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ORIGINAL

Decision No. 93121 JUN 2 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Guy C. Burns, Complainant, vs. Pacific Gas and Electric Company a California corporation, Defendant.	(ECP) Case No. 10906 (Filed September 12, 1980; amended December 2, 1980)

Guy C. Burns, for himself, complainant.
George H. Schmidt, for Pacific Gas and Electric Company, defendant.

OPINION

In 1979 complainant purchased a turn-of-the-century single-family residence located in the city of Tracy. He immediately began to renovate the structure. As part of the renovation he completely replaced the internal wiring. Complainant believes that the original wiring was installed about 40 years ago and was never modernized.

The original electrical service consisted of a 3-wire, 4 or 6 gauge,[1] 220 volt, single-phase overhead line connected to a pole located the far side of an alley behind the house. That service is still in place.

Now that the rewiring is completed complainant has requested that his service be installed underground and connected by a riser to his new quick disconnect box and meter.

Early in the negotiations over the proposed change, defendant's representatives stated that the charge for undergrounding the existing service would be less than $100. Subsequently,

1/ Neither party to the proceeding could specify the correct gauge.

an employee of defendant advised complainant that he would be required to pay the costs of trenching and repaving a joint utility (electric, telephone, and cable television) ditch to replace the existing three services for a total cost of approximately $600. Subsequently, defendant presented complainant with a written estimate proposing that complainant pay defendant $580 for trenching, materials and supplies, transportation, tool expenses, and labor to change the electrical service alone.

Complainant contends that this project should be governed by defendant's Tariff Rule 16, Paragraphs B.3.a. and B.3.b. He asserts that under these rules he should be charged something less than $580. The complaint also contends that the "ownership vesting provisions"[2/] of the proffered contract conflict with defendant's tariff.

The main thrust of PG&E's answer is that it has billed complainant under the only provision of its tariff applicable to relocation of an existing original service to an underground location, Rule 16, Paragraph G.

The amendment to the complaint stated that the amount in dispute is less than $750. Once the amendment was received, this matter was processed under the Expedited Complaint Procedure described in Section 1702.1 of the Public Utilities Code.

Hearing was held in San Francisco on January 8, 1981 before Administrative Law Judge John C. Gilman. There are no contested questions of fact. The hearing was primarily oral argument concerning the applicability of certain items of defendant's electrical tariff.

2/ During the course of the hearing complainant conceded that he had no economic stake in this issue, and orally withdrew it from consideration.

Questions Presented

The questions presented are:

1. Should complainant's service be classed as a new, or the relocation of an existing, service?
2. Should paragraph 16.B.3.b. of defendant's electrical tariff be applied to the relocation of an existing service?
3. Which should apply to complainant's service, paragraph 16.B.3.a. or 16.G.2.?
4. Does the existing overhead service meet clearance requirements of General Order No. 95?

The potentially applicable portions of Rule 16 are:

"SERVICE CONNECTIONS AND FACILITIES ON CUSTOMER'S PREMISES"

"B. Services...

"3. Underground Service Connections from Overhead Systems

"a. General

"(1) If an applicant desires an underground service from the Utility's overhead system and his property is adjacent to the public street, road or easement in which the Utility's overhead electric distribution system is located, the Utility will furnish and install conduit, cable and a pole riser between a location approved by the Utility adjacent to the applicant's property line (or in the easement) and the top of the Utility's designated riser pole provided that the load will require a main disconnect switch of at least 400 amperes or that four or more customers in a single building will be served from such facilities. In all other instances the applicant will pay to the Utility the material cost for any conduit and/or riser installed within the public right of way or easement to serve said applicant. In the event more than one separate underground service connection is initially provided from such facility, the material

cost will be divided equally among the applicants for the separate service connections or in such proportion as the applicants may mutually agree upon. The service lateral and other facilities on applicant's premises will be installed in accordance with Section b. below. Transformer installations on applicant's premises which may be required will be installed under the provisions of Section C. of this rule."

* * *

"(3) In all cases where the utility furnishes at its expense conductors and conduits, the term 'conduit' means the conduit portion of cable-in-conduit. If other types of conduit are required by the utility for its service lateral conductors on the applicant's property, the applicant, at his expense, will furnish and install such conduits of a type and size determined by the Utility."

"b. New Underground Service Connections from Overhead Systems

(I) Secondary Service (2,000 volts or less)

The Utility will install a service lateral using the shortest practicable route from its distribution line to the applicant's termination facilities under the following conditions:

(a) The applicant, at his expense, shall perform the necessary trenching, backfill and paving on his property and shall furnish, install, own and maintain termination facilities at a location satisfactory to the Utility on or within the building to be served.

(b) The Utility, at its expense will furnish, install, own and maintain the underground service lateral from the Utility's existing system to the applicant's termination facilities where the length of the service lateral is 100 feet, or less, except as provided in (c) below. Where the distance is over 100 feet, the Utility will furnish, install, own and maintain the service lateral for the entire length, and the applicant shall pay to the Utility the cost of the conductors and the conduit for the length, exceeding 100 feet, except as provided in (c) below."

* * *

"(d) The Utility will determine the size and type of the service lateral."

* * *

"G. Relocation of Service

"1. When in the judgment of the Utility the relocation of a service, including Utility-owned transformers, is necessary for the maintenance of adequate service or the operating convenience of the Utility, the Utility normally will perform such work at its own expense, except as provided in Section B.2.d. and B.3.c.

"2. If relocation of a service, including Utility-owned transformers, is for the convenience of the applicant or the customer, such relocation will be performed by the Utility at the expense of the applicant or the customer."

Discussion

1. Should the Project in Question be Classed as a New, or the Relocation of an Existing, Service?

Under one of complainant's alternative theories, PG&E should be ordered to bill him for a new underground rather than for relocating an existing overhead service. To support his claim that this is a new service, he points out that the house was not used as a residence for an extended period while being renovated.

During this period, no electricity passed through the house's original wiring system. The only electricity supplied was to a single outlet which was used to plug in power tools. He also emphasizes that he has completely replaced all of the original house wiring, entrance and fuse box with new equipment.[3/]

The utility contends that the new service provisions are intended to be applicable only to new construction and that applicant's project must be treated as a relocation of an existing service.

We reject complainant's argument. The existing overhead service has been in place continuously since prior to 1979. It is still in place and is now connected to the new house wiring. It was in place continuously during the renovation process. During this process the utility held itself ready to supply power through that service; it, in fact, did supply power for other than domestic purposes. A temporary change in the level or character of demand during the renovation process does not render this any the less an existing service. Furthermore, if complainant does decide to proceed with undergrounding, PG&E must offer to disconnect and remove the overhead wires. The question of salvage value will arise and PG&E will probably be called on to minimize the length of time the power is off.

Each of these problems are likely to be encountered in relocations and are rare in establishing service to new buildings.

We conclude, therefore, that PG&E is justified in classifying defendant's project as a relocation rather than a new service. Therefore, complainant is not entitled to be billed under the new service rules.

3/ After the complaint was filed a temporary connection was made between the existing overhead service and the new wiring, thus permitting the house to be lived in.

2. Should paragraph 16.B.3.b. be Applied to the Relocation of an Existing Service?

Another of complainant's theories would compel PG&E to absorb some of the costs of the project even if it is classed as a relocation. Despite the use of the phrase "new underground service" in the title of paragraph 16.B.3.b., complainant contends that 16.B.3.b. should also be applied to the conversion of an existing overhead service to underground service. He contends that the title of a tariff item should be disregarded in determining its application. He argues that such a rule is followed in interpreting statutes and should be applied to tariffs as well.

Complainant is mistaken; there is no such general rule of statutory interpretation. It is correct that the title of an act is not considered part of the act. Hence, where there is a conflict between text and title, the text governs. However, if a text is ambiguous, an "official" title, i.e., one adopted or considered by the enacting body, may be used in interpretation. (People v Nichols (1970) 3 C 3d 150, cert. den. 28 L ed 2d 652.) California courts will disregard the title of an ambiguous statute only if it is part of one of the few Codes which contain a section expressly prohibiting the use of titles as an interpretative tool (cf., e.g. Penal Code Section 10004).

In California utility practice, the text and title of tariffs are normally drafted, proposed, and considered in a single integrated document. Therefore, it is appropriate to use tariff titles to determine whether a tariff rule should apply to a particular situation or whether a disputed tariff provision is ambiguous. By referring to this title, we have concluded that 16.B.3.b. is applicable only to new underground service connections. It is therefore inapplicable to complainant's project.

3. Which Should Apply to Complainant's Service, Paragraph 16.B.3.a. or 16.G.2.?

Complainant asserts that paragraph 16.B.3.a. should be applicable to all underground services connected to overhead systems, both old and new. Since its provisions would then be inconsistent with the provisions of 16.G.2., he claims that we should disregard the latter.

PG&E argues that 16.B.3.a. is applicable only to new services and that 16.G. governs all conversions of existing overhead to underground services.

Paragraph 16.B.3.a. does not by its terms specifically apply to new services versus relocation of old services. However, it is reasonable to interpret 16.B.3.a. as being a generalized preamble to the specific subdivisions following it, which apply respectively to new underground connections from overhead systems and replacement of existing underground systems. None of these subdivisions applies to relocating existing overhead services underground.

This interpretation of 16.B.3. is the only one which does not pose a conflict with Paragraph 16.G.2. That provision states: "If relocation of a service...is for the convenience of the applicant or the customer...." 16.B.3.a. begins: "If an applicant desires an underground service...." To our minds, there is little difference between these words, and thus if they are both read to be applicable to relocation of existing service, their terms concerning the breakdown of expenses between utility and customer are clearly in conflict. We see nothing in 16.G.2. which allows an interpretation that it is simply an exception to 16.B.3.a. Thus, in keeping with the basic rule of interpretation that all provisions of a legal instrument are to be given effect wherever possible, we adopt the interpretation set forth above. Paragraph 16.G.2. is thus the provision applicable to complainant's service.

4. Does the Existing Overhead Service Meet Clearance Requirements of General Order No. 95?

It is conceded that the service over the residence's backyard passes within 9 feet 3 inches of the ground. The yard is apparently accessible only to pedestrians.

The applicable safety regulation is General Order No. 95 Rule 54.8.B.3.b. which reads:

> (b) Residential Premises: Over areas accessible to pedestrians only on residential premises, service drops shall be maintained at a vertical clearance of not less than 10 feet. If the building served does not permit an

> attachment which will afford at least 10 feet clearance over such areas without the installation of a structure on the building to provide additional height, the vertical clearance of service drops of 0-300 volts only may be less than 10 feet but shall be maintained as great as possible and shall be not less than 8 feet 6 inches. If the building served would require the installation of an attachment structure to provide height sufficient to afford a vertical clearance of at least 8 feet 6 inches, the full clearance of 10 feet shall be maintained.

We have insufficient information concerning the height and design of the house to determine whether the 10-foot or the 8-1/2-foot requirement is applicable.

However, it is not necessary to reopen this proceeding to take further evidence on an issue which would be material only if complainant elects not to proceed with the undergrounding project.

We will simply admonish PG&E that it should inspect the installation; if complainant decides to retain the existing service, PG&E should modify it to be fully in compliance with General Order No. 95.

With regard to this sole issue of fact, the height and design of the house, we do not have sufficient evidence to support a finding. However, as explained above, it is unnecessary to resolve that issue.

With regard to the dispute over the interpretation of PG&E's tariff, we have held that the utility has correctly decided to apply Rule 16.G.2.

Complainant is therefore entitled to no relief, and the complaint should therefore be denied.

Since this is an Expedited Complaint Procedure matter, we need not state Findings of Fact or Conclusions of Law.

O R D E R

IT IS ORDERED that the relief requested is denied.

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

Dated JUN 2 1981, at San Francisco, California.

President

Commissioners

Commissioner Priscilla C. Grew, being necessarily absent, did not participate in the disposition of this proceeding.