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Decision No. 90983 NOV 6 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Sierra Pacific Power Company for an exemption from the mandatory undergrounding requirement applicable to new residential subdivisions under the provisions of Rule No. 15 D 1 (a).

Application No. 59235
(Filed October 22, 1979)

O P I N I O N

Applicant, Sierra Pacific Power Company, a Nevada corporation, has petitioned the Commission for a deviation from its Tariff Rule No. 15, Section D.1.a., requiring underground construction of electric line extensions to 70 residential lots located in a subdivision known as the Portola Heights Subdivision in Portola, Plumas County. Applicant claims exemption from the above rule by pointing to its Tariff Rule No. 15, Section E.7., which provides as follows:

"7. Exceptional Cases

In unusual circumstances, when the application of these rules appears impractical or unjust to either party, or in the case of the extension of lines of a higher voltage, the Utility or the Applicant shall refer the matter to the California Public Utilities Commission for special ruling or for the approval of special conditions which may be mutually agreed upon, prior to commencing construction."

The unusual circumstances causing an emergency in this case are the hardships and suffering of people from whom access to their newly bought houses is withheld. Sixteen families who contracted to buy houses on specified lots with the understanding that they would be able to occupy the houses before winter are now living in temporary and inadequate quarters. Most of them have given notices to their landlords or sold their houses so that the new tenants are seeking to move in the quarters that were to be vacated. Some have moved in with relatives and in one case necessary surgery had been deferred in expectation of moving. These families will only be able to move in their houses when the electric utilities are connected. It may not be feasible to complete underground electric line extension before spring in which case considerable hardship would have to be endured by these families.

The Portola Heights Subdivision is a development consisting of approximately 50 acres subdivided in 213 residential lots. The average lot size is 50' x 70'. All adjacent development or nearby parcels have previously been developed as residential property. The 70 residential lots for which deviation is requested are located between Plumas Avenue and Fourth Street and south to Fourth Street. Houses have been constructed on 16 of these 70 lots.

The Portola Heights Development Company filed a map for this development on or before May 5, 1970, in the Office of the County Recorder in Plumas County. There is no record of an agreement for overhead service between the utility and any of the developers which would be required in order that the development might qualify for overhead line extensions under the provisions of Decision No. 81620, in Case No. 8993, issued on July 14, 1973.

Developer, Larry Kuczler, who operates the North Sierra Construction Company in Oroville, has built 16 houses in the development. Of these, 14 are located between Plumas Avenue and Fourth Street while two are on the south side of Fourth Street. The developer is committed by contracts concluded with buyers to sell these houses for approximately \$42,200 each. The houses are on Lots Nos. 159, 160, 301, 302, 305, 306, 307, 310, 313, 314, 315, 321, 324, 325, 327 and 330. Not included among these 16 houses is an additional house which is under construction on Lot No. 154 on Riverside Drive, separated by six lots from the south side of Fourth Street.

The developer believed that he had an understanding with the utility to the effect that his tract qualifies for overhead electric service. The utility did not otherwise inform the developers of the subdivision. Accordingly, the developer only dug trenches for water lines to the specified depth of 30 inches. If the electric

service were to use the same trenches as the water service, safety and construction standards would require the electric cables to be placed 2 feet below the water lines. Additional excavation and blasting would therefore be required, and the already installed water lines would have to be removed. Water lines are in place only for the 16 houses that are already built.

The terrain of the subdivision is flat and consists of strata of hard lava cap type rock. Trenching machinery customarily used for digging trenches cannot cut through this rock so that blasting is required in places. Existing houses and water lines could be damaged by dynamite as its effect cannot always be reliably confined.

The utility estimates the cost of the underground line extension exclusive of trenching to be \$72,000. The trenching cost is estimated to be \$20,000. The developer would be required to pay \$48,000 of this cost (\$28,000 to the utility as non-refundable advance and \$20,000 to the contractor who would dig the trenches). The cost per house of underground construction to the developer would thus be \$3,000.

Plumas County does not require underground construction of electric line extensions.

Overhead electric lines exist on the north side of Plumas Avenue at the north boundary of the subdivision. The existing houses could be served by service drops from the lines on Plumas Avenue.

The remainder of the subdivision extending to the south of Fourth Street is not developed except for the two houses on Fourth Street and one on Riverside Drive, mentioned above.

Discussion

On May 5, 1970, in Case No. 8993, Decision No. 77187, we noted that we shall occasionally have to deal with cases where developments of subdivisions have progressed to the point where plans cannot be changed without serious or even disastrous financial impact on the developer. For this reason, we have provided exemptions for such developments under narrowly defined conditions. In this case the utility did not have in its tariffs the rules established by Decision No. 81620, in Case No. 8993, and did not timely inform the developer of the requirement for underground construction. We could, accordingly, hold the utility responsible for the total cost of an underground line extension for the houses already constructed. However, we feel that a more reasonable course of action is to grant a limited deviation in this case, restricting overhead service to the areas between Plumas Avenue and Fourth Street, and putting the parties on notice that the utility will not be allowed to deviate further from mandatory underground requirements in the area south of Fourth Street. Sierra Pacific Power Company is advised that, should it fail to notify developers on a timely basis of the Commission's requirement for underground electric extensions, it will be held responsible for the difference in costs between overhead and underground construction.

It is anticipated that the occupants of these new houses will subscribe to telephone service. The serving telephone utility in Portola is The Pacific Telephone and Telegraph Company. Consistent with the deviation authorized herein, we shall also allow overhead telephone and cable television service for the specified lots.

Findings of Fact

The Commission finds:

1. Overhead electric lines exist on the north boundary of the Portola Heights Subdivision.
2. Sixteen houses are already built in the subdivision.
3. Water utility lines supplying the above houses are already in place.
4. The terrain in the subdivision is flat and consists of strata of hard lava cap type rock.
5. Digging of trenches, as well as holes for overhead lines, requires use of dynamite in places which would endanger the buildings and water utility lines.
6. The cost of underground line extension in this development would be \$48,000 to the developer and \$44,000 to the utility.
7. Plumas County does not require underground electric line extensions.
8. Sierra Pacific Power Company has not filed rules specifying conditions for new overhead construction as required by Decision No. 81620, in Case No. 8993, and did not timely notify the developer, North Sierra Construction Company, of the requirements.
9. Telephone and cable television lines may be installed overhead where overhead electric power lines are authorized.
10. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
11. An unforeseen emergency exists because people who were scheduled to move into their new houses when the utilities are connected are now living in temporary and inadequate housing where they moved in the expectation that their new houses would be readily available for occupancy. This unforeseen emergency justifies adding this matter to the Commission's agenda without prior notice to the public.

Conclusions of Law

1. A public hearing is not necessary in this matter.
2. It would be unreasonable to require underground electric and communications construction to aforementioned lots because of exceptional circumstances in this case.
3. The application should be granted.

O R D E R

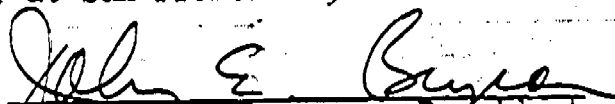
IT IS ORDERED that:

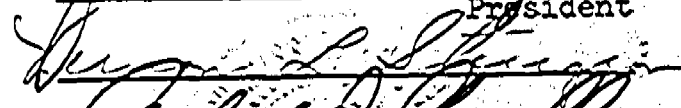
1. Sierra Pacific Power Company is authorized to deviate from the mandatory underground requirements of Rules Nos. 15 and 15.1 of its tariffs in order to serve Lots Nos. 159, 160, 301, 302, 305, 306, 307, 310, 313, 314, 315, 321, 324, 325, 327 and 330 in Portola Heights Subdivision, in Plumas County.

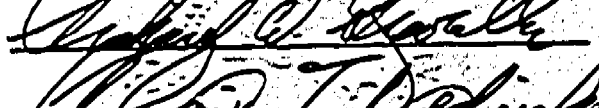
2. The Pacific Telephone and Telegraph Company is authorized to deviate from the mandatory underground requirements of Rule No. 15 of its tariffs in order to serve Lots Nos. 159, 160, 301, 302, 305, 306, 307, 310, 313, 314, 315, 321, 324, 325, 327 and 330, in Portola Heights Subdivision, in Plumas County.

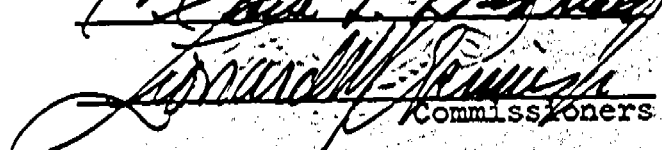
The effective date of this order is the date hereof.

Dated NOV 6 1979, at San Francisco, California.



President






Commissioners