

ORIGINAL

Decision 83 12 017 DEC 7 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CROW SAN JUAN RANCH, a California )  
limited partnership, )

Complainant, )

vs. )

SAN DIEGO GAS & ELECTRIC COMPANY, )

Defendant. )

Case 82-11-02  
(Filed November 10, 1982)

Michael Tenerelli, Attorney at Law, for Crow San Juan  
Ranch, complainant.

Steven S. Wall, Attorney at Law, for San Diego Gas &  
Electric Company, defendant.

O P I N I O N

Statement of Facts

Crow San Juan Ranch (Crow), a California limited partnership, is the developer of a real state project known as the Ranch of San Juan Capistrano (the Ranch). Located in the City of San Juan Capistrano (the City), the project is to include research and development, commercial office, and residential areas. The Ranch is a triangular shaped 3 parcel tract of approximately 324 acres, roughly bordered to the northeast by Horno Creek and to the northwest by the San Diego Freeway. Ortega Highway extends generally east-west about 1800 feet south of the Southern apex of the triangularly shaped Ranch. (See Appendix A map.)

The map depicting the Orange County Master Plan of Arterial Highways shows existing and proposed collector type streets in the county. It is the basis for consideration and location of all proposed transportation corridors in Orange County. At the times relevant here this Master Plan assertedly depicted Rancho Viejo Road south of its junction with Ortega Highway as a primary highway with established alignment, and the projection of Rancho Viejo Road north from Ortega Highway to the Junipero Serra offramp of the San Diego Freeway as a conceptually proposed secondary highway. (See Appendix B map extracts from Plan.)

As a condition to obtaining Planning Commission and City Council approvals of the Ranch project, Crow was required to agree that it would construct the northern segment of Rancho Viejo Road to conform to the conception set forth in the County's Master Plan; that is, from the Ortega Highway - Canado Road intersection (and opposite primary highway Rancho Viejo Road to the south) to run 1800 feet across intervening property to the Ranch's property line; then traversing the Ranch and crossing Horno Creek to connect with an existing road just south of and connecting to the Junipero Serra offramp adjacent to the Endevco Site. (See Appendix C map.)

To plan and design facilities to serve the Ranch project, including off-site improvements, roads, sewers and storm drains, Crow in 1979 engaged the services of Walden & Associates, Inc. (Walden), civil engineers. Entering upon this work, Walden

inherited plans previously prepared relative to the project by Albert C. Martin and Associates, consulting engineers for the previous owners of the Ranch project.

Roughly contemporaneously with initial planning for the Crow project, to the south across Ortega Highway other development plans were proceeding relative to the extensive Ortega properties. In 1977 the City, proceeding under the Municipal Improvement Act of 1913 (see Sections 10,000 et seq. of the Streets and Highways Code), determined to construct or install in the Ortega properties street, sewer, gas, telephone, electric, and water improvements, assessing the improvement costs to the owners of the lands benefited. The resulting improvement project on the Ortega lands was designated as Assessment District No. 78-3 (78-3). To prepare its plans the City engaged the civil engineering firm of Willdan Associates (Willdan).

As relevant here, 78-3 involved the installation by San Diego Gas and Electric Company (SDG&E), the public electric service utility authorized by the Commission to serve this area of the City, of certain electrical facilities, and undergrounding of both the utility's existing 12 kV distribution line which would run through the assessment district, and that portion of SDG&E's Japanese Mesa to Cristianitos to Capistrano 69 kV transmission tie line which would cross the assessment district.

In July 1979, following initial negotiations, the City asked SDG&E to prepare undergrounding plans. As evidenced by approval dates entered upon SD&GE's drawings submitted to the City SDG&E completed design work relative to the 12 kV undergrounding portion on December 18, 1979. After acceptance January 23, 1980 by the city engineer, on February 20, 1980 City and SDG&E signed the 12 kV distribution undergrounding agreement. The agreement became effective March 19, 1980 when the assessment was levied upon the participating parcels of land and the money became available.

Similarly, after the utility's design work on the 69 kV underground tie line was completed and accepted by the City's engineer, on May 20, 1980 the City and SDG&E signed a corresponding undergrounding agreement for the 69 kV line.<sup>1/</sup> It should be noted that neither contract contained a specific completion date, and neither contract contained a delay penalty clause. SDG&E construction time for 78-3 was estimated to require about three months. Subsequently, in order for the City to meet a January 1981 completion date set for the assessment district project, the City requested SDG&E to complete the latter's part of the project by December 1, 1980. But this did not happen. There were delays.

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<sup>1/</sup> However, well before that time, on October 27, 1979 the city authorized SDG&E to purchase 10,400 feet of 69 kV cable for eventual use in undergrounding the transmission line.

Apart from other party delays, as for example, those incurred from Orange Water Works District No. 4, the area's water purveyor, SDG&E's own actions caused delays. It was not until late August 1980 that SDG&E even began to obtain the necessary rights of way easements for portions of its construction. And after that the utility's right-of-way/easements for portions of its construction. And after that the utility's right-of-way agent was unsuccessful in obtaining a written release from one off-site owner, Honeyman, upon whose property (located north of the Ortega Highway - Ganado Road area) certain underground transmission facilities were to be relocated. As matters ultimately developed, in order to avoid even further delay SDG&E then decided to deviate from its Standard Practice, and began the construction in that area in December 1980 without a written easement. Accordingly, SDG&E did not complete its part of project 78-3 until March 1981.<sup>2/</sup>

That part of SDG&E's 78-3 construction relevant to the controversy which became the subject matter of this complaint, involved the undergrounding of certain 12 kV distribution cable together with a large vault substructure to be located under Ganado Road just north of the Ortega Highway intersection with the Rancho Viejo Road extension under 78-3 south to Calle Arroyo.

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<sup>2/</sup> The city was ultimately forced to pay approximately \$15,000 in damages as a result of the delays in completing 78-3. The city, however, did not seek to collect any of this from SDG&E.

These 12 kV facilities were to connect at existing pole 25415 to an existing north-south overhead 69 kV transmission line. In addition, connected to the same existing north-south overhead 69 kV transmission line, but at existing pole 322895 located to the north, a 69 kV transmission tie line cable would be run underground in conduit, extending southward through the Ganado Road-Ortega Highway intersection and the planned Rancho Viejo Road extension, to Calle Arroyo. As events occurred, these particular facilities were delayed and were not installed until between December 1980 and March 1981. (See Part 1 of Appendix D (attached).)

On December 27, 1979 and January 29, 1980, Walden's engineers met with the city engineer and the city's traffic engineer to discuss the overall project concept for Crow's project, and more specifically, to set design parameters for Rancho Viejo Road, in view of the city's insistence that Crow had to construct the extension of Rancho Viejo Road through and beyond the Ranch to intersect 1800 feet to the south with Ortega Highway, thereby completing yet another segment to the County's Arterial Highway Master Plan. To prepare for these meetings the Walden Engineers had only the approved Comprehensive Development Plan inherited from their predecessors, Martin Associates. This plan showed only that there was to be an intersection of Rancho Viejo Road with Ortega Highway at Ganado Road. (At that point in time Ganado Road

meandered, forming a large loop bisected by Ortega Highway at the point where subsequently Rancho Viejo Road would intersect). At the time of these meetings the city engineers advised the Walden engineers that there was an assessment district under way in the design stage for the area to the south of Ortega Highway. This was 78-3. When asked for a copy of the city's 78-3 plans the city engineer referred the Walden Engineers to the city's consultant Willdan. Subsequently, after being contacted by telephone, Willdan's 78-3 project engineer sent a 12-page set of drawings to Walden. These drawings, date stamped "December 27, 1979", were also marked "Preliminary, Subject to Revision."

The title page of these Willdan drawings listed 7 utilities, including SDG&E. Although the title page was numbered "sheet 1 of 92", the drawing index on the title page listed only the titles of drawings page numbered from 1 to 67, and no Pacific Telephone Company or SDG&E drawings were listed. Included in the 12 drawings sent was Drawing 53, titled "Utility Master Plan." Prepared November 7, 1979, it does not mention SDG&E, although it does depict a 69 kV transmission line alongside proposed Rancho Viejo Road from Calle Arroyo to Ortega Highway, and then is shown extending north through and beyond Ortega Highway.

Using these preliminary plans received from the city's consultant, Walden determined the location and interconnection of the northern extension of Rancho Viejo Road from the Ortega Highway

intersection. When Walden enquired what the remainder of the 92-pages not included in Willdan's transmittal would show as to his Rancho project, Walden was referred to the index page of the Willdan plans for any answers. Checking the index and determining from it that apart from a water turnout and a storm drain, no other interconnecting facilities with his Ranch project were indicated, Walden at this point in time (January, 1980) saw no reason to pursue questions further beyond discussing with the city interfacing water drain facilities.

With this information in hand, Walden proceeded with preparation of precise horizontal and vertical alignment plans for his northerly extension of Rancho Viejo Road from the Ortega Highway intersection. At the same time the Parcel Map for the Ranch project was completed. Both plans were submitted to the City, and in April 1980 both were approved by the Traffic Commission and the Planning Commission. Thereafter, in June 1980, the City Council gave its tentative approval to both.<sup>3/</sup>

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<sup>3/</sup> Tentative approval under the city's rules did not permit a developer to go ahead and construct, nor did it permit preliminary grading. Normally there is a time limit during which a tentative approval must be made final, although extensions are granted. Here Crow's final approval on the Rancho Viejo Road improvement was delayed until December, 1981 because Crow incurred difficulties in obtaining all the slope easements required from off-site owner Honeyman to construct the road at the Ortega Highway intersection. Honeyman owned all the property between the Ranch and Ortega Highway.



In order to give constructive notice to SDG&E of the advanced approval stage of its plans, Walden telephoned the utility's Customer Extension Planner (Planner) to advise about the extension of Rancho Viejo Road between Ortega Highway and the Endevco site. Walden followed up the telephone conversation on May 15, 1980 by sending the SDG&E planner copies of the Ranch Parcel Map, the Comprehensive Development Plan, and the Alignment Plan for Rancho Viejo Road (the first pertained only to the Ranch project but the latter two pertained to extension of Rancho Viejo Road north from Ortega Highway). However, the SDG&E planner, noting that the plans were stamped "preliminary", did nothing more than file them.<sup>4/</sup> During the 1980 summer other contacts between Walden and SDG&E were made, but they related only to the Ranch.<sup>5/</sup>

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<sup>4/</sup> Subsequently, the planner testified that he might have just rolled up the plans and tossed them in a box over in the corner of his office.

<sup>5/</sup> In July Walden sent the planner a proposed street improvement plan relating to the Ranch, and also telephoned him a number of times concerning specific questions: how long runs would be, the quantity of conduit to be required, etc., for the road extension. However, the planner felt he needed more specific load information so he evaded direct answers to questions not backed up by detail. In October 1980, Walden submitted cost and quantity estimates to the city for bonding purposes required under the tentative parcel map.

By September 1980 Walden's completed construction plans for the Rancho Viejo Road extension were transmitted to the City for approval, and on October 6, 1980 Walden under a letter cover sent two complete sets of these fully detailed plans for the road to the SDG&E planner. (Each set included 4 drawings specifically pertaining to the Ortega Highway-Ganado Road intersection - see drawings 2, 3, 5, and 8 of the attachment drawings to Exhibit 4). In the letter Walden specifically asked that SDG&E review them so that Crow could coordinate with any improvements SDG&E contemplated. He further noted that these plans were before the City for approval. One of these drawings, No. 3, indicated upon its face power pole conflicts previously recognized.

Again, the SDG&E planner did nothing, even though these plans in their advanced state gave strong indication that shortly there would be construction of an extension of Rancho Viejo Road from the Ortega Highway intersection.

At the same time, while reviewing these same plans, a city employee noted the pole conflict and called it to Walden's attention. On October 29, 1980 after several attempts Walden reached the planner and sought to discuss the pole matter. He was told that the planner had lost the plans. Another set was sent. When the planner, after pulling the 78-3 plans to compare, reviewed Walden's plans, assertedly he saw no conflict and took no further action.

On December 22, 1980 Walden's project manager Bell met with the planner to discuss Rancho Viejo Road alignment. There was also discussion pertaining to a possible phasing of electrical facilities on the road, dividing it into two phases so as either to backfeed from the Endevco Site, bringing power south to Horno Creek, or to bring power north from Ortega Highway. About this same time Bell incidentally learned from a Walden field surveyor that SDG&E was then constructing an underground vault in what would be the future Rancho Viejo Road right of way at the Ortega Highway-Ganado Road intersection. Knowing that SDG&E had Walden's road plans and having heard nothing from SDG&E of any conflict, Bell concluded that the SDG&E work in hand was merely some relocation of existing SDG&E facilities having no bearing on his project.

Therefore he did nothing. He considered that the known pole conflict earlier identified would be handled by the developer, and with no response from SDG&E on the plans, that there was no conflict over the intersection. With no specific knowledge of 78-3 or reason to be concerned, Bell felt no reason to question further.

Subsequently, on March 16, 1981, Walden's Bell and Chang met again with the SDG&E planner and it was agreed to do the electrical facilities on Rancho Viejo Road in two phases.<sup>6/</sup> Chang pressed SDG&E for a quick cost determination, with separate

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<sup>6/</sup> Rancho Viejo Road was finally constructed as a single phase project.

pricing and reimbursement agreements to be applied to each phase. Chang further asked that SDG&E complete its design and to provide costs by April 30, 1981 at the latest. On March 17, 1981 additional copies of the Rancho Viejo Road plans were delivered to SDG&E. On April 3, 1981 SDG&E's planner told Chang that the plans had been located after being mislaid, and that SDG&E still hoped to complete Crow's plans by April 30, 1981.

But, as is significant here, by the end of March 1981 SDG&E completed the project 78-3 installations. The result now would have to be that certain underground and overhead facilities had been located or relocated right in the path of Crow's Rancho Viejo Road extension. These would now have to be relocated again to accommodate the road extension. (See part 2 of Appendix D.)

In May, 1981 the planner who handled Crow's project left SDG&E's employment. His superior, Fussell, who had been in on the initial 78-3 planning, now took over. Thereafter Walden and Fussell met. On June 9, 1981 Walden sent Fussell still another set of the fully detailed September 2, 1980 drawings pertaining to the Rancho Viejo Road Extension (the final disposition of the sets of drawings sent in October 1980, January 1981, and March 17, 1981 to the planner was never made clear). This time SDG&E was to complete its Crow project plans for the road extension by July 30, 1981.

Subsequently, SDG&E did complete its plans, the Rancho Viejo Road extension facilities conflicts were identified by SDG&E, and the requirement for relocations become apparent to all. (See part 3 of Appendix D) Meetings on the costs and some allocation basis followed. In February 1982, SDG&E estimated Crow's share of the relocation costs should be \$71,711. In March 1982, Crow asked SDG&E to reconsider, pointing out that the utility had had information that should have apprised SDG&E of the impending facilities conflict prior to going ahead with its construction. On May 25, 1982 SDG&E responded and denied reconsideration, contending that the information it had received had been insufficient in detail to have provided notice of any potential conflict.

Under protest, in August 1982 Crow advanced the \$71,711 required to SDG&E, reserving the right to seek Commission or judicial review, but thereafter, upon advice of counsel, Crow withdrew its advance, and on November 10, 1982 filed this complaint. In it Crow asserts that despite having sufficient information in advance of construction, the utility nonetheless went ahead, thereby failing to exercise reasonable care or use good engineering judgment. It asks that the utility be required to bear the costs to relocate the existing underground and overhead facilities which are in the path of Rancho Viejo Road adjacent to Ortega Highway.

Concurrently, and apparently in reliance upon the disputed bill rule of the utility's tariff, Crow deposited \$71,711 with the Commission and asked for an interim order requiring SDG&E to proceed with the relocation pending a decision on the merits of its complaint.

On December 17, 1982 Administrative Law Judge (ALJ) John B. Weiss issued a ruling directing that the \$71,711 be returned to Crow. The ALJ noted that neither the utility's disputed bill rule nor any other SDG&E tariff rule provides for or envisions an escrow or interpleader role for the Commission in construction contract disputes.<sup>7/</sup> The ALJ then informed Crow that if it wanted the relocation done immediately, without awaiting the outcome of the complaint proceeding, it must advance the estimated cost to SDG&E, and then rely upon the jurisdiction of the Commission to award reparations should the utility's charges be subsequently found in the complaint proceeding to be unreasonable, excessive, or discriminatory (Public Utilities Code Sections 734 through 738). Crow followed this procedure and the relocation work subsequently was performed.

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<sup>7/</sup> Tariff Sheet 4132-E of Rule 10 of SDG&E's filed tariff explicitly provides that the Commission will not accept deposits when a dispute is over matters that do not directly relate to the accuracy of a billing for electric services previously provided.

On March 2, 1983 a duly noticed public hearing on Crow's complaint was held before ALJ Weiss in San Francisco. Both Crow and SDG&E were represented by counsel. Crow's evidence was presented through David L. Walden and Robert J. Bell, both of Walden Associates, civil engineers and land surveyors. SDG&E presented its evidence through its Orange County District planning supervisor, Kenneth H. Fussell, its former San Juan Capistrano area customer extension planner, William C. Cole, and San Juan Capistrano's city engineer, George M. Lohnes. At the hearing SDG&E presented testimony purporting to show that the final cost of the relocation work as completed was \$126,727, higher than the \$71,771 originally estimated earlier on February 8, 1982, and the amount

advanced by Crow to get SDG&E to do the relocation.<sup>8/</sup> The case was submitted on April 15, 1982 upon submission of concurrent final briefs.

#### Discussion

When, during the period between December 1980 and March 1981, SDG&E relocated transmission and distribution lines and facilities existing in the vicinity of the Ortega Highway - Ganado Road intersection with Rancho Viejo Road to accomplish part of its obligations arising out of the February and May 1980 project 78-3

<sup>8/</sup> SDG&E attributed the increase from \$71,771 to \$126,728 to three factors: First, it had withdrawn its 1982 offer to pay 1/2 of the \$49,774 cost of rerouting the existing 69 kV underground; Second, in the 1982 estimate it had by error omitted the \$25,552 cost of relocating the existing 12 kV overhead; and Third, costs between February 1982 and March 1983 had increased \$4,518 because of inflation. A breakdown of the estimates follows:

<u>SDG&amp;E Estimates</u>			
<u>Class Service</u>	<u>Relocation Work Performed</u>	<u>2/8/82</u>	<u>3/1/82</u>
69 kV	Reroute existing underground (\$49,774)	24,887	52,239
	Relocate & reframe existing overhead	21,246	16,557
12 kV	Relocate existing 3315 handholes and other underground facilities	25,578	32,381
	Relocate existing overhead ( <u>Omitted</u> )		<u>25,552</u>
Total SDG&E Estimate		<u>\$71,771</u>	<u>\$126,728</u>



contracts with the city, the utility also set the stage whereby shortly after, in order to accommodate the City required extension of Rancho Viejo Road, the utility would have to again relocate much of the installation just completed for project 78-3. Now SDG&E seeks to recover the \$126,727 cost of this relocation from Crow, relying upon the general rule that when reasonable care has been exercised by a utility in initially positioning its facilities, and thereafter relocation becomes necessary to accommodate the requirements of a property developer, that property developer is obligated to pay all the reasonable costs incurred by the utility in accomplishing the relocation (See Xenia International Travel v San Diego Gas & Electric Co. (1975) 78 CPUC 476, and Sunrise Oasis

Estates v So. Cal Gas Co. (1978) 83 CPUC 323).<sup>9/</sup>

But there are clear distinctions in the present case which are fatal to SDG&E's contentions.

The first distinction is that unlike the situations in Xenia and Oasis, in the case before us relocation is not required to accommodate, improve, or otherwise physically benefit Crow's

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<sup>9/</sup> In Xenia, a transformer pad had been installed on a property walkway where the utility had a legal right to install and maintain it. Subsequently, Xenia purchased the property and constructed a stairway in such a way that when the transformer was placed on the pad it would partially obstruct the stairway. Xenia could have revised his plans to avoid the transformer but constructed the stairway anyway, and then wanted the transformer pad relocated. The Commission held that if Xenia wanted the pad relocated he should pay the cost, stating:

"Defendant cannot reasonably be expected to anticipate and provide for every future modification to premises which conceivably could be adversely affected by new construction. When reasonable care has been exercised by the utility in the selection of the location of its facilities and their relocation is requested to accommodate the needs or desires of a property owner it is the normal practice of the utility to require the property owner to bear the reasonable cost of relocating the facilities." (Emphasis added.)

In Oasis, a city required a subdivision developed to pave one side of a facing street as well as install curbs, gutters and sidewalks as a condition of recording his tract. To meet the city's requirement the original four feet of cover over the utility's 10-inch gas main in the street was graded down to 5 inches by the developer. The developer advanced funds to have the main lowered. After the work was accomplished, the subdivider sought to have the utility pay the cost, alleging that the relocation was a city requirement which under the utility's franchise should be borne by the utility. The Commission held that this relocation was not an action required by the city pursuant to the utility's franchise and that the developer must pay the costs.

property development. Rather it is required to accommodate public appropriation of certain land for public thoroughfare purposes.

As regards the road extension Crow is acting merely as an instrumentality of the city. Crow has no property within a third of a mile of the involved intersection. If Crow does not construct the road, the city made it clear that it would not permit development of Crow's Ranch property at the other end of the road some 1800 feet to the north. Relocation of the SDG&E facilities is necessary only because the city has decided upon this extension and opening of Rancho Viejo Road between Ortega Highway and the San Diego Freeway, and the utility facilities are directly in the path of the roadway expansion. The proximate cause of the relocation is that a public road is being opened and extended by the city. A city has the power to open, widen, extend or improve streets within its jurisdiction (City of Red Bluffs v So. Pac. Co. (1919) 44 CA 667, 187 P 152). Certainly appropriations of land for highway purposes make them impliedly subject to such uses as the public may require (Gurnsey v Northern Cal. Power Co. (1908) 7 CA 534, 94 P 858), and the mere securing of a franchise to serve the public gives a utility no right to locate or maintain its poles or other instrumentalities at any particular place upon the public streets (Los Angeles Gas & Elec. Co. v City of Los Angeles (1917) 241 F.

912 (S.D.C.), aff'd, 251 U.S. 32, 40 Sup. Ct. 76, 64 L. Ed. 121 (1919). A utility's prior use of part of a highway area must always give way before a proper governmental use of the street by a political subdivision of the State (East Bay Municipal Utility District v County of Contra Costa (1962) 200 CA 2d 477, 19 C.Rptr. 506). Furthermore, a city has the right to require a utility to relocate its lines to make way for governmental use of the street (So. Cal. Gas Co. v City of L.A. (1958) 50 C. 2d 713, 329 P 289, cert. denied (1959) 359 U.S. 907, 79 Sup. Ct. 583, 3 L. Ed. 2d 572), and any such relocation is at the utility's expense (East Bay Municipal Utility District, supra).

In the cases relied upon by SDG&E, the relocations were of utility facilities either directly located on the property owner's property and involving his convenience (Xenia, supra), or affected directly by subdivision improvements on the subdivider's property, thereby completing his street frontage (Oasis, supra). In the case before us, the involved utility facilities are not on, adjacent to, or within a third of a mile of the developer's property. The facilities are being moved not to accommodate the developer, but only because they are in the roadway of a public road being extended from one highway to a freeway to carry out another segment of the local arterial highway scheme. Crow is merely an instrumentality indirectly acting for the city in this

regard, and is no more responsible for the relocation costs than is the city which is requiring the road extension.

Moreover, in the alternative, even were SDG&E able to surmount the difficulties raised by the instrumentality status clothing Crow vis-a-vis the road extension at this intersection, a second distinction would also cause us to grant this complaint. This second distinction under the facts of this case serves to invoke a necessary corollary to the general rule, relied upon by SDG&E, that the property owner or developer involved pays for relocations. Certainly when a utility, with actual knowledge of impending developments which bear upon the location and placement of its facilities, or with reasonably inferable or chargeable knowledge, nonetheless proceeds to place those facilities so as to set up and create an unnecessary conflict which foreseeably will necessitate subsequent relocation of those facilities, that utility will be required to make the consequent relocation of the offending facilities at its own expense. Crow asserts that just this situation is presented by the facts in this case.

Therefore, in this proceeding we are faced with the questions: (1) did SDG&E exercise reasonable care in the first instance when it planned its 69 kV and 12 kV facilities for placement in the Ortega Highway-Ganado Road intersection to accommodate the city's project 78-3 requirements, considering the potential for future extension of Rancho Viejo Road north to the

freeway, and (2) should SDG&E have been aware, both during and from transpiring events, that there existed a strong probability that the installations it was placing at the intersection would conflict with those which would be required by extension of Rancho Viejo Road by Crow for the city, thereby foreseeably requiring their relocation subsequently at substantial cost?

Addressing the first question we see that during the time frame relevant here, the Orange County Master Plan of Arterial Highways clearly indicated Rancho Viejo Road as an element in its network. South of Ortega Highway the road was depicted as a primary road with established alignment. Its immediate construction was assured by its inclusion as an integral part of 78-3 (See the 78-3 assessment district maps prepared by the city in 1979). Consequently its intersection with Ortega Highway was fixed. North of Ortega Highway the road was shown on the Master Plan as a conceptually proposed secondary road connecting Ortega Highway to the San Diego Freeway offramp at Junipero Serra. Construction of this northern segment was deemed so important by the city that in 1979, as a condition of granting conceptual approval to Crow for its Ranch project, Crow was required to undertake construction of all the northern segment between the freeway and Ortega Highway; not only that portion within the Ranch's boundaries, but also the third of a mile south beyond the Ranch to Ortega Highway.

It is difficult to accept that SDG&E's professional planning staff could not be cognizant of pending developments involving the County's Master Plan for Highways, if only as a consequence of its involvement in planning the project 78-3 facilities on Rancho Viejo Road south of Ortega Highway, or that SDG&E's staff could be unaware of the budding potentialities of the Ranch project. Nonetheless, SDG&E drew plans to relocate the 69 kV and 12 kV facilities at the Ortega Highway-Ganado Road intersection with Rancho Viejo Road squarely in the only logical future northerly right of way for Rancho Viejo Road! The location of the road south from the intersection, the location of Ganado Road, the location of existing building and the very contours of the land to the north of the intersection, as well as the Master Plan for Highways, made any northerly extension via the right of way followed the City and Crow the only logical route.

When SDG&E planned the undergrounding and other facilities relative to 78-3 at this intersection, why were not the 12 kV facilities placed entirely within the Ortega Highway right of way where eventually they were relocated? And why were not the 69 kV facilities undergrounded to connect to pole 25415 near the intersection where they too were eventually relocated, rather than extended well north of Ortega Highway to a pole inside the logical right-of-way for extension of Rancho Viejo Road? With these considerations in mind it is questionable that the utility exercised

reasonable care in the first instance in its 78-3 planning to place these facilities.

Even if SDG&E is excused for its professed unawareness of the Arterial Highway Master Plan, and for its asserted initial failure to perceive the strong probability of extension north of Rancho Viejo Road, subsequent events should have alerted its staff. By May 1980 its customer extension planner responsible for the area had a telephone call from Crow followed up by SDG&E receiving both the Comprehensive Development Plan for the Ranch project and the alignment map for Rancho Viejo Road. Both these plans clearly featured extension north from the Ortega Highway intersection of the Road. While utility reluctance to act on "preliminary plans" can be appreciated, something more than summary disposal of their plans was called for. Even cursory inspection of the alignment map alone would have signaled very possible if not certain interfacing problems at the Ortega Highway intersection. And this was at a time when SDG&E's participation in 78-3 was still at the contracting stage, months before easements were sought and well before any construction could begin. Plans could still have been modified with little or no delay to 78-3. But, SDG&E did nothing beyond filing these Crow plans or throwing them in a box in the SDG&E's planner's office.



But then to compound the indifference, on October 7, 1980, SDG&E received complete sets of fully developed plans for the road extension from Crow accompanied by Crow's letter asking that the utility review the plans "in order to coordinate the roadway construction with any improvements that you would require, or need." Clearly this referred to interfacing and was intended to identify and eliminate conflicts. On cross-examination the utility's chief planning supervisor for the area, after first testifying that SDG&E became aware of any conflict only after March 1981 (after project 78-3 construction was completed), conceded that the October 6, 1980 Crow transmittal of plans was a transmittal on the road extension in sufficient detail to have established potential conflicts. This was almost 2 months before SDG&E began its 78-3 construction, and 6 months before it completed the work.

In justification for its failure to have taken steps which might have avoided this conflict, SDG&E argues that even though Crow had tentative city approval in June, 1980, the utility doubted that it would do the Ranch project, and therefore that it would not do the road extension. It asserts that Crow's plans were too tentative, too preliminary, to be considered. But the record just does not support this. It is a fact that the plans transmitted October 6, 1980 were not "final" in that the city had not signed off on them. Crow was delayed until November 1981 in obtaining the last required slope easement, and it was not until

December, 1981 that the city signed off on the road plans. But the plans sent on October 7, 1980 were Crow's final effort and were "preliminary" only in that the city engineer had not signed them. SDG&E asserts that it does not act upon less than finally approved plans. That is just not a fact as was shown when the utility did work from these same Crow plans, before they were finally approved, in mid-1981. SDG&E's planning supervisor, after 78-3 was completed, in mid-1981 himself took over Crow's request, and promised Walden that using Crow's plans, SDG&E would check them against the newly installed 78-3 facilities, and before July 30, 1981 produce SDG&E's work plans to relocate conflicts. By fall 1981 SDG&E completed this work. Thereafter it was asked for a cost estimate. On February 8, 1982, SDG&E offered to do the relocation for \$71,711.

In answer then to our earlier two questions, we therefore must conclude from this record that SDG&E did not exercise that degree of reasonable care that it should have in the first instance when it planned its 78-3 facilities at the Ortega Highway intersection set for the southern portion of Rancho Viejo Road. Had the utility's planning unit been doing its job it should have been cognizant of the County's Master Plan of Arterial Highways. The plan necessarily must have impact upon the utility's future installation plans. In addition, the utility should have planned to place the undergrounded 12 kV distribution facilities serving 78-3

within the right-of-way of Ortega Highway (where they eventually were relocated) unless it first had obtained reasonable assurance that nothing which was to be forthcoming north of Ortega Highway would conflict. By virtue of its 78-3 participation, SDG&E knew Rancho Viejo Road south of Ortega Highway was being improved to primary highway status. The Junipero Serra offramp at the San Diego Freeway interchange had to lead somewhere, and logic alone would indicate interconnection to Ortega Highway at the Rancho Viejo Road (as the Master Plan provided). Secondly, we must also conclude that from events transpiring during 1979 and 1980, SDG&E either actually knew, or should have ascertained and have known, that the 78-3 installations it was planning and working to emplace at the Ortega Highway-Rancho Viejo Road intersection ran a high risk, if not the certainty, of setting up conflicts to be faced when Rancho Viejo Road was extended to the north. It also appears probable that the City engineer, working concurrently with both SDG&E and Crow, at least mentioned the road extension to the utility planners; without some knowledge how else could SDG&E have concluded that Crow would not do the Ranch project, and therefore the road extensions? Certainly after the early October, 1980 delivery of the detailed road plans by Crow, SDG&E must be charged with constructive knowledge. And obviously the plans show conflict.

Why then would SDG&E go ahead with planning, easement acquisition, and subsequent installation of facilities which would

conflict? One answer seems clearly indicated. The utility was determined to allow nothing to intervene which might present difficulties or delay completion of its portion of 78-3, even though this would cause extra expense subsequently to relocate the just installed facilities. Before March 1981 and completion of its 78-3 work, SDG&E went to great lengths to ignore or avoid facing the implications resulting from northerly extension of Rancho Viejo Road. It took phone call after phone call from Crow, it filed or put drawings it received from Crow in boxes or lost them. But steadfastly it avoided reviewing Crow's plans until after 78-3 was completed. Crow's drawings were well beyond merely conceptual, merely speculative, efforts. They were detailed renderings, obviously representing many thousands of dollars of effort in engineering and surveying work. They literally demanded some acceptance and recognition by the utility. Indeed, they were the drawings eventually used by the utility, but only after completion of 78-3. The utility's chief planner admitted that had the utility taken into consideration these plans, and then redesigned that part of 78-3 to accommodate interfacing with the northerly extension of Rancho Viejo Road, 78-3 would have been delayed 3 months. But had SDG&E earlier been aware of the County Master Plan, a reasonable expectation as we have concluded, or had the responsible utility planner have acted reasonably in May 1980 when

he first received drawings (rather than merely file or box Crow's submission) there would have been ample time to have completed the small revisions to that part of SDG&E's 78-3 plans required to accommodate the road extension. And there would have been no need for any delay. After all, these revisions were not required to provide facilities for the Ranch project a third of a mile away, rather they were required merely to remove the projected 78-3 facilities from the right of way for the northerly extension of Rancho Viejo Road - an extension required by and for the convenience and use of the city.

The city was under constant pressures from the owners of the Ortega Properties.<sup>10/</sup> The pressures were enough that the utility determined to begin construction even though it still had not been successful in obtaining necessary easements. Had SDG&E handled Crow's requests, the utility could have amended the small involved part of its 78-3 designs with a minimum of delay. It is significant that the city did not sue for the delay.<sup>11/</sup>

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<sup>10/</sup> The City Engineer testified that the Ortega Properties representative indicated to him that SDG&E's 3-month start up delay caused by SDG&E's easement delay (from September to December 1980) was costing Ortega Properties \$300,000.

<sup>11/</sup> The City Engineer testified that while the city's schedule of 78-3 completion was delayed, the city could find no act of negligence or failure worthy of a lawsuit in SDG&E's delay.

We next turn to SDG&E's contentions that Crow, after it learned that 78-3 would be under construction south of the area of its interest, failed to do what it might have to do to check the plans of the city and SDG&E for possible conflicts. SDG&E argues that had Crow made a diligent check, and had Crow asked the right questions of the city after receiving only 12 of the indicated 92 pages that were to make up the city's 78-3 plans, Crow could have identified the conflicts early in 1980. But this is not supported by the record. After meeting in December 1979 and January 1980 with the city's engineers, and incidentally learning of the 78-3 project beyond Ortega Highway to the south, Walden did ask the city for 78-3 plans. He was told to get them from Willdan. Walden did. But at this point SDG&E had not yet furnished its completed plans for city approval. The city engineer testified that while the city had received the utility's 12 kV distribution plans in February 1980 for approval and incorporation into the city's 78-3 Master Plan, the utility's 69 kV transmission plans were not received until May 1980. Therefore until some unspecified time after May 1980 SDG&E's plans were not incorporated into or made a part of the city's 78-3 Master Plan.

The title page of the city's 78-3 Master Plan did indicate that when completed, the full set of plans would be 92 pages. But Walden's Ranch project had no relationship or connection with 78-3, it would merely be interconnected by extension of Rancho

Viejo Road. The city's plans furnished in response to Walden's request did show the southern improvement of Rancho Viejo Road and its intersection to Ortega Highway. Water and storm drains were indicated. Crow would have no interest in 78-3's internal 12 kV distribution system and no interconnection. Nor was there any reason to suspect that SDG&E did not plan to confine its installations within the boundaries of 78-3 , but would spill them beyond 78-3 and across Ortega Highway into the only logical right of way for any northerly extension of Rancho Viejo Road, despite the fact that the Master Arterial Highway plan proposed such an extension.<sup>12/</sup> Similarly, Walden would have no reason to suspect that the undergrounded 69 kV transmission line from 78-3 would be extended beyond 78-3 boundaries, past existing pole 25415 (which carried the north-south 69 kV overhead), past Ganado Road's intersection, to finally make connection further north to existing 322895 (the next pole beyond pole 25415 carrying north-south 69 kV overhead). Had this undergrounded line in the first instance been planned to terminate near Ortega Highway (to connect with existing

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<sup>12/</sup> When SDG&E subsequently relocated these 12 kV facilities, except for a short spur leading to pole 126456, the undergrounded distribution facilities, as well as the vault, were all relocated back within Ortega Highway; that is, within the 78-3 boundaries.

pole 25415), it could have saved 78-3 considerable undergrounding expense.<sup>13/</sup>

But while Walden did not continue to press the city for the SDG&E drawings not yet incorporated into the 78-3 Master Plan, Walden did do what was prudent under the circumstances. On May 15, 1980 Walden advised SDG&E's planner of the northerly extension of Rancho Viejo Road which was to be constructed by Crow, and sent SDG&E both a comprehensive development plan and a map showing the precise alignment of the road extension from intersection with Ortega Highway north. We conclude that Crow did all that was reasonably to be expected or necessary. The ball was thereafter dropped when SDG&E did nothing with the information or plans.

The utility next argues that Crow was at fault in that subsequently, after sending its October 6, 1980 letter and detailed drawings to the utility (which formally asked that the drawings be checked on conflicts), Crow did no further follow-up. This allegation is simply not true. Crow did follow up. When Crow learned from a city engineer that the utility planned under 78-3 to relocate a particular power pole, and that this pole was to be relocated in the Rancho Viejo Road right-of-way, Crow telephoned and wrote the utility of the problem, sending still another set of plans. Having identified the problem, and advised the utility, and

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<sup>13/</sup> This latter connection, to pole 25415, was precisely what was accomplished in the subsequent relocation - at a cost of \$68,795.



having received no response, Crow assumed the matter was being take care of. There were also other contacts. A meeting was held on December 22, 1980 and another in January 1981, and more plans were provided. While at these meetings phasing of electrical installations relative to service to the Ranch project was discussed, at no time did SDG&E indicate that extension of the road would involve conflicts with its 78-3 installations then underway.

There was one instance, however, when Crow did fail to recognize an opportunity to have identified a developing conflict. Late in December a Crow surveyor reported that SDG&E was installing an underground vault in the road extension right-of-way near the Ortega Highway intersection. However, knowing that SDG&E had Crow's road plans, the Walden engineer who received that information believed that it was merely a relocation of an existing SDG&E facility in consideration of the forthcoming road extension, and did nothing more with it. The surveyor also mentioned to the SDG&E crew doing the work that the vault appeared to be in the roadway to be built, but the SDG&E crew did not apparently report that information to the utility, or if they did the utility did nothing with the information.

Having determined, under the two relevant aspects of this case, both (1) that Crow, being merely an instrumentality of the city with regard to the road intersection at the Ortega Highway, did not provide the proximate cause for relocation of the

facilities in issue, but that the city did, and (2) that the utility, with both inferable and later actual knowledge of the potential conflict it was creating in placing its 78-3 facilities, failed to exercise reasonable care and judgment, thereby creating an unnecessary conflict which foreseeably required an expensive relocation, it follows that the utility was wrong in assessing to Crow the costs to relocate the underground and overhead facilities. SDG&E must bear the relocation costs incurred, and must promptly refund to Crow the \$71,711 previously deposited as an advance on the estimated costs to get the work underway.

Failure to make the refund in full within 40 days should make the utility subject to a 7 percent per annum interest penalty.

Findings of Fact

1. In 1977 the city determined to make extensive municipal improvements in the area of the Ortega Properties located south of Ortega Highway in the city, by creating an assessment district in the area.

2. This assessment district, known as project 78-3, included an improvement contemplated in the County's Master Plan of Arterial Highways, opening Rancho Viejo Road to extend south from intersection with Ortega Highway.

3. That County Master Plan also contemplated future opening of Rancho Viejo Road to extend north from the Ortega Highway intersection to interconnect with the Junipero Serra offramp of the San Diego Freeway.

4. SDG&E is an electric service public utility authorized by this Commission to provide electric utility service within the city.

5. In mid-1979 the City asked SDG&E to prepare plans for undergrounded facilities, including transmission and distribution lines, to be installed with relation to the assessment district.

6. SDG&E should have checked the County Master Plan for Arterial Highways, and have maintained a sensitive degree of awareness of surrounding development projects or potential projects as it planned project 78-3 facilities involving public highways when it intended to place some of its intallations outside the boundaries of the project. The utility did neither, completing its plans and having them approved by the city early in 1980.

7. The city scheduled completion of the assessment district improvements for December 1980.

8. In March 1980 Assessment district property owners were assessed for costs of the 78-3 improvements.

9. In February and May 1980, the City signed construction contracts with SDG&E for installation of 78-3 electrical facilities, including undergrounded transmission and distribution facilities in and about the intersection of Rancho Viejo Road with Ortega Highway. These contracts contained no delay in completion penalty clauses.

10. As a consequence of SDG&E's failure to timely seek and obtain required easements pertaining to its intersection installations at Ortega Highway, the utility was unable to start construction in the area until December 1980. The work was completed in March 1981.

11. As a consequence of this delay by SDG&E, and delays by others, the assessment district improvements for the City were not completed by the city's scheduled December 1980 completion date.

12. Concurrent with the City's 78-3 planning for the Ortega Properties, Crow, a large land developer, was seeking approval from the city to develop its large Ranch project embracing residential, commercial and research and development areas east of the San Diego Freeway and a third of a mile to the north of the Ortega Properties.

13. The City conditioned its approval of Crow's Ranch development upon Crow agreeing to construct all of the northern extension of Rancho Viejo Road for the city.

14. At year's end 1979, meeting several times with city engineers to set design parameters for the Rancho Viejo Road extension, Crow's engineers learned of 78-3, and consequently sought and early in 1980 obtained City's 78-3 plans, then still "preliminary".

15. These "preliminary" plans, although including a utility Master Plan, did not yet include SDG&E's 78-3 drawings.

16. Working from the city's plans furnished them, including the Utility Master Plan, Crow's engineers, apart from a minor water turnout and storm drain interconnection, ascertained no interconnecting facilities between the assessment district and their road extension project, and without reason to suspect that SDG&E was planning placement of certain of its electrical undergrounded facilities outside and north of the assessment district but within the reasonable path of any northerly extension of Rancho Viejo Road, proceeded with preparation of precise horizontal and vertical alignment drawings for the road extension.

17. In May 1980, Crow's engineers informed SDG&E's planner by telephone of Crow's progress with its road extension plans, following up May 5, 1980 by sending the planner alignment plans for the road.

18. In September 1980 Crow submitted its plans to the city for city approval.

19. On October 6, 1980 Crow sent two complete sets of road plans to SDG&E, asking that they be reviewed for conflicts with utility improvements.

20. Beyond either filing or discarding them, SDG&E did nothing further with Crow's plans for the road extension.

21. On October 29, 1980, seeking to discuss with SDG&E a possible pole conflict reported to Crow by a city engineer, Crow was told that the road plans had been lost.

22. Furnished additional plans, SDG&E's planner assertedly saw no conflicts so did nothing further with the plans.

23. In December 1980 Crow met with SDG&E to discuss alignment of the road extension, and possible phasing of electric facilities to the Ranch project to the north.

24. At another time in December 1980 Crow learned that SDG&E was installing a vault in the extension roadway. However, having received no adverse response to its earlier submission of road plans for review, Crow reasonably believed that SDG&E had found no conflict, and reasonably surmised that the utility installation was merely a relocation with no bearing on Crow's road project.

25. As installed between December 1980 and March 1981, the SDG&E undergrounded facilities were placed well outside the Ortega Highway intersection with Rancho Viejo, well within the future right-of-way of Rancho Viejo Road to the north.

26. SDG&E subsequently relocated these undergrounded facilities within the Ortega Highway right of way within the 78-3 assessment district confines.

27. After completion of 78-3 in March 1981, Crow in both March and April 1981 gave SDG&E still additional sets of road plans for review.

28. In May 1981 SDG&E's planner left the utility employment and his supervisor took over Crow's request.

29. When in the fall of 1981 SDG&E finally reviewed Crow's plans, conflicts were ascertained with 78-3 facilities just installed.

30. SDG&E prepared plans to relocate the offending 78-3 facilities back within the assessment district and Ortega Highway, demanding that Crow deposit \$71,711 against costs to be incurred in making the relocations.

31. Under protest Crow advanced the \$71,711 to SDG&E and filed this complaint.

32. Upon completion of the relocations, SDG&E asserts that the full costs should be \$126,727, including \$25,552 overlooked in the first estimate, \$4,518 attributable to inflation, and withdrawal of its initial offer to share certain of the costs.

Conclusions of Law

1. The Rancho Viejo Road extension project, with regard to the 1800 feet situated south of and between Crow's Ranch project and Ortega Highway, is a road opening and extension project determined upon by the city pursuant to the County Master Plan of Arterial Highways for the benefit and enjoyment of the general public.

2. With regard to the extension of Rancho Viejo Road in the vicinity of the Ortega Highway intersection, Crow is acting merely as an instrumentality of the city.

3. Relocation of certain of SDG&E's electric facilities, including some of the 78-3 underground and overhead installations, is required to permit construction by Crow for the City of the Rancho Viejo Road extension north from the Ortega Highway intersection.

4. Relocation of these SDG&E electric facilities should be the sole responsibility of the utility.

5. Under the circumstances of this relocation the Xenia and Oasis decisions cited by SDG&E are not applicable.

6. Reasonable care was not exercised by SDG&E in its initial planning on project 78-3 for the City when the utility planned to place certain of its facilities outside and to the north of the 78-3 assessment district and Ortega Highway without ascertaining the indicated and nearing probable use of the northerly area, facts



that would have been readily ascertainable by reference to the County's Master Plan of Arterial Highways, or inferable from 78-3 construction of Rancho Viejo Road to the south of and intersecting with Ortega Highway and the inviting proximity of the Junipero Serra offramp to the San Diego Freeway.

7. Receipt by SDG&E of Crow's Rancho Viejo Road plans, particularly the October 6, 1980 submission, reasonably placed the utility on notice that the utility would, and subsequently after entry upon construction in December 1980 did, create a conflict with any extension of Rancho Viejo road in the vicinity of Ortega Highway.

8. SDG&E unreasonably disregarded notice and created a facilities conflict by placing its 78-3 facilities where they would conflict with any northerly extension of Rancho Viejo Road.

9. SDG&E should immediately refund to Crow the \$71,711 Crow advanced to the utility to get the relocation work under way.

O R D E R

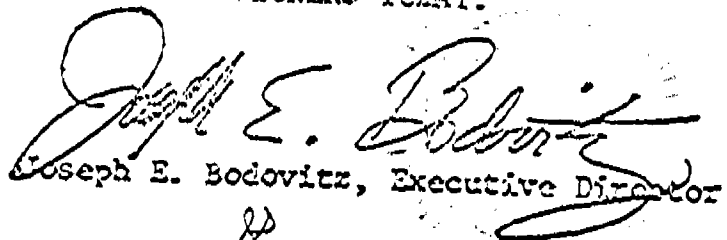
IT IS ORDERED that the relief requested by Crow San Juan Ranch is granted and within 30 days after the effective date of this order, San Diego Gas & Electric Company shall refund to Crow San Juan Ranch \$71,711. The refund shall bear interest at 7% per annum if not made in full within 40 days.

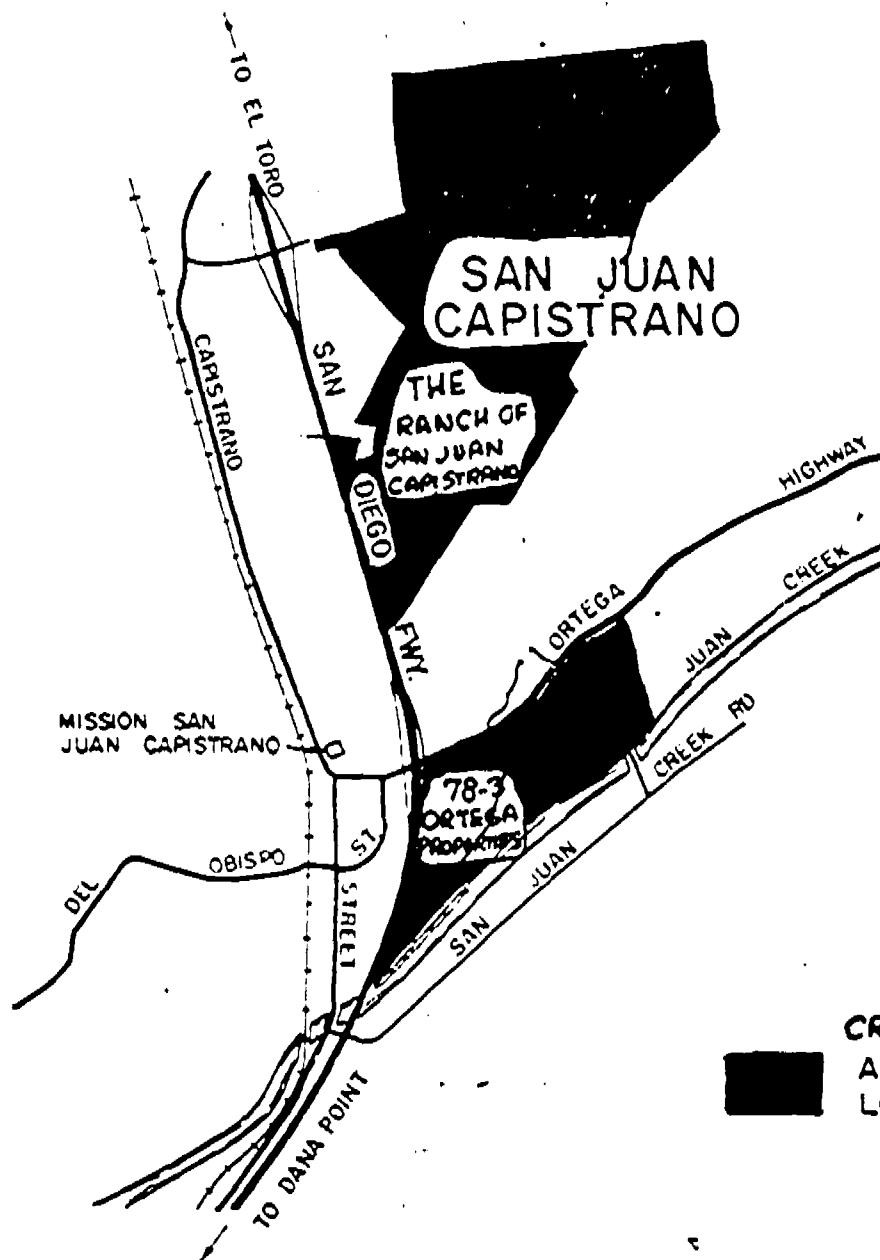
This order becomes effective 30 days from today.

Dated December 7, 1983, at San Francisco, California.

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

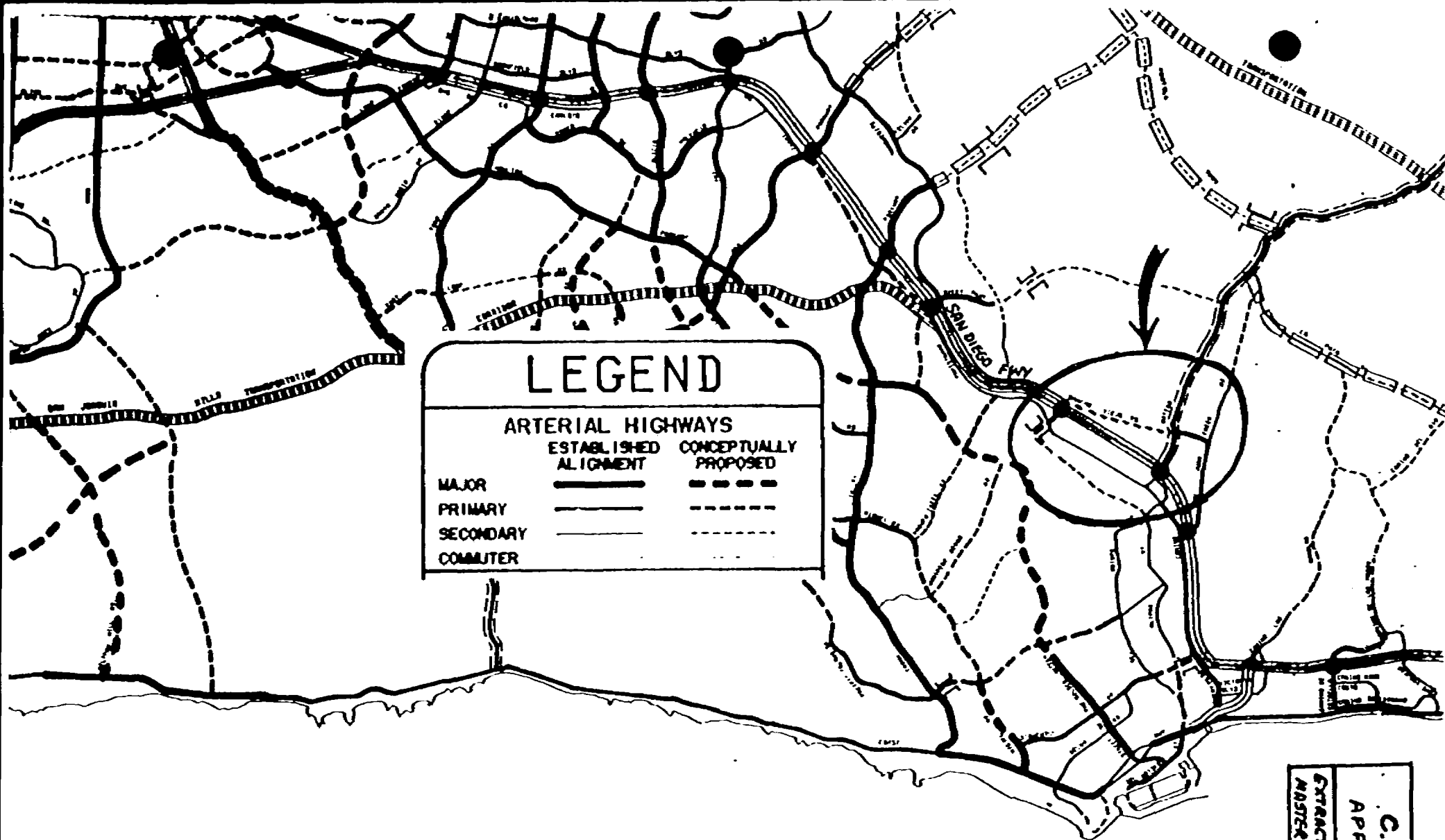
I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Joseph E. Bodovitz, Executive Director



## VICINITY MAP

NO SCALE



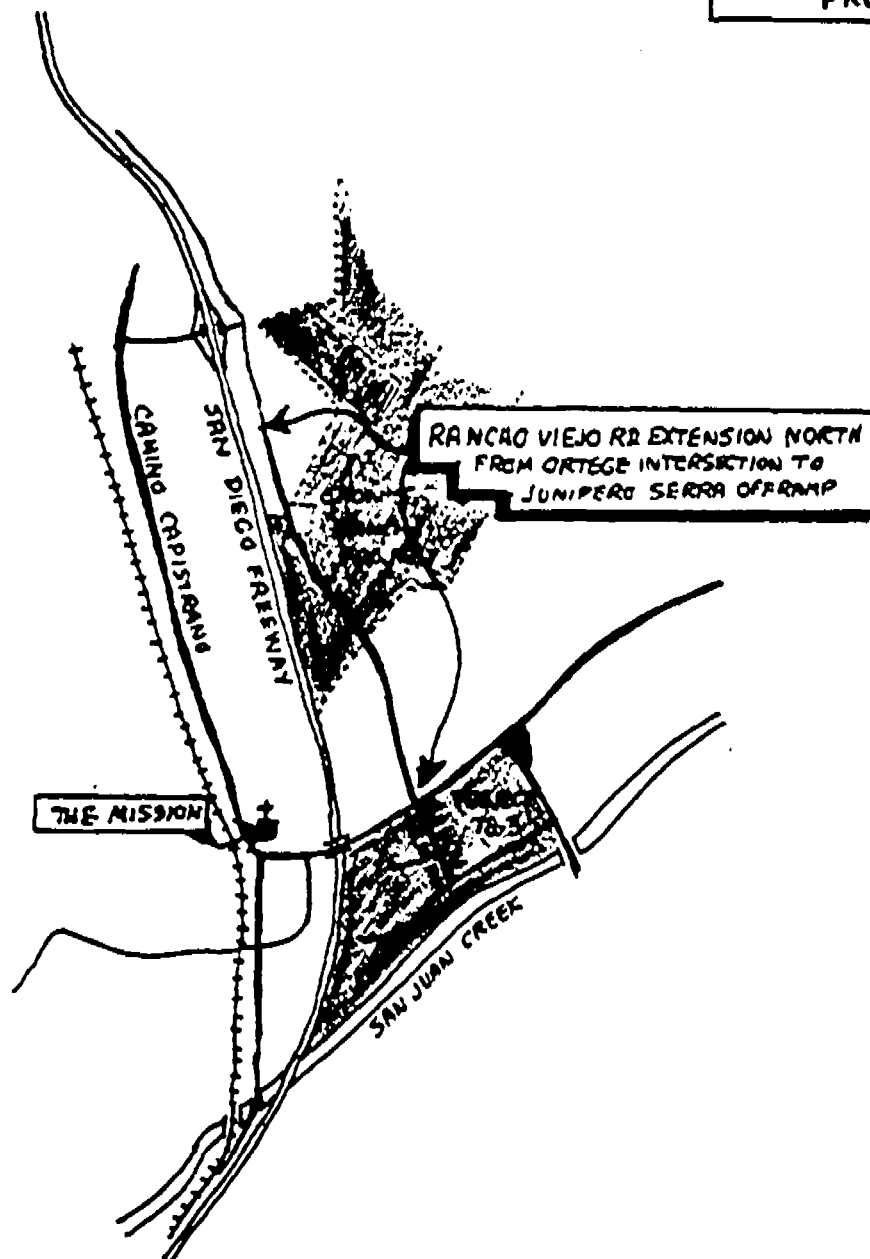
# ARTERIAL HIGHWAYS

C. 82-11-02  
APPENDIX B  
EXTRACT FROM ORANGE COUNTY  
MASTER PLAN OF ARTERIAL HWYS

C. 82-11-02

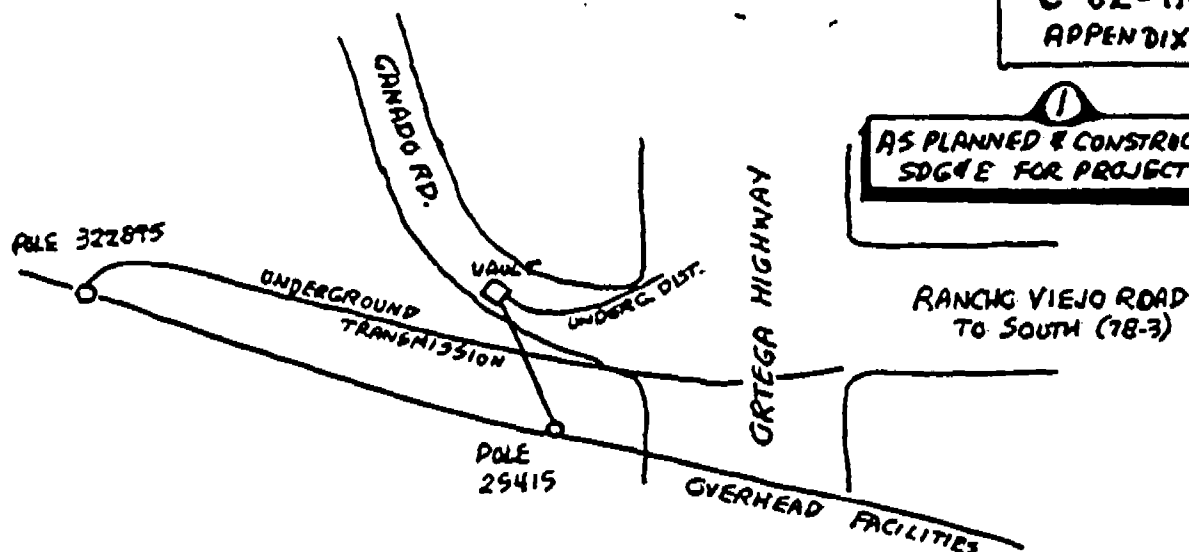
APPENDIX C

CROW'S ROAD EXTENSION  
PROJECT

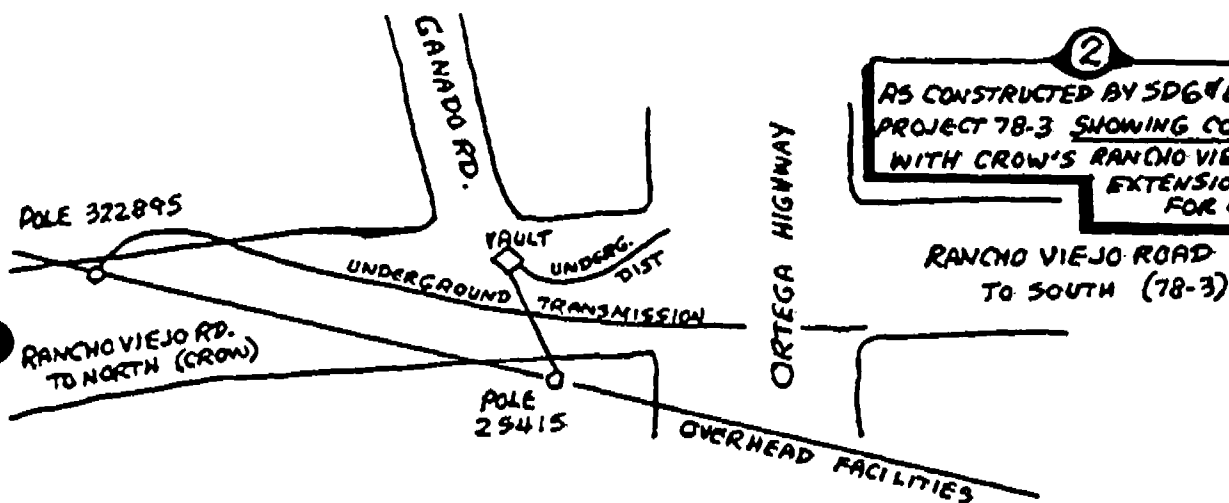


C-82-11-02  
APPENDIX D

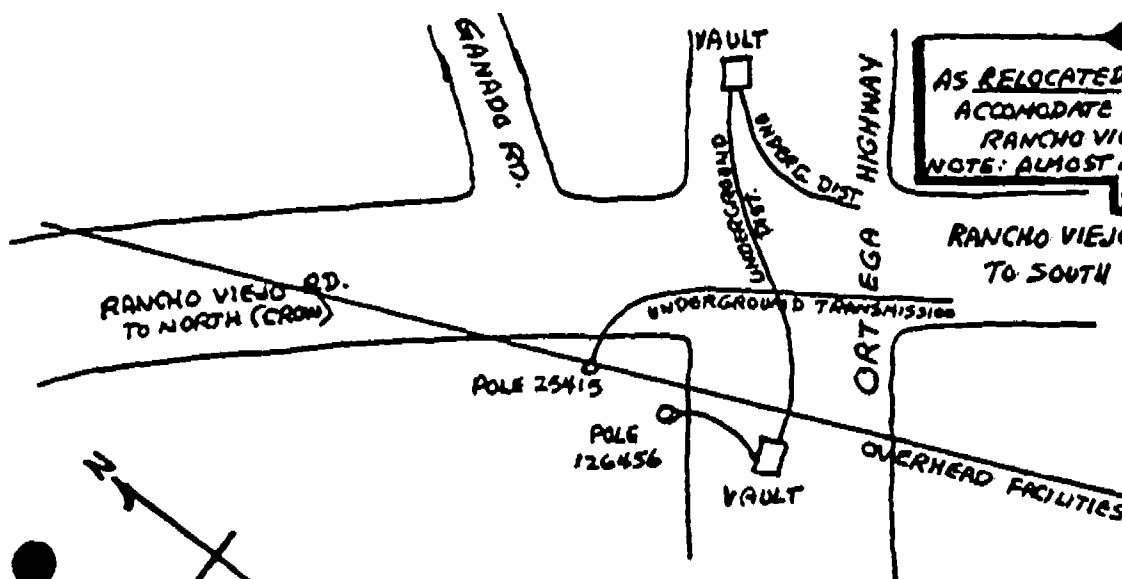
①  
AS PLANNED & CONSTRUCTED BY  
SDG&E FOR PROJECT 78-3



②  
AS CONSTRUCTED BY SDG&E FOR  
PROJECT 78-3 SHOWING CONFLICTS  
WITH CROW'S RANCHO VIEJO RD.  
EXTENSION TO NORTH  
FOR CITY



③  
AS RELOCATED BY SDG&E TO  
ACCOMMODATE EXTENSION OF  
RANCHO VIEJO RD. NORTH  
NOTE: ALMOST ALL SDG&E FACILITIES  
BACK WITHIN OR S.E. OF  
ORTEGA HIGHWAY



In order to give constructive notice to SDG&E of the advanced approval stage of its plans, Walden telephoned the utility's Customer Extension Planner (Planner) to advise about the extension of Rancho Viejo Road between Ortega Highway and the Endevco site. Walden followed up the telephone conversation on May 15, 1980 by sending the SDG&E planner copies of the Ranch Parcel Map, the Comprehensive Development Plan, and the Alignment Plan for Rancho Viejo Road (the first pertained only to the Ranch project but the latter two pertained to extension of Rancho Viejo Road north from Ortega Highway). However, the SDG&E planner, noting that the plans were stamped "preliminary", did nothing more than file them.<sup>4/</sup> During the 1980 summer other contacts between Walden and SDG&E were made, but they related only to the Ranch.<sup>5/</sup>

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<sup>4/</sup> Subsequently, the planner testified that he might have just rolled up the plans and tossed them in a box over in the corner of his office.

<sup>5/</sup> In July Walden sent the planner a proposed street improvement plan relating to the Ranch, and also telephoned him a number of times concerning specific questions: how long runs would be, the quantity of conduit to be required, etc., for the road extension. However, the planner felt he needed more specific load information so he evaded direct answers to questions not backed up by detail. In October 1980, Walden submitted cost and quantity estimates to the city for bonding purposes required under the tentative parcel map.

property development. Rather it is required to accommodate public appropriation of certain land for public thoroughfare purposes. As regards the road extension Crow is acting merely as an instrumentality of the city. Crow has no property within a third of a mile of the involved intersection. Crow is merely making a post-Proposition 13 gift of the construction of the road extension to the City. It is doing so because if it does not, the city made it clear that it would not permit development of Crow's Ranch property at the other end of the road some 1800 feet to the north. Relocation of the SDG&E facilities is necessary only because the city has decided upon this extension and opening of Rancho Viejo Road between Ortega Highway and the San Diego Freeway, and the utility facilities are directly in the path of the roadway expansion. The proximate cause of the relocation is that a public road is being opened and extended by the city. A city has the power to open, widen, extend or improve streets within its jurisdiction (City of Red Bluffs v So. Pac. Co. (1919) 44 CA 667, 187 P 152). Certainly appropriations of land for highway purposes make them impliedly subject to such uses as the public may require (Gurnsey v Northern Cal. Power Co. (1908) 7 CA 534, 94 P 858), and the mere securing of a franchise to serve the public gives a utility no right to locate or maintain its poles or other instrumentalities at any particular place upon the public streets (Los Angeles Gas & Elec. Co. v City of Los Angeles (1917) 241 F.



It is difficult to accept that SDG&E's professional planning staff could not be cognizant of pending developments involving the County's Master Plan for Highways, if only as a consequence of its involvement in planning the project 78-3 facilities on Rancho Viejo Road south of Ortega Highway, or that SDG&E's staff could be unaware of the budding potentialities of the Ranch project. Nonetheless, SDG&E drew plans to relocate the 69 kV and 12 kV facilities at the Ortega Highway-Ganado Road intersection with Rancho Viejo Road squarely in the only logical future northerly right of way for Rancho Viejo Road! The location of the road south from the intersection, the location of Ganado Road, the location of existing building and the very contours of the land to the north of the intersection, as well as the Master Plan for Highways, made any northerly extension via the right of way followed the City and Crow the only logical route.

When SDG&E planned the undergrounding and other facilities relative to 78-3 at this intersection, why were not the 12 kV facilities placed entirely within the Ortega Highway right of way where eventually they were relocated? And why were not the 69 kV facilities undergrounded to connect to pole 25415 near the intersection where they too were eventually relocated, rather than extended well north of Ortega Highway to a pole inside the logical right-of-way for extension of Rancho Viejo Road? With these considerations in mind it is questionable that the utility exercised

pole 25415), it could have saved 78-3 considerable undergrounding expense.<sup>13/</sup>

But while Walden did not continue to press the city for the SDG&E drawings not yet incorporated into the 78-3 Master Plan, Walden did do what was prudent under the circumstances. On May 15, 1980 Walden advised SDG&E's planner of the northerly extension of Rancho Viejo Road which was to be constructed by Crow, and sent SDG&E both a comprehensive development plan and a map showing the precise alignment of the road extension from intersection with Ortega Highway north. We conclude that Crow did all that was reasonably to be expected or necessary. The ball was thereafter dropped when SDG&E did nothing with the information or plans.

The utility next argues that Crow was at fault in that subsequently, after sending its October 6, 1980 letter and detailed drawings to the utility (which formally asked that the drawings be checked on conflicts), Crow did further follow-up. This allegation is simply not true. Crow did follow up. When Crow learned from a city engineer that the utility planned under 78-3 to relocate a particular power pole, and that this pole was to be relocated in the Rancho Viejo Road right-of-way, Crow telephoned and wrote the utility of the problem, sending still another set of plans. Having identified the problem, and advised the utility, and

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<sup>13/</sup> This latter connection, to pole 25415, was precisely what was accomplished in the subsequent relocation - at a cost of \$68,795.

O R D E R

IT IS ORDERED that the relief requested by Crow San Juan Ranch is granted and within 30 days after the effective date of this order, San Diego Gas & Electric Company shall refund to Crow San Juan Ranch \$71,711.

This order becomes effective 30 days from today.

Dated DEC 7 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President

VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
WILLIAM T. BAGLEY  
Commissioners