km

ORIGINAL

Decision No. 87278

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CITY OF SANTA ROSA, A Municipal Corporation,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation,

Defendant.

Case No. 10144
(Filed July 21, 1976)

William T. Bullard, Jr., Attorney at Law, for the City of Santa Rosa, complainant.
Clay C. Burton, Attorney at Law, for The Pacific Telephone and Telegraph Company, defendant.

O P I N I O N

Statement of Facts

The city of Santa Rosa, the prosperous county seat of Sonoma County, once an agricultural community, is now developing an industrial base, including fruit packing, egg packing, shoe manufacture, and light electronics. Since World War II the population of Santa Rosa has more than doubled, and the pace continues as more suburban dwellers and retired folk learn of its salubrious climate. Consequently, subdivisions are spreading over the surrounding agricultural land, especially in the western plains area, an area particularly suited for subdivision development. As the city borders enlarge, more and more the city fathers and citizens themselves are becoming concerned in an effort to retain the unique beauty and historical identity which is Santa Rosa.

In this vein, following issuance by this Commission on September 19, 1967 of Decision No. 73078 containing an interim order in Case No. 8209 in relevant part instituting uniform undergrounding conversion policies and practices to be followed by all electric and communication utilities, the city council of Santa Rosa on April 30, 1968 passed Ordinance No. 1336 to provide, among other matters, for the subsequent designation by resolution (after public hearing) of underground utility districts and for conversion of overhead facilities in such to be designated districts.

Time passed until on November 19, 1974 by Ordinance No. 1742, the city of Santa Rosa formally annexed to itself a contiguous unincorporated 124-acre parcel of land designated as West Santa Rosa Annexation No. 58.[1/] Roughly rectangular in form, the area is approximately bordered as follows: on the north by the

---

1/ The Commission takes official notice of the certified copy of Ordinance No. 1742, passed and adopted by the city council of the city of Santa Rosa, and filed with the Secretary of State of California on December 23, 1974 pursuant to provisions of Chapter 1 of Part 2 of Division 2 of Title 4 of the Government Code, relating to annexation of contiguous uninhabited territory designated as "West Santa Rosa Annexation No. 58".

northerly side of West College Avenue, on the west by the westerly side of Fulton Road, on the east by the westerly side of the Santa Rosa Sewage Treatment Plant, and on the south by the northerly side of the Santa Rosa Flood Control Channel.

In March 1975, a subdivision entitled Copperfield Subdivision No. 1 to be located entirely within the West Santa Rosa Annexation No. 58 was approved by the Santa Rosa Planning Commission upon conditions which in part provided that existing overhead power and telephone lines on West College Avenue adjacent to the subdivision be undergrounded. Final map approval for the subdivision was granted by the city on August 26, 1975.

In December 1975, the city council by Resolution No. 11737 called for a public hearing set for December 16, 1975 (continued to January 13, 1976) to ascertain "...whether public necessity, health, safety, or welfare requires the removal of poles, overhead wires, and associated overhead structures and the underground installation of wires and facilities for supplying electric, communication, or similar or associated services..." within a recommended underground utility district to be located on West College Avenue. On January 13, 1976, the city council passed Resolution No. 11794[2/]

2/ Wherein the council of the city of Santa Rosa found and determined that the undergrounding would:

(a) Avoid or eliminate an unusually heavy concentration of overhead distribution facilities;

(b) That the streets, roads, or rights-of-way are extensively used by the general public and carry a heavy volume of pedestrian and vehicular traffic;

(c) That said streets, roads, or rights-of-way adjoin or pass through a civic area.

establishing West College Avenue Underground Utility District No. 1, providing for undergrounding of "electrical" facilities "...only to the properties abutting West College Avenue." The district, as finally determined, included the area of the residential subdivision (see Appendix B).

Thereafter the city requested The Pacific Telephone and Telegraph Company (PT&T) to underground its overhead facilities on West College Avenue at the expense of the utility, citing provisions of PT&T Tariff Schedule Cal PUC No. 36-T, Rule 32, Category 1.A. The utility refused, asserting that the city in a number of regards had not complied with the provisions of that named tariff. In particular PT&T asserted that the utility had not been asked to remove its overhead facilities in concert with removal of companion Pacific Gas and Electric Company (PG&E) overhead facilities, but rather that through gross gerrymandering of the West College Avenue district set up, PT&T had been requested to underground its communication aerial facilities while electric aerial facilities would be allowed to remain. PT&T charged that the district was gerrymandered because the city does not have available sufficient funds with PG&E to require undergrounding of adjoining electric aerial facilities without expense to the city. Therefore, PT&T asserts the provisions of Category 1.A of its tariff are not applicable and PT&T has no obligation to underground at its expense. PT&T asserts that it stands ready to replace aerial with underground under provisions of Category 1.B or 1.C if the city or local property owners served by these facilities agree to pay in advance the cost of conversion less the estimated salvage value of the replaced aerial facilities.

On July 21, 1976 the city of Santa Rosa filed this complaint with the Commission seeking an order requiring PT&T to perform the underground conversion of certain of its communication facilities within the alleged district. PT&T in answer requests dismissal of the complaint.

A duly noticed public hearing was held in San Francisco on November 18, 1976 before Examiner John B. Weiss. After receipt on November 23, 1976 of a late-filed exhibit, the matter was submitted. At the hearing, the city of Santa Rosa presented an expert witness in its deputy director of public works for engineering. This witness testified to the point that he had been directed by his superior, the city's public works director, to draw up boundaries for the proposed undergrounding district at issue here. Under close cross-examination, the witness admitted that he had been specifically directed by his superior to "create a district" excluding electric aerial facilities on West College Avenue, and that the boundaries had been "revised" so as to attain that objective. It was the witness's opinion, reluctantly extracted, that this exclusion was ordered because had mutual aerial facilities and adjoining electric aerial facilities on West College Avenue been included within the district, completion of the conversion at utility expense necessarily would have involved and required use of PG&E Rule 20.A funds - conversion funds budgeted for Santa Rosa that the city council had preferred to allocate elsewhere in the city under higher priorities. The city's expert witness further testified that aside from PT&T and "probably" a city engineer, there was no other testimony at the January 13, 1976 public hearing conducted by the city council.

An engineer staff manager from PT&T's customer operations department testified that PT&T had not been invited to participate in meetings of the Santa Rosa city steering committee for undergrounding in initiation of this proposed West College Avenue district. He asserted that the utility formally became aware of the proposal when in November 1975 it received the city's letter request for conversion costs for the undergrounding. The witness for Santa Rosa admitted that the city engineer "probably" testified January 13, 1976 at the public hearing that only telephone facilities were involved and that

the cost to underground was going to be passed on to the developer who would execute an agreement with the city (i.e., a Category 1.B replacement). It was the position of the utility that even aside from its contention that the city has failed to demonstrate that this particular undergrounding is in the general public interest by reason of (1) elimination of an unusually heavy concentration of aerial facilities, or (2) extensive vehicular or pedestrian traffic on West College Avenue, or (3) an adjunctive position to a civic area, public recreation area, or an area of unusual scenic interest, it is PT&T's obligation under Category 1.A of Rule 32 to underground only "at the time and only to the extent that the overhead electric distribution facilities are replaced". The utility contends that to require otherwise would frustrate the purpose of Rule 32, which is to stimulate and achieve an orderly and complimentary undergrounding of aerial facilities with due regard for economic as well as aesthetic considerations.

Discussion

In 1965, amidst considerable public, legislative, and local governing body pressure urging utilities to do more undergrounding of existing electric and communication facilities at utility expense, the Commission instituted an investigation to determine what would be needed to "stimulate, encourage, and promote" undergrounding. It was recognized that aesthetic considerations were no longer a matter of luxury and indulgence, but rather that they had become interwoven into the patterned fabric of our whole lives. We also recognized that indiscriminate, whimful, scattered, or piecemeal conversion, utility by utility, would be wasteful of limited available resources

and would not prove of significant benefit to the public,[3] and accordingly provided for consultation in the planning and for comitant undergrounding of all utilities in those areas where undergrounding would result in certain significant public benefit.

At the time of the Commission's investigatory proceedings in 1967, the League of California Cities proposed, in part, that we leave the delineation of exact projects and areas for conversion up to the involved local city council or board of supervisors.[4] But that part of the League's proposal was not fully adopted. Rather, the policy adopted in Decision No. 73078 dated September 19, 1967 in Case No. 8209 was that the utilities and the local governing body would work together to plan for conversions of existing aerial facilities, with the local governing body having authority, in the final step, to define by ordinance after public hearing, those conversion projects that the local governing body deemed to have priority. But the local governing body could not just select any

---

3/ Without consultation and joint planning by the city and all the utilities in the general area, a patchwork overhead and underground system could result. Conversion could proceed in an unsound manner without proper engineering considerations and without regard for efficient arrangements for planning, operation, and maintenance. Coordination in all phases is essential from initiation of the project.

4/ The brief of the League of California Cities, submitted on November 21, 1966 in Case No. 8209, as relevant here, stated:

> "With respect to communication utilities, the proposal of The Pacific Telephone and Telegraph Company in this case should be approved, whereby they would underground their existing facilities at their expense at such time and to the extent that overhead power lines are removed at power company expense. As with electric utilities, rather than restricting the undergrounding of communication lines to civic, recreation, scenic, and similar areas, the exact projects or areas to be undergrounded should be determined by the local city council or board or supervisors."

project. The project selected, in order to qualify for undergrounding at the utilities' expense, would have to meet certain criteria. These criteria were evolved to assure that such conversions of existing aerial facilities would be uniformly located in areas of the greatest overall public benefit. The criteria, as applicable to communication utilities, were set forth in the conversion rule identified in Decision No. 73078 as Appendix E. By order contained in that decision, each communications utility in this state was directed to adopt that conversion rule. PT&T did so. It appears in the PT&T tariff as Rule 32 (see Appendix A to this decision). Its provisions control disposition of the issues in this case. A tariff adopted by a utility under an order made by this Commission acting in its legislative capacity has the force of law, and here it preempts the conversion field.5/

5/ Upon the adoption of Section 23 of Article XII of the California Constitution in 1911, public utilities were subjected to the control of the Public Utilities Commission, and the Commission was empowered to exercise power conferred upon it by the Legislature, and the powers respecting public utilities possessed by city councils and boards of supervisors ceased insofar as those powers conflicted with the powers conferred upon the Commission.

The conversion of utilities overhead to underground in this state is inherently a matter of statewide concern, and the regulatory scheme set forth in Section 23 of the California Constitution and Sections 701, 761, 762, and 768 of the Public Utilities Code fully occupies the conversion field. In Los Angeles Ry. Corp. v Los Angeles (1940) 16 C 2d 779, at 787, a case involving an attempt by the city of Los Angeles to legislate in the railroad operation field, the California Supreme Court quoted with approval the following from a decision of the Connecticut Supreme Court of Errors:

". . . Regulations of great businesses affected with a public interest touching every institution, every activity, every home and every person in the state must be uniform, and must be free from the local judgment and prejudice. Then too, many of these

(Continued)

Having determined that PT&T Rule 32 will control disposition of this case, we must next apply the facts of the case to the provisions of Rule 32. At the start it must be recognized that West College Avenue is a public thoroughfare and as such is affected by a general public interest. It is within the city's jurisdiction, having been legally annexed, and it adjoins a new city subdivision to be constructed. Understandably, the city desires undergrounding not only in the subdivision but also on adjoining public thoroughfares. As to the new residential subdivision, there is no problem. By Decision No. 77187 dated May 5, 1970 in Case No. 8993, the Commission made undergrounding mandatory for all new residential subdivisions. The city, however, also wants "electric, communication, or similar or associated services" on West College

---

5/ (Continued)

> utilities reached into other communities, and uniformity of regulation by all these communities would be an unlooked for result. . . . None of these great interests would be served if each community retained the power of making such police regulations as each might deem proper. . . . Neither the public nor the service corporation could tolerate as many standards and policies as there were towns, cities, or boroughs through which they operated. . . . Over certain matters of public power, wholly local, the state has left with the municipality either original or concurrent jurisdiction. Over regulations not exclusively local, those affecting the business as a whole, or affecting the public as a whole, and those which the nature of the business and the character of the regulation require should be under the single agency of the state, are by our act committed to the exclusive jurisdiction of the Public Utilities Commission. The subject matter of this ordinance clearly falls within the exclusive jurisdiction of the commission".

Avenue adjoining and abutting the new subdivision undergrounded - but at the expense of the utilities. Normally Category 1.A of PT&T's Rule 32 and PG&E's Rule 20 would apply if certain criteria (to be discussed later) were met. But there are budgetary limitations on conversion projects within any one city applicable under PG&E's Rule 20, and Santa Rosa had allocated all its currently available share of PG&E's Rule 20 conversion funds to other city projects with apparently higher priorities. Accordingly, it did not have available sufficient funds with the electric utility to convert without expense to the city itself.

The record amply attests to the method adopted by the city in attempting to solve its dilemma. At the specific direction of the director of public works, the deputy director resorted to gerrymandering tactics. The result would have delighted that Massachusetts governor who in 1812 lent his name to the practice! A conversion district was drawn up to include the projected subdivision. The western boundary was then redrawn to exclude a joint (electric and telephone) pole on private property, and angled to exclude an electric pole on West College Avenue; the northern boundary at approximately midpoint shifts from the north side of West College Avenue to the center of the street so as to exclude one joint pole and two exclusively electric poles; and the boundary at the northeast corner of the district then shifts from the middle of the street to the south side of West College Avenue to exclude two telephone poles, one of which has electric facilities attached. The western border of the district was drawn 123 feet east from the centerline of Fulton Road, thus entirely avoiding additional joint aerial facilities.

Attempting to attain its objective of obtaining partial undergrounding at PT&T's expense on West College Avenue, the city next carried its sophistry even further.

While there is a paucity of evidence before us on the matter, it seems very clear that there was at most a minimum of "consultation" on this specific conversion proposal between the city and either of the utilities maintaining facilities on West College Avenue. PT&T asserted through its witness, an engineering staff manager in its customer operations department, that there was no consultation; rather that the utility was merely asked late in November by letter for conversion costs and given a map of the district. Thereafter the city's deputy director of public works "discussed" the project with a Mr. Merritt of PT&T. However, we also note that a city engineer "probably" testified at the January 13, 1976 public hearing conducted by the city to the point that the costs to achieve the limited conversion on West College Avenue would be passed on to the developer who would execute an agreement with the city. This clearly indicates that at that late date, at least for public and PT&T consumption, the city was intending and projecting a conversion under Category 1.B or 1.C of Rule 32, i.e., a conversion not at the expense of the utility. But nowhere in the record do we find any reference to any PG&E role in a "consultation". The procedure followed by the city is scarcely the act of asking advice or of deliberating together we intended in using the word "consultation" in the rule. We envisioned a negotiated, planned, and coordinated approach concept involving the city and the utilities involved, not a unilateral decision concept.

Further, the same evening of January 13, 1976, after it concluded its public hearing on the intended conversion, the city council passed Ordinance No. 11794 wherein, without elucidation or supportive material, it "finds and determines that the undergrounding to be accomplished will avoid or eliminate an unusually heavy concentration of overhead distribution facilities; that the streets, roads, or rights-of-way in the district are extensively used by the general public and carry a high volume of pedestrian and vehicular

traffic; that said streets, roads, or rights-of-way adjoin or pass through a civic area...." Under provisions of Rule 32, all that is needed is a finding and determination, after consultation with the utility and after public hearings, that undergrounding in the specific area is in the general public interest for any one of the stated reasons.[6/] But such a finding and determination must be supportable. PT&T here challenges each of these findings and determinations, and the record fails to support the city on any one of them.

The evidence introduced at the hearing before our examiner evidenced the fact that the overhead telephone facilities on West College Avenue consist of two cables (each approximately one and one-half inches in diameter) and that the overhead electric facilities consist of one number six wire. The deputy director city witness, asked on cross-examination whether in his opinion these aerial facilities constituted an "unusually heavy concentration of aerial facilities", responded: "In my opinion, probably not, but my opinion doesn't count". The words "unusually heavy concentration", particularly in the context they are used in Rule 32, are in no way vague or ambiguous. They mean exactly what they say - an uncommonly ponderous or cumbersome mass of wires. To find, particularly in this suburban, rather rustic area, that two cables of this size and one wire constitute an "unusually heavy concentration" is a perversion of the clear meaning of the words and grossly distorts the intent behind the rule.

Evidence was also adduced to show daily average vehicular traffic of 3,900 on West College Avenue in January 1975. Relating this volume to the widened four-lane paved road West College Avenue

---

6/ See Appendix A to this decision.

is expected to become,7/ the quantity of traffic carried does not in any way qualify the road as "extensively used", nor as carrying a "heavy volume" of traffic. Interestingly enough, conversion was not proposed for Fulton Road, an arterial four-lane paved road connecting Highway 12 to Guerneville Road and U.S. Highway 101, although as long ago as 1972-1973 Fulton Road carried between 6,900 and 7,900 vehicles daily. Fulton Road also supports a heavier concentration of communication and electrical aerial facilities adjacent to the new residential subdivision than does West College Avenue. Furthermore, the new residential subdivision will egress and ingress to both Fulton Road and West College Avenue. The deputy director witness for Santa Rosa agreed that the traffic volume on West College Avenue was not heavy for a four-lane paved road.

West College Avenue, at the northwest corner of the district where it dead-ends into Fulton Road, is two miles west of the center of Santa Rosa. Fulton Road is the western periphery of the city of Santa Rosa. On the eastern side of the district, approximately 1,000 feet distant, is the Santa Rosa Sewage Treatment Plant. The southern border closely parallels the Santa Rosa Flood Control Channel. Neither feature is reputed to be a civic feature, a recreational area, or an area of noteworthy scenic interest to the general public. There appears to be no civic center, i.e., the place where the important buildings, the administrative and court buildings, and the library of a municipality are grouped, in the area of West College Avenue at issue here. On cross-examination, the

---

7/ West College Avenue, formerly a two-lane, "county type" road, in the immediate vicinity of Copperfield No. 1 subdivision, is being widened to a four-lane paved and curbed street. East of the subdivision it immediately returns to two lanes leading toward the center of Santa Rosa.

deputy director witness for the city reluctantly admitted that this part of West College Avenue adjoined no civic center, no public recreational area, and no area of unusual scenic interest.

Accordingly, after review of the evidence relating to these three elements, unusually heavy concentration of overhead facilities, heavy traffic, or an area of unusual scenic interest, a recreational area, or a civic center, we must agree with the contention made by PT&T that the city failed to show that conversion of existing aerial facilities at utility expense is in the general public interest for any one requisite reason established in Decision No. 73078 and reflected verbatim in PT&T's Rule 32, Category 1.A.

In similar vein, the city, while professing to adopt an ordinance purporting to create a conversion district in compliance with the requirements of the utility's tariff in this instance evaded the fundamental requirement that "all existing...electric and communication distribution facilities will be placed underground." The city intentionally gerrymandered West College Avenue so as to exclude a number of existing electric distribution and joint communication-electric aerial facilities. The citizens of this state have made clear their desire that as economically feasible, both electric and communication overhead facilities be undergrounded. We believe it clear beyond serious contention that conversion will create considerable aesthetic value, but we believe it to be equally clear that aesthetics does not discriminate, temporize, or play favorites. A wire is a wire, and a cable is a cable, whosoever owns the label. Aesthetics is not served by shipping wires back and forth across a street, or by the removal of some wires only. The task of conversion of existing aerial facilities to underground statewide is an enormous one. The potential cost will be in billions of dollars. Funds from the utilities involved, which ultimately means from the ratepayers in the entire

state, must be utilized evenly in all areas of the state so as to obtain the maximum aesthetic and other benefits attendant on undergrounding for all the general public. Where conversion is important enough aesthetically to be determined to be in the general public interest, all aerial facilities in the proximate vicinity must come down. Utility conversion funds are limited and cannot be permitted to be extracted from one utility to reflect purely local considerations, politics, or interests by the device of creation of artfully gerrymandered districts designed to circumvent the fundamental objective of complimentary undergrounding implicit in our order in Decision No. 73078, and leave another utility's aerial facilities standing in the proximate vicinity.

Certainly as time progresses, in some areas the more offensive overhead facilities will have been undergrounded, and cities will be able to direct their share of budgeted utility conversion funds to secondary, less offensive, situations, but the complimentary feature will remain where the utility is expected to pay the costs of conversion. The objective everywhere is that all aerial be undergrounded, and as applicable here, the utility is obligated to "...replace its aerial facilities at the time and only to the extent that the overhead electric distribution facilities are replaced." In the case at bar, if Santa Rosa desires conversion of only the communication aerial facilities on West College Avenue, it must proceed under Category 1.B or 1.C of Rule 32 of PT&T's tariff.

In his closing argument, the attorney for the city made the following statement:

> "I think that all the--all the local entities would like to have some sort of definitive guidelines as to how much--what is the meaning of 'to the same extent,' that utilities are going to underground under a 32 IA, and this is really what we are here today all about.

> "Indeed, I'm sure the city of Santa Rosa would like to have some guidelines to proceed in the future, and any other city or county would probably like to be appraised of the same sort of definitive guidelines."

In view of this plea, we would be remiss were we not here to address what the parties have found to be a nettlesome issue. Precisely what is meant by replacement "...at the time and only to the extent that the overhead electric distribution facilities are replaced." The expert witness from PT&T stated: "...it certainly does not mean that we would underground to the same extent that the power company would, pole for pole, or foot for foot, dollar for dollar, but that the overall intent of the undergrounding program, as prescribed by the city and agreed to by the utilities, would be accomplished; that you'd have an area, if you would, where there would be no longer aerial facilities." The telephone company witness stated that PT&T views its Rule 32 as "...a companion rule to be taken hand in glove...with the power company's Rule 20A." With these statements we are in accord. But then PT&T's witness went on to conclude, after a discussion of examples, that the communication company's responsibility thereunder would run only to the same extent of undergrounding as that of the power company undergrounding "...so as not to impose a greater burden on the telephone company than the power company..." It would appear to us that this final conclusion tended to reinject a dollar-for-dollar rationale, and with this we do not agree.

While the Commission is concerned to maintain a reasonable balance between the accepted advantages of undergrounding and controlling the burden on the general ratepayers, we are also concerned that in those projects undertaken we achieve the objective of total undergrounding, and that we avoid the unnecessary costs and public inconvenience which otherwise would occur if conversion of

each type of utility were to take place on a one-for-one basis or at differing times. It would defeat much of the overall purpose of the conversion program to allow a piecemeal approach. Therefore, as to each district created we will look to attainment of the objective of total undergrounding of all aerial. Assuming that an underground district is properly created,[8/] all communications and electric aerial facilities must come down within that district. We will look to the resultant effect in the entire district, which in the first instance must be a logical, integrated, interrelated whole; not merely one side, or the center, of a public street or road, or a swath cut through adjoining aerial. "To the extent" does not refer to units, square feet, or dollars; rather it refers to the total area embraced by a properly created district. If by creation of a properly drawn district in an area affected by general public interest within the tariff requirements the power company must convert all its aerial facilities, so also must the communication company convert all its aerial, even though the one utility may have twice or thrice the aerial facilities of the other utility in the district. It is our intention that all aerial facilities must come down within the confines of the district, and we look to the extent of the district as the measure of each utility's conversion obligation under the respective rules in their tariffs.

8/ I.e., after consultation with the utilities and after public hearing (and it is not necessary that the proposed district "be agreed to by the utilities"; that decision, although subject to review as here by this Commission in a complaint proceeding, has been delegated to the local governing body), and that it has been supportably determined that undergrounding along the public streets and roads in or adjoining the district, is in the general public interest for any one or more of the requisite reasons stated in the tariff.

But this does not mean that a local governing body is free to gerrymander a conversion district sprouting long tentacles or shafts of adjoining territory where those gangling extensions are not themselves logically integrated or interrelated to the basic conversion territory and do not, in and of themselves, partake of one or more of the three underlying requisite reasons for which in the first instance the conversion was determined to be in the general public interest. For example, a city might determine to erect a new city hall in the suburbs; in a field at the head of a long nondescript and unimproved roadway lined on one side by numerous communication poles carrying only its wire, and on the other side part of the way by a few power poles with but a pair of wire. The city determines to beautify an approximate six-block approach to the city hall, as well as the field around the city hall, and to make of the approach drive an attractive paved and curbed mall with handsome landscaping. The city has available PG&E's Rule 20 funds to allocate to a undergrounding district. After consultation with the utilities and public hearings, it determines that conversion of the overhead facilities on the six-block approach to the new city hall would be in the general public interest by reason that the six-block approach will now adjoin a civic area (the city hall and its surrounding park). The city thereupon creates an undergrounding district. It is our intention that <u>all</u> aerial facilities "to the extent" of the six-block approach district would be converted at utility expense at the same time even though in this instance the aerial facilities of the power utility in the district are only a fraction of those of the communication's utility, and do not extend the same physical distance along the road within the district. In summary, we would look to the overall objective in conversion, that is, removal within the district of all the overhead facilities it owns at its expense, as the extent of each utility's obligation.

Finally we turn to the question arising out of the relocation of the four PT&T poles which had to be moved as a consequence of the widening of approximately 1,000 feet of West College Avenue. After the widening, carried out on the southern side of the avenue, these poles were left standing in the roadway about 10 to 14 feet from the face of the new curb. PT&T erected new companion poles set behind the new curb and transferred the aerial wiring to these new poles preliminary to removing the four old poles. We find this relocation contrary to the spirit of Decision No. 73078. In that decision, we discussed such relocations as follows:

> "The record reveals that respondent utilities often are required to relocate their facilities due to street or highway widening. It appears that the practice of these utilities, when overhead facilities are involved, is to remove existing overhead and replace such facilities with new overhead facilities. In view of the fact that the cost differential between overhead facilities and equivalent underground facilities has markedly decreased and the fact that the cost differential between overhead and underground communication facilities has virtually been eliminated, such relocations must be given high priority under the conversion rule ordered herein."

Under the circumstances of this case it just does not make sense to re-erect new poles, with a lifespan of another 20 years. A new residential subdivision is being erected to abut the south side of West College Avenue. This subdivision will be entirely undergrounded. There are no communication or power facilities at all on the corresponding north side of West College Avenue. Therefore, the only aerial facilities in that 1,000 feet will be the relocated aerial facilities of PT&T. Instead of being relocated because of the street widening, these facilities should have been undergrounded. The objective statewide is to eliminate aerial facilities. The cost differential between aerial and equivalent underground facilities has

markedly decreased. While it may not be economically feasible to underground one pole, where four and a thousand feet of overhead wire or cable are involved, and must be relocated under circumstances and surroundings such as this, they should be undergrounded by the utility at its expense rather than relocated. Accordingly, we will require PT&T to underground these four poles at utility expense.

Findings

1. This Commission by Decision No. 73078 dated September 19, 1967 in Case No. 8209 adopted a comprehensive and reasonable statewide conversion program to require complimentary undergrounding at expense of the utilities or other parties, and under certain requisite circumstances, of all existing power and communication aerial facilities in progressive efforts.

2. The city of Santa Rosa desired undergrounding of existing aerial power and communication facilities on West College Avenue adjacent to Copperfield Subdivision No. 1.

3. The city of Santa Rosa had already allocated its municipal share of budgeted PG&E's Rule 20 conversion funds to other conversion projects assigned higher priorities by the city.

4. The city of Santa Rosa consequently determined to attempt to exclude conversion of PG&E's aerial facilities, as well as certain jointly used utility poles, and to attempt to obtain partial conversion of certain of PT&T's aerial facilities on West College Avenue at the expense of the utility.

5. To achieve this limited conversion objective, the city of Santa Rosa artfully gerrymandered a proposed undergrounding district under guise of meeting the requirements of PT&T's Tariff Rule 32 pertaining to conversions.

6. This gerrymandered district avoided inclusion of all power and joint power-communication facilities, while including all solely communication facilities.

7. The city of Santa Rosa did not engage in meaningful preliminary consultations with the utilities involved with facilities on West College Avenue; rather it merely asked PT&T for conversion costs for specific facilities preliminary to public hearing.

8. At public hearing January 13, 1976, the city of Santa Rosa appears to have deliberately attempted to create the impression that the partial undergrounding on West College Avenue would proceed under Category 1.B or 1.C (at benefited property owner or individual applicant expense) of PT&T's Tariff Rule 32.

9. The city of Santa Rosa, immediately following the public hearing on January 13, 1976, issued an enabling resolution creating an undergrounding district purporting to be in compliance with Category 1.A (at utility expense) of PT&T's Tariff Rule 32.

10. The city of Santa Rosa thereafter requested PT&T to proceed with undergrounding of certain of its aerial facilities on West College Avenue at utility expense. PT&T refused, asserting that the city of Santa Rosa had not complied with the utility's tariff, but that the utility stood ready to proceed, when requisite provisions for advance payment are made, under Category 1.B or 1.C of its Tariff Rule 32.

11. The city of Santa Rosa failed to show that undergrounding on West College Avenue would eliminate an unusually heavy concentration of overhead distribution facilities.

12. The city of Santa Rosa failed to show that West College Avenue in the vicinity of the new residential subdivision is extensively used or that it carries a heavy volume of pedestrian or vehicular traffic.

13. The city of Santa Rosa failed to show that West College Avenue in the area at issue adjoins or passes through a civic area, a public recreation area, or an area of unusual scenic interest.

14. The city of Santa Rosa failed to adopt an ordinance requiring that all existing electric and communication distribution facilities be placed underground on West College Avenue.

15. The city of Santa Rosa deliberately failed to adhere to the complimentary undergrounding provisions of PT&T's Tariff Rule 32.

16. Following widening of approximately 1,000 feet of West College Avenue adjacent to Copperfield Subdivision No. 1, four communication poles were left in the expanded paved roadway, necessitating relocation.

17. Instead of undergrounding the aerial facilities while relocating them, PT&T erected four new poles behind the new curbs on West College Avenue, transferred the wiring, and then removed the old poles, thereby retaining aerial facilities in an area otherwise to be clear of aerial facilities.

Conclusions

1. The city of Santa Rosa in attempting partial conversion of overhead communication facilities on West College Avenue while permitting continuation of other overhead communication and all power overhead facilities, deliberately disregarded the clear intent of this Commission's comprehensive statewide conversion program.

2. The city of Santa Rosa failed to create an undergrounding district conforming to the requirements of PT&T's Tariff Rule 32.

3. The relief requested by the city of Santa Rosa should be denied.

4. PT&T should be directed to underground the approximately 1,000 feet of aerial communication facilities represented by the four poles required to be relocated by reason of the widening of West College Avenue.

O R D E R

IT IS ORDERED that:

1. The relief requested by the city of Santa Rosa is denied.

2. The Pacific Telephone and Telegraph Company is directed to promptly underground those aerial communication facilities represented by the four poles on West College Avenue which were required to be relocated by reason of the widening and improvement of West College Avenue.

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

Dated at San Francisco, California, this 3rd day of MAY, 1977.

Robert Batinovich
President
William Symons, Jr.
Richard D. Gravelle
Commissioners

RULE NO. 32

FACILITIES TO PROVIDE REPLACEMENT OF AERIAL WITH UNDERGROUND FACILITIES

I. Replacement of Aerial with Underground Facilities

A. In Areas Affected By General Public Interest.

The Utility will, at its expense, replace its existing aerial facilities with underground facilities along public streets and roads, and on public lands and private property across which rights-of-way satisfactory to the Utility have been obtained, or may be obtained without cost or condemnation, by the Utility, provided that:

1. The governing body of the city or county in which such facilities are located has

a. Determined, after consultation with the Utility and after holding public hearings on the subject, that undergrounding is in the general public interest in a specified area for one or more of the following reasons:

1. Such undergrounding will avoid or eliminate an unusually heavy concentration of aerial facilities;

2. Said street, or road or right-of-way is in an area extensively used by the general public and carries a heavy volume of pedestrian or vehicular traffic;

3. Said street, road or right-of-way adjoins or passes through a civic area or public recreation area or an area of unusual scenic interest to the general public.

b. Adopted an ordinance creating an underground district in the area requiring, among other things,

1. That all existing and future electric and communication distribution facilities will be placed underground, and

2. That each property owner will provide and maintain the underground supporting structure needed on his property to furnish service to him from the underground facilities of the Utility when such are available.

2. The Utility will replace its aerial facilities at the time and only to the extent that the overhead electric distribution facilities are replaced.

B. At the Request of Governmental Agencies or Groups of Applicants.

In circumstances other than those covered by A. above, the Utility will replace its aerial facilities located in a specified area with underground facilities along public streets and roads, and on public lands and private property across which rights-of-way satisfactory to the Utility have been obtained, or may be obtained without cost or condemnation, by the Utility upon request by a responsible party representing a governmental agency or group of applicants where all of the following conditions are met:

1. All property owners served by the aerial facilities to be replaced within a specific area designated by the governmental agency or group of applicants first agree in writing, or are required by suitable legislation, to pay the cost or to provide and to transfer ownership to the Utility, of the underground supporting structure along the public way and other utility rights-of-way in the area, and

2. All property owners in the area are required by ordinance or other legislation, or all agree in writing, to provide and maintain the underground supporting structure on their property, and

3. The area to be undergrounded includes both sides of a street for at least one block, and

4. Arrangements are made for the concurrent removal of all electric and communication aerial distribution facilities in the area.

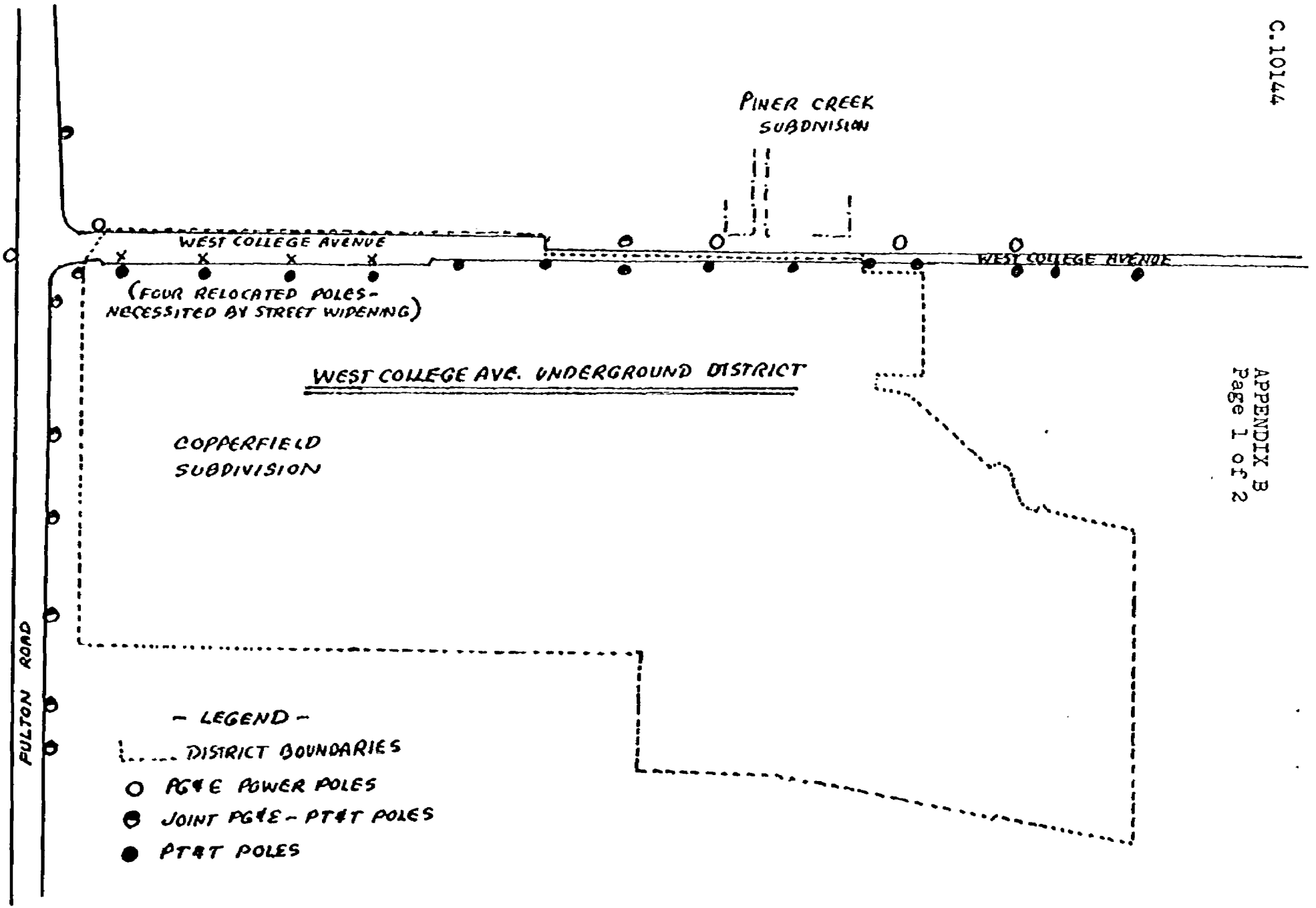
C. At the Request of Individual Applicants.

In circumstances other than those covered by A. or B. above, where mutually agreed upon by the Utility and an applicant, aerial facilities may be replaced with underground facilities, provided the applicant requesting the change pays, in advance, a nonrefundable sum equal to the estimated cost of construction less the estimated net salvage value of the replaced aerial facilities.

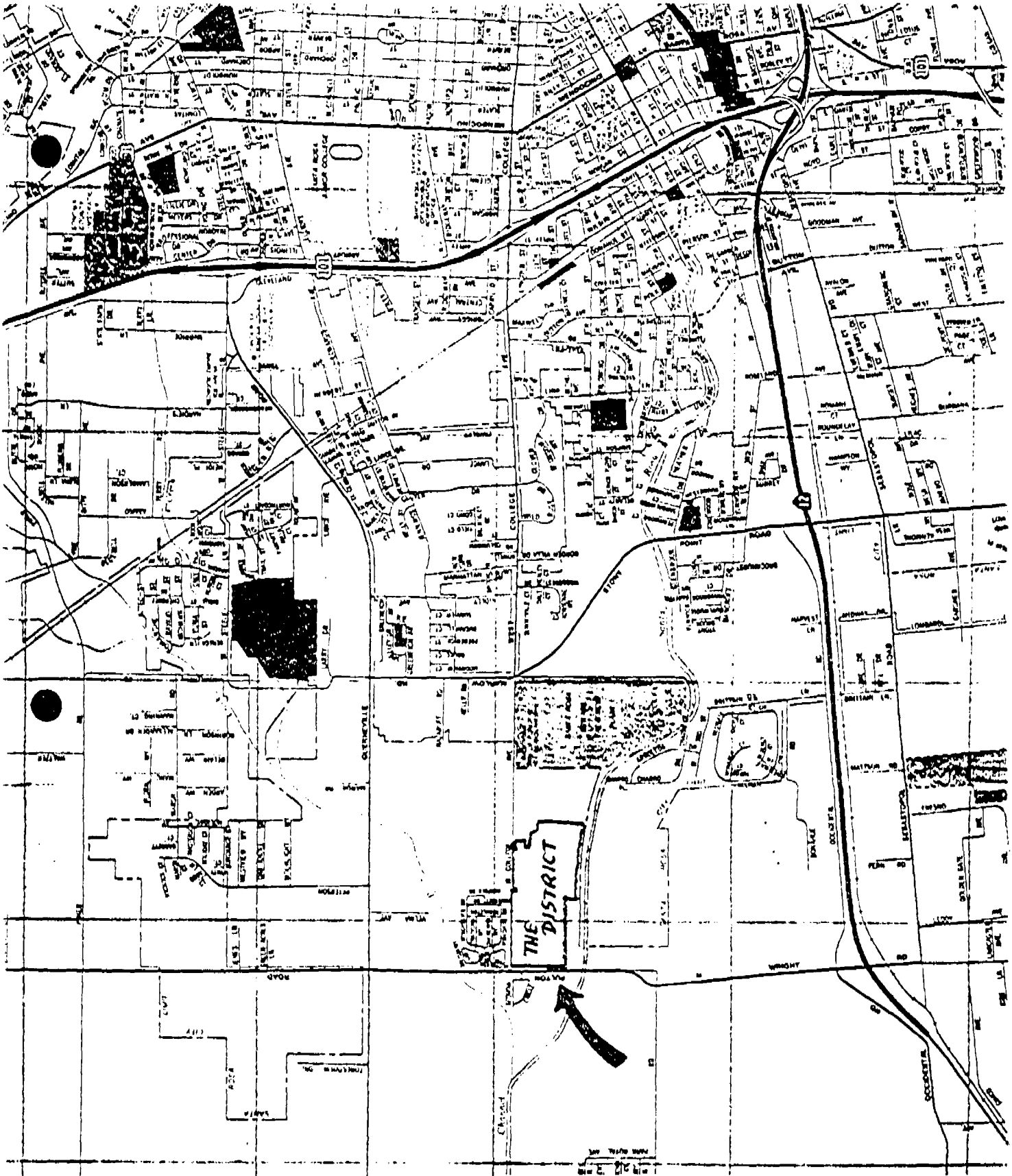
D. At Utility Initiative.

The Utility may, from time to time, replace sections of its aerial facilities with underground facilities at Utility expense for structural design considerations or its operating convenience.

C.10144



APPENDIX B
Page 1 of 2



APPENDIX B
Page 2 of 2

Basic map reproduced by permission of the California State Automobile Association, copyright owner.