moved to the south end of the lot. PG&E told Thanos that it would not pay for relocating the poles and gave him an estimate of the cost if he wished to pay for the relocation. Thanos declined to spend the money for relocating the poles. The matter lay dormant for four years. In the course of relandscaping the property Thanos inquired about undergrounding the lines. Thanos' inquiry led to his discovery of PG&E's Rule 20-A. PG&E estimated the cost of conversion to be $30,000.

6. Thanos was advised by the Hillsborough city manager that at that time (1980) there was approximately $24,000 available for underground conversions and more money was expected in 1981. In January 1981, Thanos contacted PG&E to inquire about the use of Rule 20-A funds to underground the wires at his house. PG&E told Thanos that the proposed project did not fall within the guidelines of Rule 20-A but undergrounding could be done at his expense under Rule 20-C. At the time of hearing Hillsborough had $39,704 of Rule 20-A funds available to it.

7. In addition to the esthetics of his property, Thanos is concerned about a power line breaking and damaging his house or causing electric shock. On September 12, 1981, Thanos and four neighbors petitioned the town council to adopt an ordinance creating

an underground district "for the purpose of undergrounding the present overhead utility lines in the front and back of 745 Newhall Road and in the back of 731 Newhall Road." The town council considered the petition at its meeting on November 9, 1981. The town council was aware that PG&E disputed that the Newhall Road project was eligible for Rule 20-A funds. The town council did not pass an ordinance creating an underground district. Instead, it passed a resolution giving first priority to the Newhall Road project, provided that the Commission ruled that Rule 20-A applied to the project or granted a variance. The town council indicated that it would pass an ordinance creating an underground district, upon a favorable ruling by the Commission.

8. The facilities which Thanos seeks to have undergrounded are the poles and wires that begin with the pole on Newhall Road in front of Lot 7, the wires which cross Lot 7 over the public utility easement to a pole at the back of Lot 7, and then continue to a pole on Lot 8, adjacent to the last. These wires include the following:

a. Two No. 6, copper distribution conductors, 12,000 volts phase-to-phase, are at the top of the poles.

b. Below the No. 6 wires is a secondary level of 120/240 volt 3 wire single-phase conductors used to serve Lots 7 and 23.

c. There is a transformer on the pole at the rear of Lot 8, and an overhead service drop from the pole to the house on Lot 8.

d. At the communications level is a PT&T telephone line which has a ringing current of 48 volts direct current.

9. The only consultation about the project which occurred between Hillsborough and PG&E and PT&T were telephone conversations between the city manager and the utilities in which PG&E and PT&T

advised the city manager that the project was not eligible for funds under Rules 20-A and 32-A.

10. The PG&E wires here involved are not an unusually heavy concentration of overhead electric facilities within the meaning of Rule 20-A.

11. The PT&T wires here involved are not an unusually heavy concentration of aerial facilities within the meaning of Rule 32-A.

12. The PG&E and PT&T wires involved, together, do not constitute an unusually heavy concentration within the meaning of Rules 20-A and 32-A.

13. Newhall Road is not extensively used by the general public nor does it carry a heavy volume of pedestrian or vehicular traffic.

14. Newhall Road does not pass through a civic area or public recreation area or an area of scenic interest to the general public.

15. If the project were mandated, it would be necessary to install an additional pole on Willow Avenue in Burlingame to guy the remaining overhead facilities on the Burlingame side of Newhall Road and Willow Avenue.

16. The project does not extend for a minimum distance of one block or 600 feet.

17. All of the overhead wires here involved meet the standards in GO 95. The wires are energized only from the Newhall Road side. Were a PG&E line to break or fall, any line from the break to the rear of the lots would be dead because it would have no source of energy. The line from the break to the street would be energized for the short time necessary for protective devices to take effect.

18. The record does not sustain an order requiring undergrounding under PU Code §§ 761 and/or 768.

19. If the project were mandated it would, at best, benefit only Thanos and his neighbors and not the general public.

20. It would not be reasonable to grant a variance from the provisions of Rules 20-A and 32-A under the facts of this case.

Conclusions of Law

1. Hillsborough did not engage in consultations with PG&E and PT&T within the meaning of the requirements of Rules 20-A and 32-A.

2. The Commission has exclusive jurisdiction to determine whether a project meets the requirements of Rules 20-A and 32-A.

3. The resolution of priority adopted by the Hillsborough town council is not an ordinance creating an underground district within the meaning of Rules 20-A and 32-A.

4. The Commission's safety jurisdiction under PU Code §§ 761 and 768 is independent of Rules 20-A and 32-A.

5. The project does not come within the criteria of Rules 20-A and 32-A.

6. The funds provided for in Rules 20-A and 32-A may only be used for esthetic projects of general public interest.

7. A variance from the provisions of Rules 20-A and 32-A is not warranted under the facts of this case.

8. Thanos is entitled to no relief in this case.

O R D E R

IT IS ORDERED that the complainant is entitled to no relief and the complaint in Case 82-02-04 is denied.

This order becomes effective 30 days from today.

Dated NOV 3 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

ALJ/ks

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This conduct does not meet the requirements of Rule 20-A.

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Assuming, arguendo, that consultation had taken place it appears that the project does not meet any of the criteria of Section 1.

Thanos contends that the action of the town council involves a finding that the project meets the criteria of Rule 20-A and that the Commission is bound by this finding. There is no merit in this contention. A similar contention was rejected in the Santa Rosa case.

One criterion is that undergrounding will "avoid or eliminate an unusually heavy concentration of overhead electric facilities."

As indicated, the poles involved have at the top two No. 6 conductors and a secondary level of 120/240 volt 3 wire single-phase conductors used to serve Lots 7 and 23. ~~The Commission takes official notice that~~ this is a commonplace pole configuration throughout PG&E's service area. If the 48-volt PT&T telephone line at the communications level of the pole is included, it is still a commonplace configuration.

Thanos argues that while the configuration may ordinarily be commonplace, it is an unusually heavy one because it is over the breezeway of his house. PG&E and PT&T contend that the breezeway is illegally constructed on a public utility easement, contrary to a Hillsborough ordinance; the wires existed before the breezeway was built; and, in any event, there is no unusually heavy concentration of facilities.