

Decision No. 87246

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

NuPACIFIC COMPANY, an Oregon Corporation,

Complainant,

vs.

PACIFIC GAS and ELECTRIC COMPANY, a California corporation,

Defendant.

Case No. 10063
(Filed March 8, 1976)

Richard D. Andrews and John C. Ganahl,
Attorneys at Law, for complainant.
Bernard J. Della Santa, Attorney at Law,
for defendant.
L. Earl Ligon, Attorney at Law, for
San Diego Gas & Electric Company,
intervenor.

O P I N I O N

Complainant's predecessor contracted with defendant to provide a gas and electric distribution system and lighting facilities for a residential subdivision consisting of 243 single family residential lots in the city of Fresno, between Herndon, Marks, Sierra, and Valentine Avenues, further identified as Gardenview Estates.

Six-inch conduit lines were placed in a trench along three sides of the subdivision. The conduit was laid to hold the cable along which power would come from defendant's nearby electric substation. The city of Fresno refused to allow defendant to place the substation in the selected location and the conduit presently contains no cable and is not used. It was stipulated that the conduit will never serve complainant's subdivision, although it is likely that it will be placed in service in the future to service a subdivision not yet constructed.

Complainant was charged and paid defendant \$22,752.98 for the trench and conduit which will never serve its subdivision. Complainant requested a refund and was advised that the sum is nonrefundable and was properly collected and retained under Electric Rule 15.1, Section B.1 of defendant's tariff. Complainant prays for an order from this Commission requiring the defendant to refund this sum of money, with interest at the rate of seven percent per annum from November 19, 1974 to the date on which payment is received. Defendant's answer included a motion to dismiss the complaint since it was not signed by 25 actual or prospective consumers as required by Section 1702 of the Public Utilities Code and did not allege that defendant had violated any provision of law or rule or order of the Commission. A supplementary Motion To Dismiss, with points and authorities, was filed on June 16, 1976 by the defendant. A Petition to Intervene was filed by the San Diego Gas & Electric Company on June 17, 1976. A duly noticed public hearing was held in Fresno on June 22, 1976 before Examiner Fraser. Evidence and testimony were provided by complainant and defendant. All three parties submitted concurrent opening and closing briefs.

The civil engineer designer of complainant's subdivision testified that he has been involved in the planning and construction of 30 to 40 subdivisions in the Fresno area and has never heard of a developer being required to pay for feeder conduits that would not serve his subdivision. He testified the requirement to pay on a nonrefundable basis was first brought to his attention in May of 1974 by agents of the defendant who advised that the first developer in the area always paid for the conduits.

One of complainant's managing partners testified that he has 20 years experience in land development, including construction of 50 subdivisions with more than 6,000 homes, located in Oregon, Washington, and Idaho. The current subdivision is the first one constructed by complainant in California. The allocated costs did not allow for the construction of a conduit which was not to be used. This item was first considered about November of 1974 when the project engineer was informed that defendant had added the expense of constructing the surplus conduit to the cost of the total project. The witness testified he has never been required to pay for a surplus conduit on any of his other building projects.

The electrical engineer in charge of defendant's San Joaquin Division was a witness for complainant. He testified that the conduit in dispute consists of five pipes laid parallel, which are designed to protect the cables carrying the current. The pipes will not be used until 1978, when the first cable will probably be installed. The last cable should be in by 1980. He testified that he decided the conduit should be constructed, although it will not be used before 1980. He further testified that defendant assumes the cost of sections of conduit extending between two subdivisions, or out of a subdivision, and no charge would be imposed against a developer who placed homes where the conduit paid for by defendant was extended.

All parties are concerned with the interpretation of Rule No. 15.1 of the Pacific Gas and Electric Company (Revised Cal. P.U.C. Sheet No. 5994-E, Resolution No. E-1512), which is titled UNDERGROUND EXTENSIONS WITHIN NEW RESIDENTIAL SUBDIVISIONS AND RESIDENTIAL DEVELOPMENTS. Undergrounding of electrical supply systems to and within new residential subdivisions and developments has been mandated by this Commission. Rule 15.1 is the basis for the determination of the allocation of the additional costs of this undergrounding. To implement this allocation Rule 15.1 provides:

"Extension of underground distribution lines at available standard voltages necessary to furnish permanent electrical service within a new single family and/or multiple family residential subdivision...and in a new residential development...will be made by the Utility in advance of receipt of applications for service in accordance with the following provisions..."

The rule then goes on to set forth those costs that the developer must bear in the extension of underground distribution lines to serve his subdivision. Paragraph B.1 of Rule 15.1 provides:

"The developer of the subdivision or development will perform all necessary trenching and back-filling, including furnishing of any imported backfill material required, and will furnish, install and deed to the Utility any necessary distribution and feeder conduit required."
(Emphasis added.)

Complainant argues that the plain meaning of "necessary" and "required" clearly establish that the developer is to bear the cost of conduit "necessary" to furnish permanent electric service to the new subdivision and "required" for the supply of the power thereto. Complainant further argued that it is beyond the bounds of reason to contend that the words "necessary" and "required" as used in Rule 15.1 require a developer to pay for conduit which will never serve its subdivision, but may be required to serve other developments at some time in the distant future. Complainant further contends that this argument is reinforced by the fact that complainant's underground distribution system in the subject subdivision connects to existing 21 kv overhead lines running parallel with and adjacent to the northern boundary of the subdivision, an existing source of supply, thereby indicating that it was not necessary to install the feeder conduit to supply the subdivision.

Defendant rests on the premise that complainant has neglected to allege any violation of Rule 15, or reason to repeal or modify the rule. Its brief includes quotes from the record of Case No. 8209 ((1969) 70 CPUC 339), which adopted the rule, to indicate that developers could be held responsible for the cost of conduits which extend beyond their subdivisions. It asserts that a number of electric utilities in California apply the rule uniformly and any modification of the rule in this proceeding will have a statewide effect on utilities who are not parties herein. It is suggested that if the rule is amended it should be done in a separate proceeding after proper notice to all parties who may be concerned.

Intervenor's brief emphasizes that feeder circuits are designed to carry bulk power from substations. These circuits are not used to distribute power to individual customers. They are situated to provide power to an extended area and to obtain optimum utilization from each substation and feeder circuit. Petitioner contends that the type of installation indicates that the Commission would have provided in the decision (D.76394, Case No. 8209, (1969) 70 CPUC 339), which adopted the rule, if it was intended that developers were only to pay for conduits which served their subdivisions, as was done in the separate decision which revised Rule 15.2, applicable to commercial and industrial developments (D.78294, Case No. 8993, (1971) 71 CPUC 803). The latter decision provides (at page 809) that "...in Sec. B.1b 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".

Discussion

The assertion that the difference between the rules reflects a deliberate policy decision by the Commission is not supported by either reported opinion. The situation which currently developed is unusual and was not anticipated by those who developed the rule. The rule will not be amended or modified; it is simply to be interpreted.

Necessary is defined as "that which cannot be dispensed with"; to require is "to have need of", "to be necessary or indispensable". Dictionaries may vary in text or emphasis, but the meaning of these two words is clear. A developer does not need a conduit which will never serve his subdivision and to require him to pay for it is discriminatory since others will only contribute to conduits serving their subdivisions and a minority may obtain service from conduits installed and paid for by the electric utility involved.

The argument that the first developer in the area must pay for the conduit since it may be the first electric installation planned and constructed is not persuasive. Developers to be served by it can be assessed and charged at any time regardless of when the line is constructed. It would be unconscionable to adopt a rule which requires an innocent party to pay for an electric line which will never serve his area where custom directs that users of the line at some later date will pay none of the installation cost.

Findings

1. In early 1974 Leavitt Brothers contacted defendant concerning the installation of a gas and electric distribution system and street lighting facilities for a residential subdivision in the city of Fresno.

2. Leavitt Brothers is a predecessor entity of complainant and complainant has succeeded to all rights and liabilities of said entity.

3. An electric feeder conduit was installed and \$22,752.98 was billed to and paid for by complainant under defendant's Electric Rule 15.1, Section B.1. This conduit was installed as part of an overall electric supply system to serve future growth in the area, but will not serve complainant's subdivision.

4. The feeder conduit was originally designed to carry current from a substation which will never be constructed due to a change in zoning adopted by the Fresno City Council on October 2, 1975.

5. A developer of a residential subdivision or development should not be required to pay the cost of a feeder conduit which will not serve its subdivision, where the conduit was constructed by the electric utility in reliance on a zoning authorization which was later revoked by action of a city council.

6. The cost should be borne by those who will benefit from the installation.

We conclude that:

1. The words "necessary" and "required" in Section B.1 of defendant's Rule No. 15.1 mean that the developer will only be responsible for feeder conduits required for its subdivision alone; it does not include any added capacity or footage to serve subsequent subdivisions. (Horton v San Diego Gas & Electric Co., D.86608, Case No. 10072 (1976).)

2. A complaint which concerns the proper interpretation of a tariff provision does not require signature by 25 complainants.

3. The motion to dismiss should be denied.

O R D E R

IT IS ORDERED that:

1. The motion to dismiss is denied.

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2. Pacific Gas and Electric Company is directed to refund the sum of \$22,752.98 to the complainant, with interest at seven percent per annum from November 19, 1974.

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

Dated at San Francisco, California, this 26th day of APRIL, 1977.

Robert Bateman

President

William S. Quinn

Vernon L. Sturgeon

Richard D. Charles

Commissioners