ALJ/vdl

Decision 83 01 038 JAN 12 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARY LOU ZUPP, Complainant, vs. PACIFIC GAS AND ELECTRIC COMPANY, Defendant.	Case 10985 (Filed May 18, 1981)

Mary Lou Zupp,* for herself, complainant.
Bernard Della Santa, Daniel Gibson, and Harry W. Long, Jr., Attorneys at Law, for Pacific Gas and Electric Company, defendant.

O P I N I O N

Mary Lou Zupp (complainant) alleges that the placement of certain electric distribution poles by Pacific Gas and Electic Company (PG&E) seriously impaired the view from her home and diminished the value of her property. PG&E filed its answer on June 19, 1981; and on October 30, 1981, a settlement conference was held before Administrative Law Judge (ALJ) Gilman. It subsequently appeared that a settlement was not possible. The matter was therefore set for hearing on June 28, 1982 before the same ALJ.

Testimony and exhibits were received from complainant and a PG&E witness. One of Zupp's neighbors, while unwilling to testify, made a statement on the record. The attorney who assisted complainant in presenting her case made a summarizing statement in her behalf. A brief was filed by PG&E on July 19. Complainant's closing brief was filed on August 2, whereupon the matter was submitted.

* Ms. Zupp was assisted by Don H. Gallian, Attorney at Law.

Facts

Circle Drive is situated on a hillside, straddling the boundary between San Rafael and San Anselmo. The circle encloses three residential lots, side-by-side, all of which were developed many years ago. Number 2 Circle Drive (Circle) is the easternmost of the three. The northern arc of the circle is some 50 feet or more higher than the southern arc. Because of this difference in elevation, 2 Circle has a view of the homes below and on the surrounding hillsides. Since it faces north, the view is from the back of the house. To take advantage of the view, the house is constructed with the entrance and the principal rooms on an upper floor, which has several large windows and a deck. While there is a patio on the lower level, its view is limited by a solid privacy fence.

In the spring of 1979, complainant was in the process of deciding whether to purchase 2 Circle. At that time the downhill view from the house was unobstructed by utility poles. The houses located on the south side of lower Circle were served by means of backlot easements; because of this feature and the steepness of the slope, the poles and wires were below the normal lines of sight from either level of 2 Circle. There was at this time a vacant lot on the southern arc at 23 Circle.

Installing poles in Circle to serve this lot would have interfered with the view from 2 Circle. Consequently, complainant launched an inquiry to determine if PG&E could be relied on to follow the established pattern and use another backlot easement from Alexander Drive, the next street south of Circle. She questioned her realtor and made a telephone call to a title company. She also examined the filed subdivision map which showed a utility easement running from Alexander to the rear of 23 Circle. She concluded from this investigation that PG&E would use the easement to provide service when 23 Circle was improved. Secure in her belief that the view from her prospective home would never be marred by utility poles, she completed the purchase and left on an extended vacation in Europe.

She did not contact PG&E to ask about its plans for serving 23 Circle. She believed that a big company would not respond in writing to a request for information of this type: even if there were a reply, she believed that it would be so ambiguous or qualified that she could not rely on it.

PG&E, in fact, has a policy against using backyard easements. Wherever possible, it much prefers to use its franchise rights to place poles along streets and highways.

While complainant was considering her purchase, a contractor was in the process of planning a house to be built on speculation at 23 Circle. The contractor demanded electric service from PG&E. It was offered the option, consistent with PG&E's tariff, to have the extension installed underground along Circle. Such an extension would have cost the contractor $2,700 to $2,800 more than an overhead extension. It declined to pay the extra sum. PG&E thereupon installed one new pole, raised an existing pole, and added a transformer, a primary, and a secondary conductor, extending to 23 Circle. The work was completed on August 30, 1979, while complainant was in Europe.

When complainant returned home she discovered that the new installation interfered with her view.

She complained to PG&E. Dissatisfied with the outcome of this complaint, she filed an informal complaint with the staff. The Commission's chief electrical engineer subsequently wrote to the parties. (Appendix A.)

Today it would cost upward of $7,000 to remove the added poles and wires and replace them with an underground installation. In addition, the cost of converting the service at 23 Circle to connect with an underground extension would be close to $1,000. The present owner of 23 Circle might be willing to absorb the cost of service conversion if someone else would pay for the rest of the conversion. PG&E will contribute all but $1,900 of the cost of a conversion, excluding service changes. Complainant will contribute between 1/5 and 1/4 of $1,900. No other customer will contribute anything.

Complainant's Position

Complainant recognizes that the most satisfactory way to resolve this matter is for the extension to be undergrounded. She contends that PG&E should be ordered to perform such a conversion entirely out of its own funds. She argues that PG&E should pay what she has characterized as her share ($400 to $500) of the $1,900 to compensate her for the strain and expense of pursuing this complaint. She recognizes that her neighbors are uniformly unwilling to contribute anything to the cost of such a project. She argues that PG&E, by failing to give timely notice, caused this unwillingness to contribute and should be required to absorb their share of the cost as well. She also argues that PG&E is responsible for her mistaken belief that her view would be protected and that it should therefore be responsible for all of the cost of restoring it.

With regard to the possibility of relocating the line, she contends that merely shortening the poles will not satisfactorily protect her view. Should the Commission decide against ordering conversion, she argues that PG&E should alternatively be required to reconstruct over any of several routes, without regard to the objections which other neighbors might have. She appears to be unwilling to contribute to the cost of any overhead rerouting.

PG&E's Position

PG&E's position is that:

a. It fully complied with all provisions of its tariff.

b. Neither established practice nor the ownership of an easement obliges it to use the easement. It was not responsible for complainant's mistaken belief that such an obligation existed.

c. It is not required by tariff to give notice to any customer before installing a pole or extending overhead service to a vacant lot in an existing residential area.

d. The injury to Zupp's view is de minimis and does not affect the value of her home.

It has, however, offered on the record to replace this installation with underground wires if anyone will pay it $1,900 and if the owner of 23 Circle pays for converting his service. The cost of converting the service will approximate $1,000; the total cost of converting the extension will approximate $7,000.

Neighbor's Position

Mr. Jump, who owns the home immediately west of complainant's, is strongly opposed to any relocation which would require a guy wire extending onto his property. He would also oppose a relocation over another route discussed, which would require poles to be placed along the boundary between his and complainant's property.

Discussion

How Intrusive is the Installation?

PG&E introduced a panoramic photograph taken from the patio outside the lower level of Zupp's home. This exhibit shows that the view from this location is obstructed by a solid fence apparently about six feet in height. It argues that "[g]iven the nominal obtrusiveness of the [utility] construction in question from Complainant's lower deck, it is reasonable to assume that the impact is minimal from the upper level of Complainant's home."

We cannot agree. The record also includes photographs taken from the upper deck or one of the main rooms of the house. These photos support complainant's contention that the installation interferes substantially with a portion of the view from the upper level.

Is PG&E Responsible for Complainant's Mistake?

Despite her investigation, complainant purchased her home believing that PG&E would not install poles in Circle Drive to serve 23. This was a mistake; PG&E, in fact, had a policy against the use of backlot easements to serve residential developments whenever feasible. It regularly places overhead extensions in the right-of-way along streets, as permitted by its franchises from local governments.

She did not ask PG&E what its practise was, because she believed that PG&E would either refuse to answer or would respond in ambiguous or noncommittal fashion.

In our opinion, her investigation was not reasonably complete without such an inquiry. She had no reasonable basis for her belief that PG&E would not respond candidly. A utility would have no apparent motive to obscure or conceal its preference for using the right-of-way along streets. Since PG&E is not responsible for the mistake, it has no special responsibility to restore complainant's view.

Lack of Notice and its Effects

Complainant contends that she and her neighbors should have been expressly notified well before August 1979 that they had the right, individually or collectively, to an underground extension if they offered to pay the incremental cost of such installation. PG&E, while it claims to have no duty to notify, has taken a position which makes it unnecessary to determine the scope of its duty in this regard. Rather it has decided to hold open its offer to convert the wires and poles in question to an underground installation at the same price (or less) than it would have charged for such an

installation initially. Since the lack of notice would not impose any extra costs on anyone who wishes to contribute to an underground project[1] we conclude that PG&E has effectively rendered moot this aspect of the notice problem.

Complainant also contends that with timely notice each of the neighbors would have been willing to contribute to the cost of an underground extension. She concludes that PG&E should be held responsible for the fact that none of them is willing to contribute today, and should therefore be required to absorb what she characterizes as her neighbors' shares ($1,440 to $1,500) of the amount now demanded by the utility for a conversion.

She theorizes that in 1979 each of the adjoining landowners would be afraid that PG&E would select an overhead route adversely affecting his or her property. This fear, she reasons, would have motivated three, possibly four, of her neighbors to contribute to an initial underground extension. We cannot adopt complainant's theory. We do not believe that PG&E could have persuaded any of the other landowners to contribute without revealing the possible and selected overhead routes. Consequently, we will not order PG&E to absorb any portion of the $1,900.

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[1] According to PG&E's witness, the initial installation would have cost approximately $3,500; PG&E would have billed the contractor for $2,800, absorbing the rest. Principally because of the cost of tearing down wires and poles and restoring the system to its previous condition, the cost of a conversion would now be more than double the initial cost.

Relocation of Pole and Overhead Lines

Complainant cites decisions in McGowan[2] as precedent supporting her position on several issues. While the factual context of McGowan is strikingly similar to this case, none of the decisions there can be used as precedent. McGowan was ultimately disposed of by a settlement entered into while a petition for review was pending in the California Supreme Court. This being the case, none of the McGowan decisions resolved any issue with sufficient finality to have any value as precedent.

The McGowans had complained that a newly installed pole interfered with their view. The Commission, after hearing from the complainant and utility, ordered the pole relocated. Another neighbor then petitioned for leave to intervene and for rehearing, claiming that the relocated pole would adversely affect his view.

Another hearing was held on what had become, for all practical purposes, a dispute between neighbors, with each sponsoring a location which interfered with the other's enjoyment of his property. Two and a half years later the dispute had not been finally resolved and was headed for the Supreme Court before a settlement was finally arranged.

Our experience with that case indicates that ordering a pole relocation may not end a dispute between a customer and a utility and may actually fuel additional litigation which pits neighbor against neighbor. For these reasons we are reluctant to order any pole relocated to clear a homeowner's view unless we have positive assurances that we are not simply transferring an injury from one customer to another.

Complainant's evidence describes several alternative routes for an overhead extension which would not have interfered with her view. However, she has not claimed, much less demonstrated, that any

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[2] McGowan v SDG&E Co., Case 9342, cf. Decision (D.) 83502 and S.F. No. 23135; cf. also D.82871 and D.80811.

of these is tolerable to all of her neighbors. On the contrary, it strongly appears that each route would cause at least as much dissatisfaction to one or more of her neighbors as the route selected caused her.

We therefore conclude that any order for relocation of the poles and wires would not resolve a utility-customer dispute, but would merely substitute one angry customer for another. Consequently we will not order a rerouting.

Selection of Present Overhead Route

Complainant contends that PG&E violated its own internal procedures by failing to fully evaluate alternatives to the route chosen. She bases this contention largely on PG&E's failure to produce documentary or nonhearsay testimony to show that all possible routes were adequately considered. Even if there were adequate support for a finding that some of the alternatives were slighted, the only appropriate remedy would be a requirement that the utility repeat the process correctly. Such an order would be an exercise in futility unless there were reason to believe that there is a better solution to the routing problem.

Conclusions

In conclusion, we have determined that there are only two acceptable ways of resolving this dispute. One, lowering the poles and wires, is less than satisfactory since complainant's view will remain impaired to an unknown degree. The other, an underground conversion, will restore complainant's view, but is too expensive for any of the parties, despite PG&E's willingness to bear most of the cost. We have no jurisdiction to require any of the other affected parties to contribute enough to make a conversion a reality; we have no justification for requiring PG&E to pay more than it has offered, and will not do so.

Summary

This problem was precipitated by the contractor's decision to save a few thousand dollars on the cost of building at 23 Circle, regardless of the effect on adjoining landowners' views. With undergrounding eliminated, there was no route for an overhead extension which would not annoy at least one of the adjoining landowners. PG&E was thus left with the unenviable responsibility of deciding which of them would bear the brunt of the contractor's decision. While the route which it picked is an unsatisfactory one to complainant, complainant does not claim that any of the other routes would be more tolerable to other potentially affected homeowners. We will therefore not order the extension to be reconstructed over an alternate route.

We have found that PG&E is not responsible for complainant's mistaken belief that PG&E would not place poles in Circle to serve 23 Circle. We have also found that PG&E is not responsible for the fact that none of her neighbors offered to contribute to the cost of placing these wires underground. We have, therefore, rejected complainant's contention that PG&E should be compelled to absorb all or nearly all of the costs of conversion.

PG&E has offered to absorb most (approximately $5,000) of the cost of an underground conversion, exclusive of the cost of changing the service, to 23 Circle. Complainant and/or her neighbors can accept this offer by contributing $1,900 to the conversion project.

PG&E has also offered, at its own expense, to lower the poles and wires. If its offer to underground is rejected, we will require it instead to lower the poles and wire as much as possible without violating the safety requirements of General Order (GO) 95. In all other respects complainant has been denied relief.

Findings of Fact

1. The extension in question significantly degrades the view from the upper level of complainant's home. The impact on the value of the home is more than de minimis.

2. Complainant was not notified that PG&E would place an additional pole and wires in Circle. Some of her neighbors were notified.

3. Lack of notice did not cause or contribute to the neighbor's unwillingness to contribute to undergrounding. Unless misled as to the desirability and feasibility of alternate routes, none of the other neighbors would have had a motive to contribute to undergrounding in 1979.

4. PG&E now unilaterally offers to underground the extension if any customer or combination of customers will pay it $1,900 and if the owner of 23 Circle will pay the cost of converting the service. Complainant will not contribute more than 1/4 of this sum. Except for the owner of 23 Circle no other customer will contribute.

5. If the contractor or any other person or group had been willing to contribute approximately $2,700 in 1979, PG&E would have constructed the extension underground.

6. As long as the offer is open complainant has not been injured by the failure to notify her as stated in Finding 5.

7. Complainant mistakenly believed that PG&E would not place poles in Circle to serve 23 Circle.

8. It was not reasonable to rely on such a belief without asking PG&E if it was true.

9. Complainant had no reasonable basis for believing that PG&E would not respond candidly to such an inquiry.

10. PG&E is not responsible for complainant's mistake of fact.

11. If PG&E should contribute all but $2,700 of the cost of converting the overhead extension to an underground facility, the

affected customers, including complainant, will be no worse off than if they had each been fully notified of their rights in the summer of 1978.

12. A shortening of the poles and lowering of the wires at the existing location will ameliorate the injury to complainant's view.

13. To the extent that such lowering does not violate GO 95 safety standards, PG&E should be required to accomplish it at its own expense.

14. None of the alternative routes suggested by complainant is tolerable to all landowners in the vicinity of 23 Circle.

15. None of the alternative routes is clearly superior on any other basis to the route chosen.

Conclusions of Law

1. If PG&E does not demand a larger amount to convert the extension to underground than it would have demanded to install it underground in 1979, belated notice to some or all adjoining landowners does not injure or discriminate against them.

2. It is not necessary to determine whether PG&E had a duty to notify neighbors before constructing the extension.

3. If complainant does not accept PG&E's offer to convert for $1,900 she has effectively waived any rights which she might otherwise possess as a result of PG&E's failure to notify her that poles would be constructed.

4. PG&E had no duty to adjoining landowners to use backlot easements for new services in Circle.

5. The Commission should not order a pole relocation to protect a single customer's view unless the new location is tolerable to all affected property owners or unless the proposed new location is clearly superior on other grounds.

6. If no one accepts PG&E's offer to convert, the poles and wires should be lowered as much as possible without violating GO 95.

O R D E R

IT IS ORDERED that:

1. On the effective date of this order Pacific Gas and Electric Company (PG&E) is authorized to withdraw its offer to convert this extension unless previously accepted; thereafter PG&E shall be obligated to convert only under the terms of its tariff.

2. If its special offer to convert is not accepted, PG&E shall lower the poles, wires, and transformer in issue as much as possible without violating GO 95.

3. In all other respects, relief is denied.

This order becomes effective 45 days from today.

Dated JAN 12 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

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

Joseph E. Bodovitz, Executive Director

APPENDIX A
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June 19, 1980

Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94106

Gentlemen:

Reference is made to your complaint report, dated May 5, 1980, file number 791-04685-E (RR), for the Mary Lou Zupp case, that was investigated and forwarded to the Commission.

This report has been reviewed by the Consumer Affairs Branch. It has also been referred to the Electric Branch for further investigation.

On June 9, 1980, a Commission staff member, in company with R. C. Kisbey, your manager of the Marin District, visited the residence of the complainant. Ms. Zupp explained and demonstrated the visual impact of the new overhead services upon her home's primary view. The staff member also was shown by your manager the several alternate routes of service to the new customer at 23 Circle Drive that had been considered.

Staff review and investigation reveal that the new service now in place to 23 Circle Drive is apparently the most practical routing of the several considered. It does impact upon the view of the complainant at 2 Island Drive, Ms. Zupp, but is judged to be much less obtrusive and detrimental than alleged. However, the complainant evidently objects to any impairment of her view, including that of the reduced profile offered by your company as an alternative overhead arrangement to be accomplished at company expence.

The staff considers PG&E's placement of this new distribution service to be correct and proper. Notification of service plans to any other than the new customer to be served is not required. However, it understood that where there is a scenic impact the company attempts to advise those affected, as a courtesy rather than due to a tariff rule or service requirement. This prior notice of construction plans was not afforded Ms. Zupp, due to her vacation absence and other unexplained reasons.

The Commission has often stated its goal of eventual undergrounding of all utility distribution services, including a reaffirmation of this policy in its Decision No. 91850 on June 3, 1980. The staff believes this complaint exemplified an opportunity, now past, to have demonstrated a small step toward this general goal. It appears that timely notice of your plans to Ms. Zupp and other neighbors would have encouraged their selection of the undergrounding option for this new service, at their expense.

The staff thinks that this lost opportunity to underground (when performing the original service construction) places an implied obligation on your company to cooperate with the complainant.

We would appreciate consideration of this suggestion and hope that you will be able to negotiate a final apportionment of costs with Ms. Zupp to your mutual satisfaction. Please advise of your decision in this complaint case.

The staff believes that the undergrounding solution should be sought in all situations possible. Special notice and persuasion of all parties affected by such future service installations might well be productive of increased participation. Such an approach is in consonance with Commission goals and anticipates future rules mandating undergrounding of all distribution services both new as well as overhead lines long in place.

Very truly yours,

R. T. Sipe
Chief Electrical Engineer

VR:LDB

(END OF APPENDIX A)

She did not contact PG&E to ask about its plans for serving 23 Circle. She believed that a big company would not respond in writing to a request for information of this type; even if there were a reply, she believed that it would be so ambiguous or qualified that she could not rely on it.

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When complainant returned home she discovered that the new installation interfered with her view.

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