

ORIGINAL

Decision No. 88613 MAR 21 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RANEY DEVELOPMENT COMPANY, )  
 Complainant, )  
 vs. )  
 SOUTHERN CALIFORNIA EDISON )  
 COMPANY )  
 Defendant.

Case No. 10313  
 (Filed April 19, 1977)

A hearing was held before the Commission on August 1, 1977. James D. James, Robert D. Raney, for complainant. H. Clinton Tinker, Attorney at Law, for defendant.

O P I N I O N

The complainant is the developer of a subdivision consisting of 24 single-family dwellings in the unincorporated area of Yucaipa, San Bernardino County, California, which is within the defendant's service area. The complainant alleges that prior to the time the defendant would begin installation of underground electric service for the complainant, the defendant required the complainant to provide \$3,500 of feeder conduit to be used for the defendant's future expansion and not to be utilized for providing electrical service to the subdivision development of the complainant on Tract 9183 in Yucaipa. The complainant contends that the defendant was not authorized to require it to provide the conduit but the complainant did so only because it would not have been able to have electric service otherwise. The complainant seeks an order requiring the defendant to pay the complainant the sum of \$3,500 which it alleges it expended for the conduit and the installation thereof.

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In its answer the defendant admits that it required the complainant to provide certain feeder conduit but alleges that the requirement to do so is in accordance with the defendant's filed tariff, Rule 15.1 (Revised Cal. P.U.C. Sheet No. 4639-E, Resolution No. E-1566), which provides in paragraph B.1. that the complainant shall "furnish, install and deed to the utility any necessary distribution and feeder conduit required". In addition the defendant denies that the feeder conduit and installation cost \$3,500 and denies the other allegations of paragraph 2 of the complaint.

A hearing was held before Administrative Law Judge James D. Tante on August 2, 1977 in Los Angeles and the case was submitted upon the filing of briefs by the parties or either of them on or before August 9, 1977. A brief was filed by the defendant only.

The defendant's motion to dismiss as set forth in its answer was withdrawn. One of its partners testified for the complainant. The defendant's customer service planner in the district serving Yucaipa and its supervisor of community activities testified for the defendant. Exhibits 1, 2, 3, 4, and 5, each a schematic drawing of Tract 9183, and Exhibit 6, a copy of the defendant's Rule 15.1, were received in evidence.

The complainant's witness testified that the complainant installed 1,380 feet of feeder conduit in Tract 9183 at a cost of \$1,656 for the conduit, \$1,400 for installation including digging the trench, laying the conduit, backfilling and compacting the trench, and for soil testing as required; and \$620 for removing a section of conduit from Grant Street to Avenue E in Tract 9183; for a total of \$3,676.

The defendant's customer service planner testified that the complainant was required to install only 943 feet of conduit in Tract 9183 to be utilized to integrate the system and all other conduit was to be used for the benefit of Tract 9183 only. He stated the cost of the conduit was \$1,131, and agreed that the cost of installation was \$1 per foot as stated by the complainant's witness, but testified that only \$364 was a necessary expenditure for installation as 579 feet of conduit was placed in a trench used for other conduit at no additional expense. He stated that the total amount spent for conduit which would be for future use to integrate the system and provide service to adjacent tracts, was \$1,495.

The defendant's witness referred to Exhibit 4 and testified that 470 feet of conduit was utilized by Tract 9183 and 943 feet was for future use. He stated that when the location of the installation of certain conduit for future use was changed, the defendant had no knowledge that installation had taken place and the complainant did not advise it of the fact. The complainant had an opportunity to rebut the testimony of the defendant's witness but declined to do so. It appears that the total expenditure made by the complainant for the installation of conduit for future use to serve adjacent areas as further subdivision occurred was \$1,495.

The defendant's supervisor of community activities testified that he had been employed by the defendant for 27 years and was familiar with the defendant's tariff provisions, including Rule 15.1. He stated that Rule 15.1 was filed pursuant to the order in D.76394 dated November 4, 1969 in C.8209 (70 CPUC 339). He stated that the intent of the Commission is that developers such as the complainant would be required to pay the cost of any necessary

feeder conduit required even though, as here, it would be for future use for subsequent developments outside of the tract. He stated that the only other alternatives would be to not lay the conduit during the development of the complainant's subdivision, which would require subsequent developers to do so at greater expense, or to lay the conduit at the defendant's expense and later require the subsequent developer to contribute to the cost, for which there is no provision in its tariff. He stated that if the defendant is required to bear the cost, such cost would be a part of its rate base and a reasonable return thereon would tend to increase rates for all consumers, most of whom would receive no benefit from the installation.

The witness further testified that the 943 feet of conduit installed for future use was distribution conduit to house the supply of service within Tract 9183 because in the future, especially in emergencies, the electric service may be brought into Tract 9183 by means of electric circuits in the now empty conduit in a direction opposite to that from which service is presently brought into Tract 9183. Such a possibility would not change the fact that the conduit is now feeder and not distribution conduit. Furthermore, the answer of the defendant admits that the defendant required the complainant to provide feeder conduit and did not mention distribution conduit.

Generally, feeder conduit carries the primary electric power source to a point where it is to be distributed to ultimate consumers and distribution conduit carries the secondary electric power from the distribution point to the ultimate consumers.

We find that the conduit involved herein is feeder and not distribution conduit.

Rule 15.1 provides in part:

B.1. The developer of the subdivision will perform all necessary trenching and backfilling, including furnishing of any imported backfill

material required, and will furnish, install and deed to the utility any necessary distribution and feeder conduit required.

The complainant contends that the developer should be obligated to furnish, install, and deed to the utility only that conduit installed to serve its subdivision. It is the defendant's contention that under Section B.1 of Rule 15.1, the developer is required to pay for the conduit installed in anticipation of future extensions and that the complainant's theory is inconsistent with the requirements of Section B.1 of the rule and the Commission's prior decisions which ordered adoption of Rule 15.1.

The defendant argues that:

(1) Rule 15.1 was developed in C:8209 after six days of hearings in which the utilities, representatives of the League of California Cities, governmental entities, Commission staff, the California Builder's Council, and other interested parties participated. More than seven years have passed since the Commission ordered the adoption of rule in 1969. Although the California Builder's Council actively and aggressively participated in the proceedings, the first formal complaint relating to the application of the conduit requirements of the rule was not filed until 1976, and in the Edison company's service territory no such formal complaint was filed prior to the Raney case in April 1977 despite the fact that all of the regulated California electric utilities adopted Rule 15.1 pursuant to the Commission order.

(2) The complainant's contention that a developer is not required to furnish conduit in anticipation of future extensions is clearly refuted by the transcript of the proceedings in C:8209.

(3) The Commission would have provided in the decision (D.76394, C:8209, (1969) 70 CEUC 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, C.8993 (1971) 71 CPUC 803). The latter decision provides (at page 809) for Rule 15.2, B.1.b. as follows:

"Instead of having the applicant for the extension furnish and install any necessary conduit, the applicant will be required to furnish and install only that conduit necessary to serve the development, with the utility paying for conduit installed in anticipation of future extensions. The applicant will, however, be required to reimburse the utility for conduits which the utility had already installed in conjunction with a previous extension in anticipation of the current extension. This places the burden upon the applicant who benefits from the advance planning."

(4) In D.78294 at page 808 it is stated:

"It is recognized, however, that we are in the relatively early stages of transition from essentially overhead to essentially underground electric and telephone lines. As new residential extensions are installed underground and existing overhead lines are replaced by underground facilities, present rules for such installations result in a progressively larger utility investment in the extra cost of undergrounding. Under these circumstances, it is not inappropriate to liberalize somewhat the rules for commercial, industrial and individual underground extensions."

The language of the decision indicates the intent of the Commission to limit the developers responsibility in 15.2 for undergrounding in commercial and industrial developments by providing that the utility will now pay for conduit installed in anticipation of future extensions. Likewise, the intent is clear that as provided in 15.1 the developer will furnish and install conduit in anticipation of future extensions.

Discussion

In Horton v. San Diego Gas & Electric Co., D.86608, C.10072 (1976) and NuPacific Company v. Pacific Gas and Electric Company, D.87246, C.10063 (1977), we rejected arguments similar to those advanced by the defendant in this proceeding. We concluded that, in spite of the language from D.78294 suggesting that the expression "any necessary distribution and feeder conduit" encompasses more than only that conduit necessary to serve the development, <sup>1/</sup> Rule 15.1 does not require a developer to pay for the installation of conduit in anticipation of future developments adjacent to that for which service is sought. We are now of the opinion that our prior conclusion was erroneous. To the extent that NuPacific and Horton are inconsistent with the conclusions we arrive at today, those decisions are overruled.

In order to rationalize our language in D.78294 with the view expressed by the complainant, we would be required to: (1) assume that when we discussed the phrase "any necessary conduit" in D.78294 we intended to express a different interpretation of that phrase than we did when we issued D.76394, the decision which adopted Rule 15.1; (2) determine that the phrase as used in the earlier decision encompasses only that conduit necessary to serve the actual development for which service is sought; (3) adopt the earlier interpretation; and (4) in interpreting the language used in D.76394 ignore our subsequent decision (D.78294) on the same subject matter. Even if we could assume that our concept of "necessary" as that term is employed in D.76394 differs from that suggested in D.78294 (we know of nothing

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1/ 71 CPUC 803 at p. 809, cited herein at mimeo. p. 6.

in the record of either proceeding to support such an assumption), our latter expression of the term's meaning should guide us in the instant proceeding. That latter expression in D. 78294 supports the defendant's position that Rule 15.1 requires the developer of a residential tract to furnish, install, and deed to the utility not only that feeder conduit required to provide service to the tract for which service is sought but also that feeder conduit located within the boundaries of the tract that is required to interconnect the system to anticipated future developments outside the tract.

We are also persuaded by the defendant's argument that our adoption of the complainant's position would result in a gross inequity to the defendant's existing ratepayers. If the defendant is required to bear the cost of the conduit installed in anticipation of future developments, that cost will become part of the defendant's rate base. Defendant's ratepayers, only a fraction of whom will benefit from the installation, will pay a return on this investment. The other alternative is to not install the conduit until a subsequent development requires such installation. This alternative, however, would require that whoever bore the cost of installation would incur considerably more expense than would have been required to install the conduit at the time of the installation of that conduit required to serve the previously developed tract.

Findings

1. On October 2, 1976 complainant and defendant entered into discussions regarding the installation of an electrical distribution for a residential subdivision on Tract 9183 in the unincorporated area of Yucaipa, San Bernardino County, California.



2. As a condition of receiving service, complainant expended in excess of \$3,500 to furnish and install feeder conduit in Tract 9183.

3. Of the amount expended by the complainant to install the feeder conduit, \$1,495 was expended to furnish and install feeder conduit which was not necessary to provide electrical service to Tract 9183 but rather was necessary to interconnect the electrical service to Tract 9183 to that to be provided to future developments in the area.

4. The feeder conduit described in Finding 3 is "necessary ...feeder conduit" within the meaning of Section B.1 of defendant's Rule 15.1.

5. The amounts expended by the complainant, as described in Finding 1, were properly charged to the complainant pursuant to defendant's Rule 15.1.

Conclusions

1. The phrase "any necessary distribution and feeder conduit required" in Section B.1 of defendant's Rule 15.1 includes not only that feeder conduit required to serve the tract for which service is sought, but also that feeder conduit installed within the boundaries of the tract which is necessary to interconnect the service to the tract with service to subsequent developments outside the tract.

2. It is unreasonable to require the defendant's general ratepayers to provide a return on plant which will benefit only a small fraction of those ratepayers.

3. The complainant is entitled to no relief in this proceeding.

O R D E R

IT IS ORDERED that the relief requested is denied.

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

Dated at San Francisco, California, this 21st day of MARCH, 1978.

*Abstain*  
*Robert Batimuel*

*Abstain*  
*Robert W. Noble*

President  
*William J. ...*  
*Thomas L. ...*  
Commissioners  
*Paul J. ...*