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Decision No. 86608

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DALE HORTON,
Complainant,
v.
SAN DIEGO GAS & ELECTRIC COMPANY, a corporation,
Defendant.

Case No. 10072
(Filed March 22, 1976)

OPINION ON MOTION TO DISMISS

Complainant is the developer of a subdivision consisting of 36 condominium units in Chula Vista, which is within defendant's service area. He alleges that San Diego Gas & Electric Company (SDG&E) has demanded that he provide trenching and conduit for in-tract electrical facilities in excess of the subdivision's requirements. He also alleges that SDG&E has demanded excessive amounts of advances and contributions for an underground electrical extension to the subdivision.

SDG&E answered, denying some of the material allegations of the complaint. However, the main thrust of SDG&E's answer, repeated in a motion to dismiss, is that the charges and contributions of goods and services it imposes are provided for in its tariff. Most notably, it claims the Commission has authorized it to compel complainant to contribute to plant which will not be necessary until nearby land is developed and sold.

Discussion

The first issue concerns the scope of complainant's responsibility for trenching and installing conduit within the subdivision. SDG&E claims the right to compel complainant to trench and provide conduit for underground electrical plant in excess of

that needed for complainant's condominiums. Complainant has resisted, asserting that under SDG&E's tariff a subdivider cannot be required to contribute plant intended to provide electrical service to nearby property owned by others.

SDG&E's Rule 20.1 governs underground extensions within new residential developments. It provides, in paragraph B:

> "1. The developer of the subdivision or development will perform all necessary trenching and backfilling, including furnishing of any imported backfill material required, and will furnish, install and deed to the utility any necessary distribution and feeder conduit required, all in accord with the utility's specifications." (Emphasis added.)

There is no express provision for plant constructed in excess of that required to serve the developer's property but useful for subsequent developments.

SDG&E contends that true meaning of the word "necessary" cannot be established without considering the contrasting provisions of Rule 20.2. That rule, which governs commercial and industrial developments, provides in paragraph B:

> "1. The developer of the commercial or industrial development will, in accordance with the utility's specifications:
>
> a. Perform all necessary excavating and backfilling, including furnishing of any imported backfill material required.
>
> b. Furnish and install any conduit and substructures necessary to serve the development, including reimbursement to the utility of the cost of such necessary conduits and substructures which the utility had installed at its expense in

> conjunction with a previous extension, in anticipation of the current extension. Substructures shall include such items as switchgear vaults and concrete encasement of conduit, where required." (Emphasis added.)

Paragraph B further provides:

> "2. The utility will complete at its expense:
>
> c. Any conduit and substructures not needed for the current extension but included in the utility's plans in anticipation of future extensions." (Emphasis added.)

SDG&E argues that the different wording of the rules requires that industrial and residential developers be treated differently. It therefore concludes that the word "necessary" in Rule 20.1 should be read to require a residential subdivider to trench and donate conduit necessary to serve other anticipated subdivisions. Complainant, on the other hand, contends that the word "necessary" means necessary for the contributor's subdivision only.

Both rules were promulgated by Commission decisions which required all California electrical utilities to adopt them. Rule 20.1 was adopted by Decision No. 76394 (1969) 70 CPUC 339. Rule 20.2 was adopted by Decision No. 78294 (1971) 71 CPUC 803. The only discussion of the pertinent wording is at 71 CPUC 806:

> "The revised rules prescribed herein to be applicable to underground extensions of electric lines to serve new commercial and industrial developments are based upon the rule proposed by Staff in Exhibit No. 12, with the following modifications:
>
> Modifications
>
> Section
> 1.B. Instead of having the applicant for the extension furnish and install 'any necessary conduit', the applicant will be required to furnish and install only that conduit necessary to serve the development,

> with the utility paying for conduit installed in anticipation of future extensions. The applicant will, however, be required to reimburse the utility for conduits which the utility had already installed in conjunction with a previous extension in anticipation of the current extension. This places the burden upon the applicant who benefits from the advance planning."

SDG&E's assertion that the difference between the rules reflects a deliberate policy decision by the Commission is not supported by either reported opinion. Rather, it appears that the drafter of the first rule did not intend to deal with the problem of financing in-tract underground plant constructed in excess of immediate need. While the drafter of the second rule did so intend, he did not explain why he limited his consideration only to industrial developers. The most likely explanation is that he did not foresee that the difference between rules might be the basis for an unintended expansion of a residential subdivider's responsibilities. Therefore, neither Rule 20.2 nor the decision adopting that rule is useful in interpreting Rule 20.1.

SDG&E argues that complainant's definition of "necessary" in Rule 20.1 has been implicitly rejected and its own definition implicitly adopted by the decision adopting Rule 20.2. However, it appears that SDG&E's interpretation is not one which could be implicitly adopted, since it would compel the first subdivider to contribute more, and permit subsequent subdividers to contribute less, than their pro rata share of jointly used underground plant. There may be a basis to hold that such a financing plan is not unduly discriminatory; whatever it may be, it is not self-evident. Thus, there is no support for SDG&E's interpretation of Rule 20.1. Complainant's interpretation of the word "necessary" should be accepted.

The second issue involves the allocation of the cost of an underground extension from SDG&E's existing plant to the in-tract facilities. The governing tariff provision is SDG&E's Rule 20.D.4.2 which provides:

> "4. Extensions to Residential Subdivisions and Developments or Commercial and Industrial Developments Referred to in Section B.3. of Rule 20.1 or of Rule 20.2.
>
> a. Underground line extensions to residential subdivisions and developments or commercial and industrial developments will be installed, owned and maintained by the utility provided developer requesting the extensions pays before start of construction a nonrefundable sum equal to three-fourths of the estimated difference between the cost, exclusive of transformers, meters and services, of the underground extension and an equivalent overhead extension. The developer requesting the extension shall advance to the utility, in addition to the nonrefundable sum, an amount equal to the estimated cost, exclusive of transformers, meters and service, of the equivalent overhead line; ..." (Emphasis added.)

It is conceded that the actual underground system will be no more than one No. 2 single-phase aluminum cable. Nevertheless, SDG&E argues that the cost of an "equivalent overhead extension" should never be less than the cost of a three-phase No. 3 copper extension, since it has a practice never to provide a smaller overhead service to any subdivision, regardless of anticipated load. SDG&E's tariff does not mention this practice.

Complainant, on the other hand, argues that the clause should be interpreted to mean an overhead system having equivalent electrical characteristics.

We adopt complainant's interpretation. A person subject to a utility charge should be specifically apprised by the tariff of any factor which affects the calculation of the charge. If SDG&E wishes to use a minimum hypothetical cost in the calculation of underground extension charges, that factor should be expressly mentioned in its tariff, not left to implication.

SDG&E asserts that the complaint is an attack on the reasonableness of its rates and hence cannot be entertained unless signed by 25 customers, actual or prospective. (§ 1702 Pub. Util. Code.) Complainant responds that he is not challenging SDG&E's tariff but merely trying to compel a utility to comply with his interpretation of the tariff. SDG&E's argument should be rejected; the 25-customer requirement does not apply to a dispute over tariff interpretation.

The pleadings appear to raise certain factual issues. We think it probable that our interpretation of the tariff will render the factual issues moot. Nevertheless, it appears appropriate to continue this proceeding until it is clear that all outstanding issues have been resolved.

We conclude that:

1. The word "necessary" in SDG&E's Rule 20.I.B.1 means necessary for the applicant's subdivision alone; it does not include any added capacity or footage to serve subsequent subdivisions.

2. The words "equivalent overhead extension" in SDG&E's Rule 20.D.4.a mean an overhead cable of equivalent electrical capacity to the cable actually installed underground. It does not refer to any standard minimum overhead construction.

3. A complaint alleging that a utility is not properly applying its tariff does not require signature by 25 complainants.

4. The motion to dismiss should be denied.

INTERIM ORDER

IT IS ORDERED that the motion to dismiss is denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 9th day of NOVEMBER, 1976.

President
William Symons, Jr.
Vernon L. Sturgeon
Robert Batinovich
Commissioners

Commissioner Leonard Ross, being necessarily absent, did not participate in the disposition of this proceeding.