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Decision No. 86777

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LEWIS M. DUCKOR,
Complainant,
v.
PACIFIC GAS and ELECTRIC COMPANY,
Defendant.

Case No. 10043
(Filed February 10, 1976)

Michael Duckor, Attorney at Law, for complainant.
Kathy Graham, Attorney at Law, for defendant.

## O P I N I O N

This is a complaint for overcharges resulting from installation of electrical service. Public hearing was held August 9, 1976 before Examiner Thompson at Santa Clara and the matter was submitted on written closing statements filed August 25, 1976.

Complainant is a developer of commercial and industrial property. Defendant is an electrical corporation as defined in Section 218 of the Public Utilities Code engaged in the furnishing of electricity as a public utility in Santa Clara and Sunnyvale, among other places. The complaint concerns the charges defendant assessed and collected from complainant, and represented by defendant to be its lawful tariff charge, for extending its electrical plant, including undergrounding, to provide service to complainant's property. The facts regarding the electrical plant installed and the events leading to this controversy are not in dispute.

In about January 1974 complainant purchased a lot in a subdivision known as the International Science Center located in Sunnyvale. The property, now identified as 845 Stewart Drive, Sunnyvale, is on the northwest corner of Stewart Drive and De Guigne Avenue. Complainant had previously developed commercial property in the International Science Center and had negotiated with defendant in connection with providing electrical service to that property and the charges assessed by defendant had been less than $200 for such installation.

On August 16, 1974 complainant's general contractor submitted to defendant the general plans for the proposed building and requested an estimate of the cost of installing electrical service. In mid-September ground was broken for the building construction on the property. On October 15, 1974 defendant's commercial representative sent a letter to the general contractor outlining the proposed service arrangements and the underground facilities that would be required. The letter notified the contractor that complainant would be charged three-fourths of the difference in cost between the underground and an equivalent overhead distribution system. It states that the number and size of the circuits and the size of the transformer pad are contingent on the ampacity of the main switch. The letter asked complainant to inform defendant of the firm gas load but did not request the electric load. On October 29, 1974 complainant's electrical contractor notified defendant of the size of the main switch. On November 1, 1974 defendant requested electrical load information from complainant. On November 5, 1974 that information was supplied to defendant by complainant's electrical contractor. On December 23, 1974 defendant mailed to complainant four copies of the Electric Underground Agreement for the project at 845 Stewart Drive with the following summary of charges:

| | | |
|---|---|---|
| a. | Nonrefundable amount (Rule 15-D) | $4,702.00 |
| b. | Excess service conductor | 123.19 |
| c. | Electric portion of trenching, backfilling, and excavation | 1,357.30 |
| d. | PT&T portion of trenching and backfilling | 1,057.30 |
| | Total | $7,239.97 [sic] |

Defendant notified complainant to sign all copies of the agreement and return them with his check for $7,239.97 and that upon receipt of the payment complainant would schedule work to start approximately three weeks later.

In its barest outline, and as it pertains to the issues here, the project consisted of running 570 feet of 12 kv line underground from a point at the foot of an existing utility pole about 86 feet east of De Guigne Avenue., located in a utility easement and also serving electricity to Western Electric Company on property on the eastside of the street, to a transformer located on complainant's property about 132 feet west of De Guigne Avenue. What defendant included in its estimate and actually did to accomplish this was to remove a paper and lead riser from the pole to a subsurface splice-box containing Western Electric's service, install a new polyethylene concentric cable riser from the pole to a new box, adjacent to that splice-box, in which it installed a 200 amp. subsurface switch. Western Electric's service was then connected to that switch. From the switch box a trench was made westerly along the easement (86') and extended across De Guigne Avenue (57'), then southerly along the westside of De Guigne Avenue (295') to complainant's property line, thence westerly within complainant's property (132') to the transformer. Within the trench extending 295 feet on the westside of De Guigne Avenue complainant installed

two ducts, one as a conduit for complainant's line and the other for future extensions for customers and to permit looping of the system to provide more reliable service to the future customers, complainant, and to Western Electric. (See sketch in Attachment A.)

After receiving the statement of charges, complainant met with defendant's manager and its commercial representative to discuss the amounts and was informed that the charges were pursuant to defendant's tariff and correct. On January 24, 1975 complainant addressed a letter to the Commission setting forth the facts stated above and requesting investigation and assistance.

Complainant's building construction was completed January 25, 1975. On February 19, 1975 complainant again met with defendant's manager and its commercial representative to discuss the matters complained of in complainant's letter to the Commission.

By March 6, 1975 complainant had a tenant for his building so that on that date he signed an Electric Underground Agreement and tendered defendant $6,182.67 in connection therewith.

On March 10, 1975 defendant's manager sent a letter to complainant confirming the conversation of February 19th and stating that the extension has to be in accordance with Rule 15, Section D of its electric tariff, and that the applicable provisions where the utility does the installation are set forth in Rule 15, Section D.2. The letter further states that defendant's reply to the complainant's original inquiry (letter dated January 24, 1975 to the Commission) has been sent to the California Public Utilities Commission.

On April 24, 1975 a letter was sent by the Commission to complainant setting forth defendant's responses to the matters raised in the letter of January 24th. It states that the inclusion of PT&T's share of the trenching costs in the original bill was

inadvertent and that this item has been removed from the underground agreement. It asserts that the total nonrefundable charges amount to $6,182.67. The letter states that it was the position of the utility that the costs involved are only for facilities to serve complainant and do not include any facilities installed for future customers; that the switch and splice-box referred to in the letter are directly related to the underground electric extension to complainant; and that the sharing of costs has been determined in accordance with Rule 15.D.2. The letter points out that the purpose of the Commission's staff is to mediate between the utility and its customers in an effort to bring about a mutually satisfactory solution to any complaint, and in the event that the staff fails to achieve that result, a formal complaint may be made to the Commission.

In mid-July 1975 Thompson Ramo Woolridge (TRW) made a decision to construct a building on property beyond complainant within the subdivision. Actual breaking of ground occurred January 10, 1976 and the building construction was completed January 25, 1976. The spare duct in the trench for which complainant paid 75 percent of the cost was utilized to provide electric service to that property.

Discussion

There are three basic issues presented: (1) What portion of the electric plant installed was required to provide service to complainant and what portion was installed for utility purposes; (2) what are the charges provided under defendant's tariff that are applicable; and (3) is complainant entitled to any relief by reason of defendant's failing to provide him with a proper estimate of charges until a period of three months or more had elapsed from the time the request was made?

Had there been no consideration for future uses and only a simple extension made to provide service to complainant's property, the installation would have consisted of extension by splice at the then existing splice-box and undergrounding with a single duct to the transformer along the route actually used. The purpose of the switch and the box housing it is to provide greater reliability of service to customers, including complainant, Western Electric, TRW, and future customers on a loop system that may be installed. The replacement of the riser was required only because the paper and lead riser could not be installed in the 200 amp. separable elbows which connect to the switch. From the switch to the splice-box on De Guigne Avenue (1 to 3 on the sketch in Attachment A) the installation is exactly the same as would be for a simple extension to complainant's property. Where the duct and line from the switch make a ninety degree turn on De Guigne Avenue (Point 3 on the sketch) defendant installed a splice-box and made a splice. The actual installation contemplated an additional splice being made therein in connection with a line to be installed in the spare duct for future customers. Regardless of that contemplated future use, it would appear that the splice-box, or some similar facility, would be indicated at either that point or at the other sharp bend opposite complainant's property line (Point 4). It is possible that something less costly might have been utilized.

Along the westside of De Guigne Avenue from the aforementioned splice-box to complainant's property line (3 to 4 on the sketch), defendant installed two 4-inch ducts, one for complainant's extension and one for future customers or for looping the system. The width of the trench (9 inches) is the same width that would

have been required for laying only one duct. Had a simple extension to complainant's property only been involved, the only difference in the work and installation would have been one duct instead of two.

The installation on complainant's property (4 to 5 on the sketch) relates only to complainant's service and not to any utilization by defendant for any other purpose.

Applicable Charges

Rule 15.D.2 (Utility-Installed Extensions to Serve Individuals) set forth on Revised Sheet No. 4869-E, effective April 20, 1971, of defendant's tariff provides the basis for determining the charges to be assessed for the extension involved herein. In brief, it requires the payment of 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. It also requires payment for the difference in length of equivalent overhead extension required and the free allowance.

One of the disputed allocations of costs involves that connected with the trench. A portion of the trench is a joint one with PT&T. The total cost of the work involving the trench was $2,414.60 of which $1,057.30 was the share allotted to PT&T leaving $1,357.30 as defendant's share. In effect defendant charged complainant three-fourths of that amount. Complainant contends: (1) that defendant should bear a greater share because the trench was utilized by it by installing an additional duct for its own future use, and of no benefit to complainant; and (2) defendant knew, or should have known, that TRW would soon require electric service through an extension via the duct placed in the trench and should have taken steps so that the cost of the trench be shared

equitably by the parties benefited therefrom. These contentions are without merit. We must first recognize that it is a matter of State policy that utility facilities be underground and that it is in the public interest that such undergrounding be as economical, efficient, and safe as is reasonably possible. In its orders the Commission has encouraged utilities to make efficient use of joint trenches in order to implement that policy and to avoid unnecessary tearing up of streets. The placing of the additional duct in the joint trench was consistent with that policy. Contrary to complainant's contention, he has benefited from the placing of the additional duct in the trench by reason of having to pay a lower charge for the extension than the charge that would be applicable if only the duct containing his service were installed. His share of the labor cost is lower than the labor costs of installing only one duct in that trench. The answer to complainant's contention that defendant should have attempted to obtain an extension agreement with TRW to share the cost of 295 feet of trench lies in posing another question: Would complainant have been willing to defer his electric service for a year in order to coordinate with TRW's requirement? Complainant requested electric service and was entitled to receive it within a reasonable time from his request. At that time defendant did not have any request or agreement with any other entity for service which would have required the use of that trench. The trench had to be made at that time only because of complainant's extension. He should be responsible for the full share of that cost as provided in the tariff.

The charge made by defendant included costs of installing the 200 amp. switch and the necessary appurtenances, including the new riser. It also included the full costs of installing the splice-box at Point 3 on the sketch, together with the facilities appurtenant thereto. To that extent the charge assessed by defendant is in excess of the lawful charge provided under its tariff. The record does not permit us to ascertain the amount of those costs. Exhibit 7, which is a copy of defendant's estimate, sets forth only lump sum estimates of material costs, labor costs, and other costs in the categories of distribution and transportation, together with the indirect and overhead additives to each category.

The following is the basis for determining the nonrefundable advance applicable to this extension under Rule 15.D.2 of defendant's tariff:

| | | |
|---|---|---|
| Total cost of extension including $1,357.30 PG&E share of the trench costs | | $10,966.30 |
| Deduct costs incident to installation of facilities at Point 1 (riser, switch, etc.) except for one splice of 3/2 22 kv cable | | |
| Deduct one-half the cost of installation of splice-box and appurtenances at Point 3 | | |
| Deduct one-half the cost of installation of two 4" ABS DB duct from Point 3 to Point 4 | | |
| Deduct installation costs of the portion of cable installed under Rule 16 | | |
| Deduct equivalent cost of overhead | $1,486.00 | |
| Total Deductions | | |
| Difference in cost (total less deductions) | | |
| 75 percent of difference | | |
| Add cost of equivalent overhead service in excess of 100 feet (free allowance) | | 123.19 |
| Total Nonrefundable Charge | | |

NOTE: Installation costs include direct costs, indirect costs of 32 percent on transportation labor, 68 percent on other labor, and 7 percent on material costs; plus 8 percent general overhead costs on total direct, indirect, and other costs.

Defendant should be required to develop the estimates in accordance with the above and to provide an explanation of the bases of the amounts developed for the deductions to the total cost of the extension. The difference between the amount of total nonrefundable charge so developed and the amount charged complainant is the amount defendant has collected from complainant in excess of its lawful rates and charges for the service performed; and defendant should be ordered to refund that amount, plus interest at seven percent per annum, to complainant.

The Delay in Providing the Estimate

In its argument complainant asserts that the delay by defendant in providing the specifications and estimates of cost undergrounding caused sufficient prejudice and damages to complainant to justify relief. Although the complaint, by incorporating the letter dated December 23, 1974 addressed to the Commission, alleges that complainant was caused substantial inconvenience and possible damage because of inability to exercise options or alternatives, the complaint does not specify the damages claimed. In any event, the Commission does not have jurisdiction to award monetary damages for the actions alleged.

Findings

1. On or about March 6, 1975, defendant collected from complainant the sum of $6,182.67 as a nonrefundable advance applicable under Rule 15.D.2 of its tariff for extension of its electrical plant to provide service at 845 Stewart Drive, Sunnyvale.

2. The development of the amount of $6,182.67 included costs of installing facilities and plant not necessary or required to extend electrical service to that property.

3. The ascertainment of the lawful charge, specified as a nonrefundable advance, applicable under Rule 15.D.2 for the extension of electrical plant by defendant to serve the property at 845 Stewart Drive requires cost data maintained by defendant but not of record in this proceeding.

4. The basis for the development of the lawful charge applicable under Rule 15.D.2 is that specified in this opinion.

5. Defendant has collected from complainant a charge in excess of that prescribed in its tariff for the extension of its electrical plant to provide service at 845 Stewart Drive in an amount equal to the difference between $6,182.57 and the amount determined under the basis in Finding 4, above.

Conclusions

1. Defendant violated Section 532 of the Public Utilities Code by receiving a different compensation for service rendered than the rates and charges applicable thereto as specified in its schedules on file and in effect at the time.

2. Defendant should be ordered to recalculate the applicable charges in the manner specified in this opinion, and within thirty days after the effective date of this order file with the Commission, and serve upon complainant, the recalculations of the applicable charges, together with the supporting data described in this opinion.

3. Defendant should be ordered to refund to complainant the sum amounting to the difference between the applicable charge and the charge that it received with interest.

4. Any additional relief sought by complainant in this proceeding should be denied.

O R D E R

IT IS ORDERED that:

1. Defendant shall recalculate the nonrefundable advance applicable under its Rule 15.D.2 for the extension of electrical facilities to 845 Stewart Drive in accordance with the procedure specified in this opinion, and within thirty days after the effective date of this order shall file with the Commission, and serve upon complainant, the recalculation of the applicable charges, together with the supporting data described in the opinion.

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2. Within thirty days after the effective date of this order defendant shall refund to complainant the sum of money amounting to the difference between the applicable charge and the charge that it received from complainant, together with interest at seven percent (7%) per annum from March 6, 1975.

3. Except as otherwise provided herein, relief sought by complainant in this proceeding is denied.

The Executive Director shall cause a copy of this order to be served upon defendant and the effective date of this order shall be twenty days after completion of such service.

Dated at San Francisco, California, this 21st day of December, 1976.

President

Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.

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ATTACHMENT A

Sketch of Installation of Facilities
by PG&E in Connection With Providing
Electrical Service at

845 Stewart Drive
Sunnyvale, Calif.