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Decision No. 87777 AUG 30 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mason Industrial Park,  
Pro Sports Marketing, Inc.,

Complainants,

vs.

Bay Point Light & Power Co.,

Defendant.

Case No. 10148  
(Filed July 29, 1976)

Knox, Rickson, Snook, Anthony & Robbins,  
by Thomas A. Palmer, Attorney at Law,  
and Robert A. Fergusson, for Pro  
Sports Marketing Inc., and Martin  
Mason, for Mason Industrial Park,  
complainants.

Ron Garlick, for Bay Point Light &  
Power Co., defendant.

Harry Strahl, for the Commission  
staff.

O P I N I O N

Complainants Pro Sports Marketing, Inc. (Pro Sports) and Mason Industrial Park (MIP) seek reparations from defendant Bay Point Light & Power Co. (Bay Point) for alleged excessive charges for the installation of facilities purportedly required to furnish electric service to the Pro Sports building located in an industrial park (the park) in Concord developed by MIP, which is a division of Memory Garden Cemetery Contra Costa County, Inc. Bay Point and the independent contractor, Ronald D. Garlick (Garlick), who installed the line extension to the Pro Sports building under contract with Bay Point, deny that the charges were excessive. The case was heard before Examiner Pilling at San Francisco on January 28, 1977.

Pro Sports, a manufacturer of plastic injected molded parts, entered into negotiations with the president of MIP to acquire a new building in the park as a new site for its manufacturing operations. At that time Bay Point, in whose electric service area the park was located, had fulfilled its commitment under a line extension agreement with MIP to extend Bay Point's underground electric distribution line along the streets within the park. The building that Pro Sports was ultimately to purchase had no electric service. To bring service to the building it would have been necessary to bring a service line from the distribution line along the street to a transformer to be located on the same premises as the building, and then to run a service connection to the building from the transformer. MIP's contractor for the development had installed the necessary substructures, underground empty conduit, and transformer pad for use by Bay Point in bringing electric service to the building from the distribution line. Garlick testified that at the time he inspected the facilities installed by MIP's contractor between the existing distribution line and the building, he found that the facilities were suitable for handling no greater than a 400- to 600-ampere electric service, which would have required a 500-kva transformer. Martin Mason of MIP testified that on several occasions he had inquired of Bay Point about bringing service to the building when it became occupied and that both the general manager and business manager for Bay Point assured him that there would be no extra charge for bringing service to the building. When Pro Sports inquired of Mason about electric service to the building, Mason replied by repeating the no-charge representation made to him by Bay Point. Thereafter, Pro Sports purchased the building. (In actuality, the president of Pro Sports, in partnership with another, purchased the building for use by Pro Sports.)

On April 29, 1976 Pro Sports signed an electric service contract agreeing to take 3-phase, 60-cycle, 480-volt electric service, minimum 250 horsepower, from Bay Point. Pro Sports requested the required 300-kva transformer. Shortly thereafter, in anticipation of future loads, Pro Sports requested a 1,000-ampere service with a 750-kva transformer. Garlick, in consultation with Pro Sports, represented that he could purchase a 1,000-kva transformer for the price of a 750-kva transformer and, based on that representation, it was agreed that a 1,000-kva transformer would be installed.

Bay Point then sent to Pro Sports a Line Extension and Service Agreement covering service using a 1,000-kva, 4,160-volt, 480-volt outdoor-type transformer. The agreement called for Pro Sports to advance to Bay Point \$40,608 to cover the cost of construction. The president of Pro Sports testified that he was taken aback at the request for the advancement since he had been under the impression that the installation would be free of charge, based on the representation made to him by Mason; Pro Sports refused to sign the agreement. Bay Point then presented Pro Sports with a similar agreement but calling for an advance of only \$21,808 which Pro Sports also refused to sign. Thereafter, Bay Point presented Pro Sports with a third agreement, which required an advance from Pro Sports of \$13,920 for construction costs and an additional advance of \$6,500 being the difference in cost between a 300-kva transformer as originally requested and a 1,000-kva transformer; the \$13,920 to be refunded from revenue paid by Pro Sports over a 10-year period, and the \$6,500 to be refunded when Pro Sports signed an electric service contract stipulating the minimum horsepower of 1,000 kva. Pro Sports rejected this contract also.

Pro Sports then employed the services of an electrical engineering company to survey Pro Sports' electrical needs and give an estimation of the cost of installing the required electrical facilities to bring electric service to the building. This company estimated a total future load of 572.8 amperes requiring a transformer of a capacity of 476 kva with an installation cost totalling approximately \$1,500. The company estimated that a 500-kva transformer would cost approximately \$8,700. The witness for the company testified that the estimations were based upon Pro Sports' initial load projections and that he understood that those projections have been revised upward by Pro Sports since then. The estimated cost data did not include an amount for freight or sales tax.

After receiving Pro Sports' third contract rejection, Bay Point then called Pro Sports and informed them that unless Bay Point immediately received a check from Pro Sports for \$20,500, Pro Sports would have no electric service when they moved into their new building. Pro Sports' lease on its old premises was just about to expire and Pro Sports conferred with Mason about choices. They agreed to pay the \$20,500 under protest by depositing the money with the Commission, which was done, Pro Sports paying \$14,500 and MIP paying \$6,000. Repeated requests by Pro Sports and Mason for an explanation of why Bay Point was charging a connection charge when Bay Point had stated earlier that there would be no connection charge were not answered by Bay Point.

Bay Point let the contract for the project to Garlick for \$21,600, even though Bay Point had received a bid on the project for \$18,500 from another electrical contracting firm. Garlick testified that in looking over the job in anticipation

of bidding on it, he found the facilities installed by MIP between the primary circuit along the streets and the building to be inadequate to handle the 1,000-ampere current requested by Pro Sports and that he would have to install completely new facilities. Garlick stated that while he was originally of the opinion that the requested service needed only a 750-kva transformer, after reviewing the drawings supplied to him by electrical contractors on the building and the documents furnished the county, plus taking into account the future requirements indicated on the engineer's drawings, he concluded that a 1,000-kva transformer was required and submitted his bid accordingly. Garlick presented in evidence his estimate on which he based his bid to Bay Point which showed material costs of \$11,892, including \$7,900 for the 1,000-kva transformer; miscellaneous costs totaling \$3,163, including \$680 for freight for the transformer and \$773 sales tax; and labor costs at \$18 an hour, totaling \$1,314. To the material costs of \$11,892, Garlick added a percentage for overhead in the amount of \$2,378. To the sum of all costs and overhead he added \$2,812 as profit. Total estimated connection cost, including transformer, was \$21,559, and the bid he submitted was for \$21,600.

Since moving to its new quarters, Pro Sports has experienced brownouts which have forced it to close down operations for a time. Bay Point attributes such brownouts to the failure of its supplier, PG&E, to furnish Bay Point the amount of power contracted for. Mason and Pro Sports request that PG&E be allowed to serve the industrial park instead of Bay Point.

The witness for the Commission staff recommended that Pro Sports pay a refundable sum to Bay Point in an amount equal to the difference between the cost of a 1,000-kva and 300-kva

transformer. The witness also requested that the Commission admonish Bay Point for the unbusinesslike manner in which Bay Point has conducted these contract negotiations, citing a similar matter which was allegedly mishandled by Bay Point. The witness stated that the project should have been handled under the exceptional cases provision of Bay Point's tariff Rule No. 20.2. The witness recommended against allowing PG&E to serve the industrial park in place of Bay Point and that we order Bay Point to cease extending use of its P-1 rate schedule to new industrial customers, as that schedule, the staff asserts, is for agricultural customers only.

Discussion

Neither the complainants nor defendant made any reference to Bay Point's tariff rules in determining their respective rights or obligations concerning the project, and Bay Point's general manager was unable to point to any of his company's tariff rules pursuant to which the project was accomplished. While the titles and forms of the agreements impliedly refer to the utility's rule pertaining to the extension of its distribution lines - Rule 20.2, the opening paragraph of which reads in part, "Extension of Utility underground distribution lines..." - the project did not entail the extension of the utility's distribution lines. Rather, the project involved the making of a service connection pursuant to the utility's tariff Rule 21. Hence, the rule invoked by the contract was not the rule applicable to the project.

Rule 21 reads in part as follows:

"RULE NO. 21

SERVICE CONNECTIONS AND FACILITIES ON CUSTOMERS' PREMISES

\* \* \*

C. UNDERGROUND SERVICE CONNECTIONS FROM UNDERGROUND SYSTEM

\* \* \*

2. New Underground Service Connections from Underground System.

a. Secondary Service (2,000 volts or less)

\* \* \*

(5) Transformer Installation on Applicant's Premises. In those instances where utility-owned transformers are installed on the applicant's premises under the applicable portions of this rule, the service facilities will be installed under the following conditions:

- (a) The applicant, at his expense, shall perform all necessary trenching, backfill and paving for the underground primary and secondary service lateral on his property.
- (b) The utility, at its expense, will furnish, install, own and maintain the primary conductors and conduit from its distribution supply line to the transformer and the secondary service lateral conductors and conduit from the transformer to the applicant's termination facilities; ...
- (c) The utility will determine the size and type of the primary and secondary service lateral conductors."

The requested service was for 480 volts. As can be seen by the above rule, the applicant, in this case Pro Sports, is required only to stand the expense of trenching, backfilling, and paving and the utility stands the remainder of the expense of completing the service connection. Such being the case, Bay Point's assertion to Mason that no further charges would be made for installing the service connection was, at least in part, correct. However, subparagraph (c) above gives the utility the power of final

determination as to the size and type of the primary and secondary service lateral conductors to be installed. Such determination must be based on reasonable grounds. Bay Point would not have reasonable grounds for installing a service connection using a 9-kva transformer where Pro Sports signed an electric service contract guaranteeing a minimum use at any one time of 250 horsepower. Likewise, it would not be reasonable for a customer who signed a 250-horsepower electric service agreement to demand a 1,000-kva transformer. A utility is not required to install a service connection with a capacity greatly in excess of that which will be put to permanent use within a reasonable time after installation. If the utility was required to make such an installation, the effect would be that the utility and its ratepayers would, in effect, be financing a speculative venture as there would be no guarantee that the unused excess capacity would ever be put to permanent use. The utility would receive no income covering its cost of ownership or as a rate of return on the excess investment needed to finance the overly large facility. Where a utility does acquiesce in a customer's request to install unneeded capacity, the customer should be required to finance the excess capacity. In this case, Pro Sports wanted a service connection based on the increased load of 1,000 amperes it expected to need one or two years hence, yet signed an electric service agreement for only 250 horsepower. It would be unreasonable and unjust to require Bay Point to carry the financing of a transformer with such unused capacity, and we will order Pro Sports to make a refundable advance of \$6,500 as the difference between the estimated installed price of a 300-kva transformer



and the estimated installed price of a 1,000-kva transformer.<sup>1/</sup> The remainder of the cost of the project, namely \$15,100, should be borne in its entirety by Bay Point as required by its service connection Rule 21.C.2.a(5). Of the \$20,500 on deposit with the Commission, we will order \$13,500 returned to Pro Sports and MIP and order the balance of \$6,500 disbursed to Bay Point to be refunded to Pro Sports at such time that Pro Sports executes an electric service agreement with Bay Point stipulating the minimum horsepower of 1,000 kva.

We must deny the staff's request to order Bay Point to cease offering its Tariff Schedule P-1 to new industrial customers in the future. This issue was interjected by the staff at the close of the hearing; it had not been raised by complainants or defendant. Admittedly, Schedule P-1, a connected load schedule based on the manufacturer's rated horsepower stamped on the motor plate of a machine, is ungainly for use in rendering industrial service since the machinery in an industrial plant can be changed without the knowledge of the utility. Since the schedule is not specifically restricted to agricultural customers, the staff should bring a special proceeding to consider the many problems which could arise if such a restriction is imposed.

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<sup>1/</sup> The need for a 1,000-kva transformer to handle the requested 1,000-ampere 3-phase service is evidenced by the engineering table in Exhibit 10. According to the table, a 750-kva transformer, 480 volts at full load, is capable of giving a maximum current strength of only 902 amperes. The table shows that to obtain a maximum current strength of 1,000 amperes, the use of the next larger size transformer, a 1,000-kva transformer, is necessary as it allows for a maximum current strength of 1,203 at full load. Hence, Garlick installed the proper size transformer to handle the anticipated future load.

Findings

1. Pro Sports acquired a new building in the industrial park to house its plastic manufacturing business and requested Bay Point to furnish electrical service to the new building.

2. Pro Sports signed an electric service agreement with Bay Point for 250 horsepower.

3. A 250-horsepower service would require a 300-kva transformer.

4. Bay Point contacted Garlick to install the service connection to the new Pro Sports building and, in developing his bid for the project, Garlick conferred with a Pro Sports' representative who requested that to take care of two years' anticipated requirements a 1,000-ampere service and a 750-kva transformer be installed.

5. Garlick determined that to meet Pro Sports' future electrical requirements for a 1,000-ampere service a 1,000-kva transformer was necessary.

6. A standard engineering table shows that a 1,000-kva transformer is necessary to handle a current strength of 1,000 amperes.

7. The empty conduit between Bay Point's distribution line and the Pro Sports building which had been installed by the subdeveloper of the industrial park was inadequate to handle a 1,000-ampere service. ✓

8. Garlick submitted a bid for the project to Bay Point for \$21,600, and the bid included retrenching, laying of new conduit, installation of new substructures, and the use of a 1,000-kva transformer. Another electrical contractor submitted a bid on the project of \$18,500.

9. Three-line extension agreements were submitted to Pro Sports by Bay Point at various times for the installation of service consisting of a 1,000-kva 4160-volt, 480-volt 3-phase outdoor-type transformer, coils, conductors, conduit, and all other equipment and structures, the last of the three agreements calling for Pro Sports to pay a sum of \$13,920 refundable in ten years from revenue, and a sum of \$6,500 refundable when Pro Sports signed an electric-service agreement stipulating the minimum horsepower of 1,000 kva.

10. MIP, which had been assured by Bay Point when the park was being developed that the service connection to the Pro Sports building would be done free of charge, in turn, assured Pro Sports of the free installation and used such assurances in negotiating the sale of the building to Pro Sports.

11. Pro Sports rejected all three-line extension agreements submitted to it by Bay Point in view of the assurances Pro Sports had received that the service connection would be free of charge and because Bay Point gave no explanation why it was charging for the connection or of the charges themselves, though Pro Sports had requested Bay Point for an explanation.

12. In order to have electric service when it moved into the new building Pro Sports, with a contribution from MIP, paid \$20,500 to the Commission as a disputed bill payment.

13. Subsequent to the disputed bill payment, Bay Point accepted Garlick's bid, and Garlick went ahead and made the service connection using a 1,000-kva transformer which necessitated new trenching and a new conduit.

14. Bay Point was in error in presenting agreements in the form of a line-extension agreement to Pro Sports, since the project was a service connection to be made pursuant to Bay Point's tariff Rule 21.C(5) which provides that the applicant for service shall, at its own expense, perform all necessary trenching, backfill, and paving for the underground primary and secondary service lateral on his property, and that the utility will, at the utility's expense, furnish, install, own, and maintain all other necessary materials to complete the connection.

15. A utility may not be required to install a service connection with a capacity larger than would be required to service a user's need within a reasonable time after the installation of the connection unless requested by the user and the payment by the user of a refundable sum equal to the difference in installed cost between the larger capacity system and a system which had a capacity to meet the user's needs for a reasonable time after installation.

16. A service connection employing no larger than a 300-kva transformer was sufficient to satisfy the needs of Pro Sports for a reasonable time after its installation.

17. Pro Sports was entitled to have a service connection with a 300-kva transformer installed free of charge by Bay Point under Bay Point's tariff Rule 21.C(5).

18.a. Since Pro Sports elected to have a service connection installed to satisfy its anticipated increased service requirements one to two years in the future and to require a more expensive transformer than would have been required if a service connection satisfactory to Pro Sports' present needs had been installed, Pro Sports is chargeable with paying a refundable advance to Bay Point for the difference in the cost of the transformers.

b. Bay Point did not prove service connection cost differences aside from the difference in costs of the transformers.

19. \$6,500 would have been the difference between the cost ✓  
of a 300-kva transformer and a 1,000-kva transformer.

20. All costs incurred by the project in excess of \$6,500  
should be borne by Bay Point.

Conclusions

1. Bay Point's charges to Pro Sports for the service  
connection, to the extent the charges exceed \$6,500, are  
excessive.

2. A refundable advance of \$6,500 to cover the difference  
in cost between the installed cost of a 300-kva transformer and  
the installed cost of a 1,000-kva transformer actually installed  
is reasonable.

3. From the \$20,500 deposited with the Commission as  
payment of the disputed bill for utility services, the Commission  
should order the disbursement of \$6,500 to Bay Point as a  
refundable advance and the disbursement of the balance of \$14,000  
to Pro Sports and MIP, jointly.

4. The staff's recommendation that Bay Point's Schedule P-1  
be restricted in the future to only agricultural customers should  
be denied.

O R D E R

IT IS ORDERED that:

1. From the \$20,500 deposited with the Commission by Mason  
Industrial Park and Pro Sports Marketing, Inc. in combination,  
\$6,500 shall be disbursed to Bay Point Light & Power Co. as an  
advance to be repaid to Pro Sports Marketing, Inc. by Bay Point  
Light & Power Co., such repayment to be paid only in the event  
Pro Sports Marketing, Inc. executes an electric service contract  
stipulating the minimum horsepower requiring a 1,000-kva 4,160  
volt, 480-volt 3-phase outdoor-type transformer within two years  
after the effective date of this order.

2. From the \$20,500 deposited with the Commission by Mason Industrial Park and Pro Sports Marketing, Inc. in combination, \$14,000 shall be disbursed jointly to Pro Sports Marketing, Inc. and Mason Industrial Park.

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

Dated at San Francisco, California, this 30th day of AUGUST, 1977.

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President

William J. Gordon Jr.  
Deputy Secretary  
Richard A. Goble

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Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.

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