ALJ/hh

ORIGINAL

Decision No. 92799 MAR 17 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GEORGE N. F. WOODWARD, JR., DORIS WOODWARD, and JOEL B. WOODWARD, dba WOODWARD RANCH, Complainants, vs. PACIFIC POWER AND LIGHT COMPANY, Defendant.	Case No. 10900 (Filed August 25, 1980; amended December 8, 1980)

ORDER OF DISMISSAL

In late 1965 Pacific Power & Light Company (PP&L) requested of, and in early 1966 was granted, an overhang easement by Doris Woodward, one of the complainants. The easement was associated with the construction of a single-phase distribution line for about 1,100 feet adjacent to, but not on, her property in Siskiyou County and granted to PP&L only the right to overhang the property with its wires. The deed recites that the easement was granted "in consideration of One Dollar ($1.00) and other valuable consideration to her paid, receipt of which is hereby acknowledged..."

Complainants allege that, since they had no use for a single-phase line, they asked PP&L what concession it would offer for the easement. Complainants further allege that:

> "In an exchange of correspondence defendant offered to install on complainants' future request a line extension pursuant to Rule 15 as it then was. Complainants accepted defendant's offer, believing that having the future cost of the installation fixed at a nominal amount was a valuable consideration.

> Complainants executed defendant's form for 'Grant of Easement' on January 3, 1966, believing in good faith that a contract had been made."

Some of the correspondence mentioned above is attached to the complaint. PP&L's letter of December 17, 1965 apparently initiated the exchange. That letter explained PP&L's need for the easement and enclosed the original deed and a check for $1.00 to cover notary fees. The only mention of possible future service to anyone is in this sentence near the end of the letter:

> "Obviously the existence of the power line would make service available to others along the County Road."

Doris Woodward wrote a letter dated December 29, 1965 in response to PP&L's letter of December 17, 1965, but complainants did not attach that letter to the complaint, nor explain their failure to do so. Thus, there is nothing in the pleadings to support their allegation that they asked PP&L what concession it would offer for the easement.

PP&L replied by letter dated January 5, 1965, to Doris Woodward's letter of December 29, 1965. In its letter PP&L undertook to confirm a telephone conversation between PP&L's representative and Doris Woodward's representative, a Mrs. Cooke, which had "attempted to answer the questions contained in your letter." PP&L refers to possible future service to property adjacent to the line as follows:

> "The power line we are proposing to construct will be located, in general, along the northerly side of County Road A-12 and will be adjacent to your property for a distance of about 1,100 feet. The line will be owned by Pacific Power and other customers may be served from it. In the event other applicants wish to utilize this line the free footage allowances and computation of line advance, if any, will be made on the basis of commencing at an appropriate point, or pole, on the line as now proposed. The length of tap line the Company could construct, at no cost to

> the applicant, would be determined by the load or appliances to be served. The free footage allowances are recited in the attached Rule 15 filing with the Public Utilities Commission. In the event the free footage accrual is less than the length of new line required, then the line advance would be at a rate of $1.00 per foot for the excess line length.
>
> "The approximate distance from your property to the nearest distribution line is about 2¼ miles. The construction of the proposed line would place electrical facilities adjacent to your property for a distance of some 1,100 feet."

Complainants construe this language as an offer by PP&L to afford complainants, upon request, a line extension in perpetuity under the terms of its Rule 15 then in effect. They also construe Doris Woodward's signing and delivery of the deed as an acceptance of the alleged offer.

Despite what complainants may believe, the language just quoted is not that of an offer of contract. It merely explains how Rule 15 is applied, apparently in response to a question in Doris Woodward's letter of December 29, 1965. This conclusion should have been clear to complainants since PP&L's explanations of Rule 15 are couched in the third person. Complainants did not have reasonable cause to believe that PP&L had offered them a contract on the terms they describe.

Amendments to Complaint

The Administrative Law Judge (ALJ) informed complainants that he would prepare a dismissal order based upon the pleadings unless complainants desired to amend their complaint. Complainants requested and were granted time to amend and on December 8, 1980 filed their amendments to the complaint.

Complainants now ask that their complaint be considered a request for a deviation from PP&L's current tariff Rule 15. To

support this request complainants delete the following language from their complaint:

> "In August 1976, complainants discussed the details of the planned line extension with the staff at defendant's Yreka office and on or about October 15, 1976, made application for the line extension. Complainants were then informed that defendant did not consider that a contract had been made and could not in any case honor such a contract due to a revision of Rule 15 effective some six weeks earlier."

Complainants' amendment replaces the above language with the following:

> "In August, 1976, complainants met with the staff of defendant's Yreka office and made application for the planned line extension. Complainants did not quickly recognize that defendant's refusal to provide a written receipt dating their application left complainants weak as to their later asserting the date of application. Complainants continued to discuss with defendant's staff the details of the planned extension until mid October, 1976, at about which time complainants' neighbors warned complainants to get from defendant an acknowledgment of the application in writing. When complainants insisted on having such an acknowledgment, defendant's Yreka Manager said he would write complainants a letter, but that he couldn't refer to the contract because he didn't himself think one had been made and that his main office in Portland would have to make that determination for the company. Defendant's Yreka Manager further informed complainants that defendant could not in any case honor such a contract since Rule 15 had been amended some six weeks earlier.
>
> "This amendment is made because complainants have lately recognized that since the only difference between their August and mid October meetings with defendant's Yreka staff was complainants' mid October insistence on a written acknowledgment, that complainants should originally have asserted the earlier date for their application." (Amendment, p. 2.)

In amending their complaint, complainants apparently overlooked paragraph 8, page 3, of the complaint which states:

> "8. That defendant has been at least gravely negligent in not warning complainants in August, 1976, of the imminent and adverse revision to Rule 15, of which revision defendant was then aware, and also in not subsequently seeking, on its own initiative, permission from the Commission for such deviation from the tariff as would have permitted defendant to ignore the six weeks between Rule 15's August 31, 1976, revision and complainants' October 15, 1976, application in the interest of an equitable settlement."

Thus, the complaint is now internally inconsistent as to the date complainants applied for a line extension; the complaint states October 15, 1976, after the revision of Rule 15, and the amendment states August 1976.

Complainants' position appears to be that either: (1) The Commission should find that complainants' application for a line extension was made before August 31, 1976, and is thus subject to Rule 15 as it then existed; or (2) if the application for a line extension was made after August 31, 1976, then the Commission should grant an exemption to complainants for equitable reasons and apply the version of Rule 15 in force before August 31, 1976.

Complainants appear to assume that the date of application for a line extension is the crucial date. For this proposition they cite no authority. The general rule in California is that it is unlawful for a public utility to make effective any contract, arrangement, or deviation for the furnishing of any public utility service at rates or conditions other than the rates and conditions contained in its tariff schedules on file and in effect at the time, unless it first obtains the authorization of the Commission. (Cable T.V. Corp. v All Metal Fabrications, Inc. (1966) 66 CPUC 366; General Order No. 96-A(X)(A).)

Thus, it is the date of an executed line extension contract which controls, not the date when the customer first applies for a line extension.

Complainants have not alleged the existence of an executed line extension contract. The only mention in the pleadings of any contract is as follows:

> "Complainants lost over $50,000 in 1977 and by Spring 1978, it was clear that the new field could not be satisfactorily irrigated without three-phase power. Defendant was asked to determine the then current price of complainants' line extension. A contract offered March 16, 1978, specified a cost of $15,894.00, which had to be prepaid before defendant would even add the project to its list of work to be scheduled. Between the extreme cost, the economic injury already suffered, the uncertainty of defendant's scheduling process and the cost and difficulty of obtaining funds, complainants chose to discontinue the farming operation." (Complaint, pp. 2-3.)

It is noteworthy that the only estimate of the cost of the line extension mentioned by complainants is the one for $15,894, which they did not request until 1978.[1/] It is thus reasonable to infer that complainants' discussions with defendant in August and October of 1976, were preliminary. This inference is further supported by complainants' failure to attach to their complaint or allude to any documents arising out of the 1976 discussions.

Complainants have stated no basis for their contention that their line extension should be subject to Rule 15 as it existed prior to August 31, 1976. Therefore, the only issue still to be resolved is complainants' request for an exemption from the line

---

1/ Complainants attach a copy of the contract offer to their complaint. The contract shows that PP&L proposed to furnish 480 volt, three-phase, A.C. electric service to one 50 hp, one 30 hp, and two 10 hp irrigation pumps. The excess footage is 7964 feet and the cost per foot is $2.25 for a total of $15,894 to be advanced to PP&L by complainants upon execution of the contract.

extension rule now in force. In support of exemption complainants ask the Commission to consider:

1. Their belief that they had a contract in 1966 with the defendant;
2. Their economic losses from improving their land and farming it between 1976 and 1978 without electric power for their pumps;
3. Their discussions with defendant in August and October, 1976;
4. The change of the excess footage charge from $1.00 to $2.25, effective August 31, 1976 (PP&L Advice Letter No. 133, filed June 18, 1976, approved by Resolution No. E-1594, and effective August 31, 1976);
5. Their conclusion that the March 16, 1978 contract offered by defendant constituted an excessive charge, without an explanation of why it was excessive; and
6. PP&L's tariff Rule 15(E)(7).[2/]

These considerations are outweighed in our view by two factors: (a) Complainants' dilatory pursuit of a line extension; and (b) the subsidy of complainants by PP&L's other ratepayers which would be inevitable if complainants' request for exemption were approved.

Complainants' lack of diligence in pursuing their line extension is indicated by several of their allegations. First, they waited more than 10 years after their contractual rights supposedly

---

2/ PP&L's Rule 15(E)(7) states:

"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...Commission for special ruling or for the approval of special conditions which may be mutually agreed upon, prior to commencing construction."

accrued before inquiring about them. Second, in April 1976 they commenced a major project involving land clearing and irrigation equipment costing $100,000 before inquiring about a line extension. Third, they first inquired about a line extension in August 1976 and did not follow up until October 15, 1976. Fourth, they did not request an estimate until 1978. Fifth, they did not file their complaint until August 25, 1980.

But more important is the subsidy inherent in the exemption. If PP&L was ordered to extend service to complainants under rules first established in 1960 and at $1.00 per excess foot, then the full cost of construction of that excess footage would not be advanced by the complainants but would be funded by PP&L. The cost of construction funded by PP&L would become a part of PP&L's rate base. Revenue from complainants' pumps would not in all likelihood completely defray the operating and capital costs of complainants' line, and PP&L's ratepayers would pay the difference.

Conclusions of Law

1. The complainants have failed to state a cause of action against PP&L for a violation of any rule, regulation, order, or statute.

2. The complainants have failed to state reasonable grounds for an exemption from Rule 15.

3. No contract between complainants and PP&L for a line extension arose out of the overhang easement transaction.

4. No contract for a line extension was signed before August 31, 1976.

5. A public utility may not lawfully enter into a contract in violation of its tariffs in effect at the time of the execution of the contract, and any such contract would be void without prior authority of the Commission.

6. Even if complainants had applied for a line extension before August 31, 1976, (a fact about which complainants' allegations are both vague and contradictory and which is unsupported by any documents) and, even if the Commission had undertaken to apply the pre-August 31, 1976 version of Rule 15 to applications made before that date[3/], complainants' dilatory pursuit of a line extension and the subsidy inherent in a line extension agreement priced at 1960 excess footage charges outweigh the considerations advanced by complainants in support of their request for exemption from PP&L's current Rule 15.

3/ No evidence of any such undertaking has been discovered. This is in contrast to the opinion on rehearing in the original line extension investigation (Decision No. 59801 dated March 22, 1960, in Case No. 5945 et al.) wherein we ordered that: "Where investigations have been started for electric line extensions..., as evidenced by written application for service or other documentary evidence but not completed prior to the effective date of the rules prescribed herein, the lesser of the two amounts determined from the old or the new rules shall be applied. However, after the effective date of the above revised rules, all new business, except that just mentioned above, shall be subject to the new rules." (Emphasis added.) (57 CPUC 571, 583.) This "grandfather" provision is, of course, inapplicable to later changes in line extension rules.

7. In accordance with PP&L's request, the complaint should be dismissed.

8. Complainants' request for exemption from Rule 15 should be denied.

IT IS ORDERED that:

1. The complaint is dismissed.

2. The request for exemption from Rule 15 is denied.

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

Dated MAR 17 1981, at San Francisco, California.

President

Commissioners