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ORIGINAL

Decision No. 92373 NOV 4 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

T.K.D. Corporation,

Complainant,

vs.

Southern California Edison,

Defendant.

Case No. 10888
(Filed July 7, 1980)

William F. Kimble, for complainant.
Frank J. Cooley, Attorney at Law,
for defendant.

O P I N I O N

Complainant, T.K.D. Corporation, contends that defendant, Southern California Edison Company, is not properly applying its tariff Rule No. 15.1, Underground Extensions Within New Residential Subdivisions. Defendant denies this contention and urges that the complaint be dismissed. A duly noticed public hearing was held in this matter before Administrative Law Judge A. E. Main in Los Angeles on September 18, 1980.

The dispute centers on the extent of the developer's responsibilities for the portion of an underground extension beyond the property line of the development. As set forth in the answer to the complaint, it is defendant's position that Rule No. 15.1 in Section B, entitled Installation, clearly assigns certain responsibilities to the developer and other

duties to the utility: (a) Section B(1) requires the developer to "perform all necessary trenching and backfilling..."; (b) Section B(3) of Rule No. 15.1 states that the portion of the extension beyond 200 feet is subject to Rule No. 15 (the scope of Rule 15.1 is the underground extension within the subdivision and up-to-200 feet outside the subdivision); (c) Section B(2)b of Rule No. 15.1 assigns to the utility the expense of "the supply circuit which may extend beyond the boundaries of the subdivision to the utility's existing supply facilities that is not in excess of 200 feet"; and (d) supply circuit is the wire which conducts electricity to the subdivision.

Consistent with the above position, defendant paid for and provided approximately 90 feet of wire and informed complainant that complainant would have to trench, install conduit, and backfill approximately 90 feet of underground extension in a dedicated public street for a development of thirteen units at 11118 Lambert Road, North El Monte, California.

By letter dated April 2, 1980 directed to the attention of a representative in the Consumer Affairs Branch of the Commission staff, complainant took exception to defendant's interpretation of Rule 15.1 and sought assistance. The letter was appended to the complaint purportedly to set forth the facts constituting the grounds of the complaint and the injury complained of. In pertinent part this letter, which became Exhibit 4 in this proceeding, reads as follows:

"I have thoroughly acquainted myself with this rule and my interpretation of it is the opposite of Southern California Edison's. Please consider these points:

"Point 1: The rule states in the heading that it concerns 'Underground Extensions Within New Residential Subdivisions.' It does not say public street work that is outside the subdivision.

"Point 2: In paragraph A. GENERAL it states 'The utility will construct (emphasis is mine), own, operate, and maintain underground lines only along public streets, roads, and highways'. It does not say that it will supply the wire only. It says that the utility will 'construct' with no exceptions public road work.

"Point 3: As to paragraph B. INSTALLATION, No. 1, we are in agreement. We expect to do the trenching and backfilling in our development and to pay for this work ourselves.

"Point 4: In paragraph B. INSTALLATION, No. 2.b. it states 'The utility will complete, at its expense: That portion of the supply circuit which may extend beyond the boundaries of the subdivision to the utility's existing supply facilities that is not in excess of 200 feet.'

My interpretation is as it says: The utility will complete at its expense 200 feet of supply circuit that is outside the boundaries of the development. It does not say the developer will do the work or that the utility will install the wire only. It clearly states that the utility will complete up to 200 feet.

"Point 5: My interpretation of B. INSTALLATION, No. 3 is that if there is more than 200 feet of underground service the developer will be charged for a portion of it. In

> our case we are not anywhere near 200 feet away. We are only 90 feet away. Here again it does not say that the developer will have to do this work. It infers that when the utility does work in excess of the 200 feet, the developer will have to pay part of it."

At the hearing complainant's president testified, relying basically upon the above five points (Exhibit 4). A rate structure engineer testified in support of defendant's position stated earlier in this decision. Her points included:

(a) Defendant's filed tariffs, Rule No. 15.1 and contract Form No. CSD-194, set forth the provisions under which underground extensions are installed within new residential subdivisions and the first 200 feet outside the boundary of the subdivision.

(b) Defendant's filed and approved contract Form No. CSD-194, paragraph 3, provides that: "Whereas, Developer and Utility have agreed that within the subdivision and for the first 200 feet of supply circuit outside the subdivision, Developer, in accordance with Utility's specifications and timing requirements, will perform the necessary trenching, excavating, and backfilling, including furnishing of any imported backfill material required, and will furnish and install, and transfer ownership to utility of any conduit required other than the conduit portion of cable-in-conduit, or Developer will pay to Utility as specified herein and before start of construction Utility's estimated costs thereof. Any necessary riser conduit, conduit covering, and miscellaneous riser material required for the supply circuit will be furnished or paid for by Developer and will be installed by Utility; . . . (Emphasis supplied.)"

(c) Since the inception of Rule No. 15.1 (D.76394 in C.8209) defendant has in its application of that rule consistently made the developer responsible for the expense of trenching, backfilling, and conduit required for that portion of an extension to serve a residential subdivision which is within 200 feet of the boundary of the subdivision.

(d) In applying Rule 15.1 all other electric utilities regulated by this Commission also have the developer bear the expense of necessary trenching, backfilling, and conduit required for that portion of an extension to serve a residential subdivision which is within 200 feet of the boundary of the subdivision.

Discussion

Rule No. 15.1 applies to the "Extension of underground distribution lines at available standard voltages necessary to furnish permanent electric service...within a new residential development..." (Emphasis supplied.) It is thus made clear that, under the rule, the word "within" denotes where the electric service is to be furnished rather than boundary constraints on the underground extension as contended by complainant in its Point 1.

In its Point 2 complainant misconstrues the right-of-way clause of the rule:

> "A. General. The utility will construct, own, operate, and maintain underground lines only along public streets, roads, and highways which the utility has the legal right to occupy, and on public lands and private property across which rights of way and easements satisfactory to the utility may be obtained without cost or condemnation by the utility."

Indeed, if complainant's Point 2 were valid, the plain language of Section A, above, would similarly preclude any construction of the underground extension by the developer on the site of the development. In any event it is apparent that complainant's interpretation could be tenable only if there were not the next part of the rule, which is:

> "B. Installation.
>
> "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.
>
> "2. The utility will complete, at its expense:
>
> "a. The installation of the underground distribution system within the residential subdivision, consisting of primary and secondary conductors, transformers, and associated equipment, except excess footage within the subdivision will be partially at subdivider's expense in accordance with Section C.3.
>
> "b. That portion of the supply circuit which may extend beyond the boundaries of the subdivision to the utility's existing supply facilities that is not in excess of 200 feet.
>
> "c. Any necessary feeder circuits within the subdivision.
>
> "3. That portion of an extension to a subdivision from the utility's existing supply facilities in excess of 200 feet outside the boundaries of the subdivision will be made underground in accordance with Rule No. 15, except that the free footage allowances listed in Sections B.1.a. and B.1.b. of Rule No. 15 will be reduced by 50 percent for those appliances installed within the subdivision.

"4. Underground services will be installed and maintained as provided in Rule No. 16.

"5. Street lights will be installed in accordance with the appropriate tariff schedule.

"6. The distribution facilities will be installed as herein provided and will be owned, operated, and maintained by the utility."

In its Point 3 complainant interprets Section B.1. of the rule to apply only within the development. In so doing, complainant presumably is relying on its Point 1. As has been demonstrated above, Point 1 is unsupportable and therefore the reliance is misplaced.

In its Point 4 complainant appears to equate "complete" as used in Section B.2 with "construct". In the context of the rule "complete" is properly associated with what has not been prescribed in Section B.1. to be performed by the developer.

With respect to complainant's Point 5, it is clear that "[t]hat portion of an extension to a subdivision from the utility's existing supply facilities in excess of 200 feet outside the boundaries of the subdivision" is governed in part by Rule 15.

Findings of Fact

1. Defendant informed complainant that complainant would have to trench, install conduit, and backfill approximately 90 feet of underground electrical extension in a dedicated public street for a development of thirteen residential units at 11118 Lambert Road, North El Monte, California.

2. It was the responsibility of complainant to perform the above work pursuant to Section B(1) of Rule No. 15.1.

Conclusions of Law

1. Defendant properly applied its tariff Rule No. 15.1 in its requiring complainant to perform the work described in Finding 1, above.

2. The complaint should be denied.

O R D E R

IT IS ORDERED that the relief sought in Case No. 10888 is denied.

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

Dated NOV 4 1980, at San Francisco, California.

President

Commissioners