

ORIGINAL

Decision No. 91917 JUN 17 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Daniel Strub,  
 Complainant,  
 v.  
 General Telephone  
 Company of California,  
 a corporation,  
 Defendant.

Case No. 10779  
(Filed August 27, 1979)

Charles D. Nachand, Attorney at Law, for  
 complainant.  
Kenneth K. Okel, Attorney at Law, for General  
 Telephone Company of California, defendant.

O P I N I O N

The complaint of Doctor Daniel Strub (Strub) shows that he is the purchaser of an undeveloped 40 acres of land in the form of two parcels of 20 acres each located at 37250 Quarter Valley Road, Temecula, California, 93790. Strub is seeking telephone and electrical service to this property.

A complaint had also been filed against Southern California Edison Company (Case No. 10780) which was dismissed at the request of Strub.

Strub alleges that General Telephone Company of California (General) seeks to charge him the maximum amount allowed for installation of telephone service to his property pursuant to the terms and conditions of its rules, regulations, and tariffs, and has not applied the proper guidelines to the determination of the fee to be charged. Specifically, Strub alleges that General has

refused to provide him with the free footage allowance; has demanded the total cost for the placement of service, including the free footage which should be allowed as a set-off; and has exceeded the maximum per-foot line charge that may be charged.

Strub states that it is his intent to reside on the property. He has no intention whatsoever of subdividing or attempting to develop the property by way of subdivision, buildings, industrial, commercial, residential, or otherwise, for the use of any individuals other than himself. Strub does not challenge the reasonableness of any rate or charge, rather he states that said rates and charges have been inappropriately applied to him and on that basis are in fact discriminatory and unconstitutional. It is Strub's position that General's determination that he is a subdivider or developer is not founded on any rational basis.

Strub alleges that he has paid the entire cost of the installation of poles and other materials used by Southern California Edison Company in providing electric service to his property, and that any rental charge by General should be paid directly to Strub as reimbursement for his costs and expenses in establishing electric service to the property.

Strub requests that we properly define "subdivision", "developer", and "development" for purposes of use in the rules, regulations, and tariffs of General. He also requests that we declare the present application of said rules as discriminatory and unconstitutional and that we establish the free footage allowance and appropriate maximum linear foot charge for the placement of telephone service to Strub's property.

General filed its answer to the complaint on October 9, 1979, setting forth a general denial of all of the allegations and setting up two affirmative defenses as follows:

1. The complaint fails to allege facts sufficient to state a cause of action, and

2. The complaint fails to allege how, or in what manner, General has violated any provision of law, its tariffs, or any order or decision of this Commission, and requests that the request be dismissed.

A prehearing conference was held on the consolidated cases on November 28, 1979 in Los Angeles. The complaint against Southern California Edison Company was withdrawn at the prehearing conference. The procedure for hearing on the complaint against General was established in which it was agreed by the parties that Strub would distribute his prepared testimony and exhibits to General on January 28, 1980; that on February 11, 1980 General would exchange its prepared testimony and exhibits with Strub. Hearing on the matter was scheduled for February 25 and 26, 1980 in Los Angeles.

On February 5 a letter was received from General advising that Strub had not filed his prepared testimony and exhibits as agreed upon at the prehearing conference. General requested, on that basis, additional time in which to file its prepared testimony and exhibits. A copy of this letter was sent to the attorney for Strub.

By letter dated February 13, 1980, the assigned Administrative Law Judge granted the request for an extension of time to General and advised General that since the complainant failed to file his prepared testimony by the date agreed upon, and that it appears the testimony would be filed during the week of February 11, the matter was temporarily taken off calendar until such time as complainant's testimony was filed. It was pointed out that a new hearing date would be scheduled after the filing of Strub's testimony and exhibits. A copy of said letter was sent to Strub and his attorney.

To date Strub has neither filed the testimony and exhibits agreed upon at the prehearing conference nor has he communicated in

any manner with the Commission or the Administrative Law Judge on this matter.

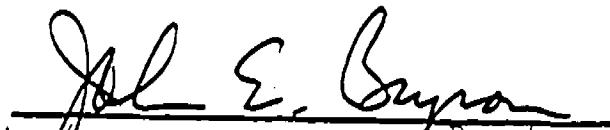
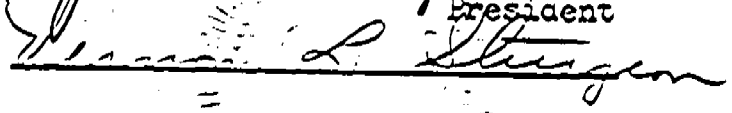
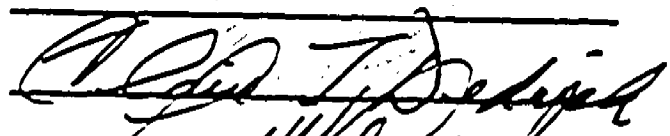
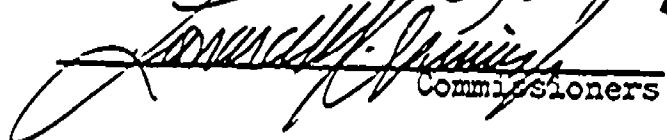
Therefore, we find that Strub has failed to diligently pursue his complaint and we conclude that the matter should be dismissed for lack of prosecution.

O R D E R

IT IS ORDERED that the complaint of Daniel Strub against General Telephone Company of California, Case No. 10779, is dismissed without prejudice.

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

Dated JUN 17 1980, at San Francisco, California.

  
\_\_\_\_\_  
President  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
Commissioners

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.