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Decision No. 91850 June 3, 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own Motion into the Rules Pertaining to Underground Extensions to Commercial and Industrial Developments and to Individual Customers of all Electric and Communications Public Utilities in the State of California. Investigation on the Commission's own Motion into Mandatory Requirements for Underground Extensions.	Case No. 8993 (Reopened November 9, 1978)

Appearances at Reopened Proceeding

H. Clinton Tinker, Attorney at Law, for Southern California Edison Company; Thomas F. Mulvaney, Attorney at Law, for San Diego Gas & Electric Company; William K. Mullen, for Continental Telephone Company of California; Duane G. Henry, Attorney at Law, for The Pacific Telephone and Telegraph Company; and Malcolm H. Furbush and Bernard J. Della Santa, Attorneys at Law, for Pacific Gas and Electric Company; respondents.

John Harper, Attorney at Law, for Corona Land Company; Robert M. Desky, Attorney at Law, for Boise Cascade Home and Land Corporation and Boise Cascade Recreation Communities Corporation of Delaware; Harvey Diemer, Attorney at Law, for Dart Industries; and Fred A. Strauss, for Thomas H. Porter, dba The Deerwood Corporation; interested parties.

Peter Fairchild, Attorney at Law, and Vladislav Bevc, P.E., for the Commission staff.

OPINION ON REOPENED PROCEEDING

Summary

By Decision No. 81620 (1973) 75 Cal PUC 321 in this proceeding the Commission exempted residential subdivisions and and real estate developments for which (1) a master plan, preliminary map, or tentative map was filed with the appropriate local authorities pursuant to the Subdivision Map Act before May 5, 1970 and (2) an agreement for overhead service was entered into with the utility before May 5, 1972, from the requirement that electric and telephone line extensions to new residential subdivisions should be undergrounded, as provided in Decision No. 77187 (1970) 71 CPUC 134. In this decision the Commission rescinds such exemptions because:

1. By specific provisions in the line extension agreements the parties have been put on notice that such exemption provisions can be modified or terminated.
2. The costs of conversion from overhead to underground lines are considerably higher than the costs of constructing underground lines initially in residential subdivisions.
3. Continuation of the exemptions would perpetuate construction of utility distribution facilities in many areas in a manner inconsistent with the undergrounding requirements imposed elsewhere.
4. The exemption provisions were contemplated to be grace provisions of limited short-term duration.
5. Development of the tracts covered by the exemptions have proceeded at a slower rate than contemplated at the time the exemptions were adopted.
6. It is in the public interest and the time has come to terminate such exemptions.

Introduction

On November 4, 1969, in Decision No. 76394 (Case No. 8209) 70 CPUC 339 we found that electric and telephone line extensions to new residential subdivisions should be undergrounded.

On May 5, 1970, in Decision No. 77187 (Case No. 8993) 71 CPUC 134 we ordered that such extensions be undergrounded, unless we authorized a deviation from that requirement.

On July 24, 1973, in Decision No. 81620 (Case No. 8993) 75 CPUC 321, we specified the circumstances under which exemptions were authorized. One such exemption provides for those residential subdivisions and real estate developments for which (1) a master plan, preliminary map, or tentative map was filed with the appropriate local authorities pursuant to the Subdivision Map Act before May 5, 1970 and (2) an agreement for overhead service was entered into with the utility before May 5, 1972.

In light of the lingering nature of this exemption, and because of our goal to have all distribution facilities eventually undergrounded, by Decision No. 89636 dated November 9, 1978, we reopened Case No. 8993 for the limited and sole purpose of determining whether the exemption from the requirement of mandatory undergrounding ordered in Decision No. 81620, at those residential subdivisions and real estate developments for which (1) a master plan, preliminary map, or tentative map was filed with the appropriate local authorities pursuant to the Subdivision Map Act on or prior to May 5, 1970 and (2) an agreement for overhead service was entered into with the utility on or prior to May 5, 1972, should be terminated.

After due notice to all the parties to this proceeding, including 13 respondent electric utilities and 33 respondent telephone utilities, and to many other persons who had expressed interest in the proceeding, public hearing was held on February 28, 1979, at San Francisco, before Administrative Law Judge Gillanders. Respondents Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) presented testimony. Statements were received from interested parties: Boise Cascade Home and Land Corporation (Boise), Dart Industries (Dart), Corona Land Company (Corona), and Deerwood Corporation (Deerwood). Boise presented four exhibits and Corona presented one exhibit. Our staff (staff) presented no testimony or any formal recommendation. The matter was submitted on February 28, 1979.

Staff's Motion to Set Aside Submission

On May 18, 1979, staff formally petitioned pursuant to Rule 84 of our Rules of Practice and Procedure that the proceeding be reopened for the purpose of entering a statement of position. In support of its petition, staff averred that preparation of the proposed statement had not been possible until presentation of evidence was completed. The statement itself, filed concurrently with the petition, declared that, since no evidence was adduced by any party during the subject hearing on the basis of which the impact of undergrounding on the development of properties currently eligible for the subject exemption could be conclusively determined, no change was warranted in the position advocated by staff at the hearings held in this proceeding in 1970. At that time staff recommended that, in the absence of compelling reason to the contrary, all extensions to and within residential subdivisions be constructed underground. Therefore, staff's statement continued, the subject exemptions should be terminated as of May 5, 1980. This date of termination would allow these exemptions to be in effect for a

period of ten years. Such a period, concluded staff, would serve to properly balance both public and private interests in this matter.

Response to staff's petition was received from four parties: PG&E, Boise, Dart, and Continental Telephone Company of California (Continental). All four expressed opposition. In its response, PG&E alleged that the petition failed to allege any new material evidence to be adduced, and that no evidence presented at the hearing justified terminating the subject exemptions. Boise alleged that the Commission's order last reopening this proceeding failed to provide proper guidance for the conduct of the hearing, that insufficient opportunity had been provided the parties to comment on staff's proposal, and that the evidence presented at the hearing was entirely contrary to staff's position and staff counsel abdicated his responsibilities of informing participants and the public on the issues to be discussed in the hearing.

If the proceeding is reopened, Boise requests that staff counsel be required to set forth a substantive memorandum together with staff recommendations defining the issues before the Commission and seek substantive testimony from and for a broader spectrum of the industry and the concerned members of the public. Dart alleged that the grounds submitted in support of staff's position are clearly untrue; and that, therefore, the petition should be denied. In the event the petition is granted, Dart requests that further hearings be held in order to permit the introduction of rebuttal evidence. Continental finds it hard to believe that the staff is seriously suggesting that we could support the findings implicitly required by the staff's recommendation. Continental asks that the staff's petition be denied and its statement disregarded.

We agree that the staff's petition is fatally defective under Rule 84. Therefore, we will deny the petition.

Positions of the Parties

In Decision No. 73078 dated September 19, 1967 in Case No. 8209, we set forth our policy of encouraging undergrounding. In Decision No. 85497, dated March 2, 1976 in Case No. 9265, we reaffirmed that policy regarding undergrounding of distribution lines and expanded it to cover the undergrounding of all overhead lines regardless of voltage classification.

In spite of our well-known policy regarding undergrounding, all parties who appeared at the hearing and offered testimony as well as those parties who made statements opposed termination of the undergrounding exemption.

PG&E's records show that it has 115 subdivision agreements in effect under the undergrounding exemption or grandfather clause of Rule 15C. The agreements cover about 48,269 lots, and approximately 5,816 of the lots are presently served from overhead. Approximately 19,803 lots are adjacent to existing overhead; thus, they can be served from overhead lines. The other approximately 22,650 lots require extension of PG&E's facilities.

PG&E suspects that the cost of establishing underground electric service to many of the lots could make construction of homes on the sites prohibitive. Obviously, according to PG&E, if the extensions are short, the cost might not be too great; but for many of these, there would be long extensions, and the cost would be considerably higher than the overhead. PG&E based its testimony on its witness' experience. PG&E did not make a study of the subdivisions because it had not assembled the necessary information.

Edison had a total of 16 contracts under the so-called grandfather clause of Section C of Rule 15. Of the original 16 agreements, 13 remain in full force and effect permitting overhead extensions to 9,559 lots. Currently, 403 lots, which constitute about 15 percent of the total, are being served with the potential of serving an additional 5,034 lots from existing overhead lines so

that 68 percent of the original 9,559 lots now have the potential of receiving electrical service from existing overhead lines.

New overhead extensions are presently scheduled for construction which will have a potential of serving an additional 323 lots, which would bring the percentage total up to about 71 percent.

Three of the developments covered by the original agreements have been built out to the point where 100 percent of the lots within the developments can be served from existing overhead line extensions, while one development has built out to the point where only 48 percent of the lots can be served from existing lines.

The remaining nine developments have the capability of serving between 69 percent and 97 percent of the lots within the individual developments from existing lines or new lines in the planning or construction stage.

According to Edison, it is apparent from the facts involved herein that most, if not all, of the developments qualify for exemption from the mandatory undergrounding in accordance with Rule 15, Subparagraph C.1.a.(1) on the basis of the "significant" existing overhead lines.

Under these circumstances, if it is the Commission's intent to terminate the subsection of the rule relating to "significant overhead lines", Edison would be opposed to such termination.

If the grandfather clause was terminated, Edison would be concerned about the present contractual and financial arrangements between it and the developer as they now exist.

Legal exceptions made with the State Real Estate Commission have been satisfied by letters in which Edison has attested to the availability of electricity to innocent lot purchasers.

Edison thinks that the rights of present and future lot purchasers should be considered, as some purchasers buy a lot perhaps on the basis that they would be able to have electric service brought to their lot at no cost to them. Further, it believes that the long-range financial commitment of the developer in his plan should be given some consideration.

From an operational standpoint, Edison thinks that in some of these areas its costs could rise, and the operation and maintenance cost of overhead versus underground lines would be impacted.

According to Edison, the grandfather clause is successfully being administered. Given a few more years, Edison thinks that in its area all of these developments would be built with overhead lines and it would no longer have any contracts to administer under the exception rule.

According to Boise, it has fully completed both its divestiture program and all of its construction-type obligations on all of the subdivisions in which it was involved. Boise is responsible, through another subsidiary, for the administration and collection of certain receivables previously created by the retail sale of lots and parcels and other property in California. Because of the contractual responsibilities as to these receivables and its belief that the property rights of persons to whom land was sold in good faith should be protected, Boise argues that the undergrounding exemption should not be terminated.

It is the position of Corona that it would be inequitable to now place the burden of additional cost for undergrounding on a developer who in good faith relied upon the exemption in pricing and selling lots and who no longer has a legal interest in those lots.

Deerwood apparently desires to retain the present exemption.

It is the position of Dart that if the Commission terminates the grandfather clause provision of the line extension rule, a great hardship would be imposed on Dart as it cannot recoup any losses due to higher utilities installation costs that undergrounding would entail. If the Commission is to make any change at all, Dart recommends the rule change set forth below:

CHANGES IN RULES OF ELECTRIC UTILITIES
Rule 15 (PG&E and SCE)
Rule 20 (SDG&E)

LINE EXTENSIONS

(Replaces the existing language of Section C)

C. Overhead Extensions to Serve Residential Subdivisions or Developments.

1. Conditions of Service.

Overhead extensions may be constructed when either of the conditions in a. or b. below are found to exist:

a.(1) When significant overhead lines exist within a subdivision or development, additional extensions within the subdivision or development may be constructed overhead.

(2) The new residential subdivision or development is one for which a master plan, preliminary map or tentative map was filed before May 5, 1970, with the appropriate local authorities pursuant to the Subdivision Map Act and an agreement for electric service was entered into with the utility before May 5, 1972.

The exceptions set forth within this subsection C.1.a.(2) shall be deleted for all new residential subdivisions or developments for which significant overhead lines have not been installed prior to May 5, 1982.

b. (Subsection b shall remain unchanged.)

According to Dart, its suggested change would serve to allow those developers who have acted in good faith in reliance upon the grandfather clause, but have not yet completed their subdivisions or developments, to complete them with overhead extension as planned, in accordance with their agreements with the utilities and, at the same time, would provide an ultimate cutoff for those developers who have not made significant efforts to complete their development.

Discussion

In Decision No. 76394 in Case No. 8209 (1969) 70 CPUC 339 at page 355 this Commission said:

> "The costs of conversion are considerably higher than underground construction costs in new residential subdivisions. A considerable investment has already been made in existing overhead systems. The Commission believes that higher priority should be given to new underground construction than the types of conversion covered by Section B and Section C of the conversion rule."

and at page 356 of the same decision the Commission found:

> "3. All electric and communication systems within new residential subdivisions should be installed underground."

In Decision No. 77187 in Case No. 8993 (1970) 71 CPUC 134 at page 136 the Commission said:

> "The record shows that the utilities and developers have generally responded commendably to the commission's decision. The vast majority of extensions of electric and telephone lines in new subdivisions since the effective date of Decision No. 76394 have been underground. Under the interpretation by many parties of the present tariff provisions, however, the electric utility and the developer must both agree to undergrounding in order to make the present subdivision underground extension rule applicable. Thus, under such interpretation, with or without a

valid reason, and without Commission review or even timely knowledge, either a utility or a subdivider could subvert the intention of Decision No. 76394.

"It will be far better for the commission to scrutinize closely the circumstances whenever a utility or a developer wishes to install overhead utility extensions in a residential subdivision.

"There is no merit in the contention that the relative responsibilities of utilities and developers resulting from the present subdivision line extension rules should be modified when the rule is made mandatory. Those relative responsibilities have been deemed reasonable by their having been prescribed by the Commission. Making the rule apply in essentially all cases, rather than just in most cases, does not render those relative responsibilities unreasonable. If the rule is applied in a discriminatory manner, as suggested by some developers, appropriate relief can be sought by a formal complaint.

"From an aesthetic standpoint, there is no merit to the contentions that undergrounding should not be required for 'lot-type' or 'recreational community' developments, where construction of residences is spread over many years. Slow growth does not make it desirable to have festoons of electric and telephone lines in a tract."

All contracts entered into by the respondent utilities under the provisions of Rule 15 and Rule 20 contain substantially the following provision:

"This contract shall at all times be subject to such changes or modifications by the Public Utilities Commission of the State of California as said Commission may, from time to time, direct in the exercise of its jurisdiction."

In the face of such provision, it is clear that we can do away with the grandfather exemption. It is well known that over the years, state, county, and city governments have changed land

use and zoning criteria. It can be expected that those governmental agencies having control over land use and zoning will continue making changes based on the exigencies of the day.

Those affected were put on notice that the exemption provisions could be modified or even eliminated. Accordingly, the rights of those affected were not vested with finality; they have no right vested in perpetuity for an exemption from undergrounding requirements. The policy regarding undergrounding by California utilities is established by this Commission.

The record reflects that continuation of the exemption would not be in the public interest because there are for example, in PG&E's service territory alone, approximately 42,000 lots eligible for overhead extensions sometime in the future under the exemption. Continuation of the exemption would perpetuate construction of utility distribution facilities in many areas in a manner inconsistent with the undergrounding requirements imposed elsewhere. The exemption provisions adopted in Decision No. 81620, in 1973, were contemplated to be short-term grace provisions of limited duration. Development of the tracts under the exemptions have proceeded at a slower rate than originally contemplated when we adopted them. We now find the situation to be that if the exemptions are not terminated, a subdivision could be developed thirty years hence and be eligible for overhead utility line service. That result is clearly at odds with the long adopted policy of undergrounding utility lines. Accordingly, we conclude the time has come to terminate the exemptions. The owners of the affected parcels have had from July 1973 to the present to develop the parcels with overhead lines. That has been a long grace period, probably too long, which afforded those who contemplated construction prior to our undergrounding decisions--and who had planned under the old rules and procedures--time to

complete the contemplated construction. It is illogical and unreasonable to further extend the exemption provisions of Decision No. 81620.

The exemptions under discussion were granted based on costs and conditions almost a decade old. Although not as much progress in reducing the cost differential between overhead and underground has taken place as we desired, there have been significant reductions. With the added impetus provided by the elimination of the grandfather exemption, we are sure the utilities and their suppliers, spurred on by those who must pay for the differential, will further reduce the differential.

Developers or lot owners who feel that for one reason or another they should be exempted from the mandatory requirement of the subdivision line extension rule may file an application with the Commission seeking deviation, or the appropriate utility may file an application requesting such relief. However, the Commission wishes to emphasize that only exceptional circumstances will hereafter justify the granting of such relief.

Findings of Fact

1. The contracts entered into by the respondent utilities under the provisions of Rule 15 and Rule 20 provide that such contracts are subject to changes or modifications by the Commission.

Hence the parties to such contracts have been put on notice that the exemption provisions can be modified or eliminated.

2. The costs of conversion from overhead to underground lines are considerably higher than the costs of constructing underground lines initially in residential subdivisions.

3. Continuation of the exemptions provided in Section C.1.a.(2) of Appendix B (Electric) and Section I.G.1.a. of Appendix C (Telephone) of Decision No. 81620 would perpetuate construction of utility distribution facilities in many areas in a manner inconsistent with the undergrounding requirements imposed elsewhere.

4. The exemption provisions adopted in Decision No. 81620 in 1973 were contemplated to be grace provisions of limited short-term duration.

5. Development of the tracts covered by the exemptions have proceeded at a slower rate than contemplated at the time the exemptions were adopted.

6. It is in the public interest and the time has come to terminate the exemptions provided in Section C.1.a.(2) of Appendix B (Electric) and Section I.G.1.a. of Appendix C (Telephone) of Decision No. 81620.

Conclusion of Law

Section C.1.a.(2) of Appendix B and Section I.G.1.a. of Appendix C of Decision No. 81620 should be rescinded, thus terminating the exemptions previously permitted under those sections.

O R D E R

IT IS ORDERED that:

1. Section C.1.a.(2) of Appendix B (Electric) and Section I.G.1.a. of Appendix C (Telephone) of Decision No. 81620 are rescinded.

2. Within thirty days after the effective date of this order, all respondent electric and telephone utilities shall file revised tariff sheets reflecting the deletion of the rescinded section.

3. The Commission staff's Petition to Reopen Case No. 8993 dated May 18, 1979 is denied.

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

Dated JUN 3 1980, at San Francisco, California.

President

Commissioner JOHN E. BRYSON

Present but not participating.

Commissioners

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