ORIGINAL

Decision 93303 JUL 22 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Duane Belfanz, et al, Complainants, vs. General Telephone Company of California, Defendant.	Case 10926 (Filed November 24, 1980)

Douglas W. Blois, for complainants.
Richard E. Potter, Attorney at Law, for defendant.

O P I N I O N

Complainants, 15 residents of Tract 6410 in Riverside County, allege that defendant, General Telephone Company of California (General), is causing them undue hardship and injustice with respect to the following issues:

(1) Incorrectly interpreting its rules and tariffs in response to complainants' requests for telephone service.

(2) Quoting unreasonably high costs for additional unneeded telephone lines and for underground rather than aerial construction.

(3) Withholding information from complainants and not cooperating with complainants in their efforts to obtain telephone service.

Complainants seek an order requiring General to provide them with telephone service under General's tariff Schedule Cal. P.U.C. A-31 (Schedule A-31).

In its answer to the complaint, General alleges, with respect to issue (1), that complainants seek service to a "real estate development" within the meaning of its tariffs and are, therefore, subject to the requirements of its Schedule A-31, Special Condition 8. General further alleges that it would serve complainants by underground facilities because it is less expensive than aerial and that under Schedule A-31, Special Condition 8.b., General's Rule 34 would apply. General notes that applicant pays full construction costs regardless of whether aerial (Schedule A-31, Special Condition 8.a.) or underground (Schedule A-31, Special Condition 8.b.; Rule 34.A.3.d.) facilities are used.

With respect to issue (2), General alleges that the facility size, construction methods, and costs for service to the 15 complainants will be different from that specified in the letter to complainant Blois referenced in the complaint and that it will conduct a study to have available at the hearing in this matter. In all other respects, General denies each and every allegation in the complaint and requests that complainants take nothing by their complaint and that it be dismissed.

After notice, a hearing was held in Los Angeles before Administrative Law Judge (ALJ) William A. Turkish on March 30, 1981. The matter was submitted subject to the receipt of late-filed exhibits and concurrent briefs by the parties to be received by April 20, 1981. The late-filed exhibits and briefs were received on April 22, 1981, following an extension of time granted to the parties by the ALJ.

The 15 complainant families reside in Tract 6410, a 41-lot subdivision in a sparsely settled area known as the Rancho California area. It is located on the outskirts of Temecula, approximately 25 miles inland from the California coastline, midway between Riverside and San Diego in the County of Riverside. Twenty-five of the 41 lots presently have living structures built on them and of these, 17 families are year-round, permanent residents. Seven of the permanent residents have telephone service. The remaining 10 permanent residents, along with 5 weekend residents, are the complainants in this action. All 15 complainants have requested telephone service from General. Deed restrictions limit the minimum size of each lot to five acres. Since each lot is five acres, no further subdivisions within the tract are possible. The tract was developed in the early 1970s and the last lot was sold in 1977.

Complainants' Position

Testimony on behalf of complainants was presented by five members of the complainant group. Each recited the length of time he or she has been residing in Tract 6410 and their experiences in trying to obtain telephone service from General. They related how they were initially told that installation costs would be approximately $20, only to be informed later that the cost would run into the thousands. The witnesses testified they could not understand how this could be since several of their neighbors in the same tract had had telephone service installed by General for approximately $20 (Exhibit 4). Several of the witnesses, upon cross-examination, acknowledged that they would probably have paid more for their property had the developer paid for telephone line extensions to and within the tract, but they pointed out that these extra costs would have been paid over a long-term period and would

have been insignificant on an amortized monthly basis. They testified that for them to come up with the advance costs demanded by General to install line extensions to and within the entire tract would be prohibitive. They objected to having to advance the costs for the entire tract without any means of recovery from future lot owners who build on the remaining vacant lots. Each witness also testified that they were not developers or subdividers of the tract.

In addition to these witnesses, two General employees were called as adverse witnesses by complainants. One witness, an engineer, explained that the different estimates given to some residents were due to the passage of a year or so between quotations and the fact that General's plan for serving the tract had changed during this period. He also testified that in aerial construction poles are required to be placed at certain distances apart and that existing Southern California Edison Company poles serving the tract are set further apart than General's practice permits. For this reason, in discussing why underground installation was less expensive than aerial installation, he stated that more poles would have to be placed and due to costs, it was just cheaper to dig a trench - especially in this rural area.

The other General employee, a rates and tariff administrator, when asked about General's tariff Schedule Cal. P.U.C. A-12 (Schedule A-12) and why it was not made available, testified that he was not certain but that it was his belief that Schedule A-12 (Farmer Rural Cooperative Line) has not been used for sometime. He testified that since complainants were within a planned development area, it fell under Rule 34.

In view of the information elicited from General's employees by complainants, General elected not to call them as its own witnesses.

Discussion

Although complainants have raised three issues in their complaint and raised two additional points during the hearing, the threshold issue is whether complainants' application for service is governed by Schedule A-31, Sections B.1. and 2., or Rule 34. Complainants contend that since (1) they are not real estate developers, (2) they cannot split or divide their lots any further because of the zoned five-acre minimum lot size of this tract, and (3) the development is not a new development but is at least four years old, they should be governed by the general line extension rates for suburban areas covered in Schedule A-31.

General contends that because complainants reside within a filed tract area which does not meet the density requirements of a subdivision, it is a "real estate development", as defined in its tariff. General also contends that because underground extensions in complainants' area are actually less expensive than aerial, General invariably refers to Rule 34 when giving estimates to applicants.

General, in correspondence with one of the applicants and in response to an inquiry from the Consumer Affairs Branch of this Commission (Item A), admits that Tract 6410 is zoned RR5 which prohibits further splitting of the lots (to any less than five acres) and limits each owner to not more than one residential dwelling per lot. In addition, General admits that Riverside County, in which Tract 6410 is located, does not require underground construction where lots are five acres and up.

Proceed H-C

Schedule A-31 is entitled "Charges for Line Extension and Service Connection Facilities in Suburban Areas". It is applicable to charges for line extensions and service connections in addition to line extension and service connection provisions of Rule 34 and the regular service connection charges of Schedule A-41. The territory within which it is applicable is the suburban areas of all exchanges. A suburban area is defined as that area of the exchange area located outside the base rate area. Tract 6410 is outside the base rate area but within the service area of the Temecula telephone exchange. Section B.1. of Schedule A-31 provides for 1,000 feet of free line extension and service connection per applicant, which amount includes not more than 300 feet of service connection on private property. Section B.2. of Schedule A-31 provides for a charge of $10 to the customer for each 100 feet or fraction thereof of line extension and/or service connection exceeding the free-footage allowance above. Special Condition 1.a.(2) of Schedule A-31 states that the charges in Schedule A-31 are not applicable within new subdivisions and "real estate developments"[1/] and refers the reader to Special Condition 8. It is at this point where the views of the parties sharply differ. Complainants contend that Special Conditions 1.a.(2) and 8 are not applicable to them because they are individual property owners rather than real estate subdividers or developers, while General contends that since Tract 6410 is a filed tract area which does not meet the density of a subdivision, it must be treated as a "real estate development" under Special Conditions 1.a.(2) and 8 and Rule 34.A.3.d.

1/ The distinction between a subdivision and a "real estate development" relates only to anticipated density within a three-year period following completion of the project. A subdivision anticipates a density of one or more telephone main stations per acre. A real estate development anticipates a telephone main station density of less than one main station per acre.

Special Condition 8 of Schedule A-31 provides as follows:

"8. Line Extensions to Serve New Subdivisions or Real Estate Developments in Their Entirety.

"a. Where requested and permissible, aerial facilities to and within real estate developments will be provided under the following conditions:

"(1) The applicant, in addition to any labor or material to be furnished by him, will pay in advance the estimated total cost of the Utility's construction. Any difference between the amount advanced and the actual cost shall be advanced or refunded, as the case may be, within 60 days after completion of the Utility's construction.

"(2) When, within the first three-year period after completion of construction, the subdivision density requirement has been met, the Utility will refund the advance in (1) above. If, at the end of the three-year period the subdivision density requirement has not been met, the Utility will refund that portion of the advance proportional to the ratio of the then permanent main telephone and PBX trunk line terminations density to the subdivision density requirement. No interest will be paid on such advances.

"b. Where underground facilities are to be constructed to and within new subdivisions or real estate developments, line extensions and service connection facilities will be provided in accordance with Rule No. 34."

A review of the entire Schedule A-31 indicates it is applicable to situations whereby line extensions are to be provided to individual suburban applicants singly or collectively (Section B.2.; Special Condition 3; Special Condition 4) or to situations whereby line extensions are to be provided to serve new subdivisions or "real estate developments" in their entirety (Special Condition 8; Rule 34). These are the only situations governed by Schedule A-31.

The relevant general provisions of Rule 34 of tariff Schedule Cal. P.U.C. D&R, Rule 34 (Rule 34) state the following:

> "a. Except as otherwise provided in these Rules, the Utility will at its expense construct, own and maintain all facilities necessary to serve applicants in accordance with its rates, rules and current construction standards, provided dedicated streets are available or acceptable easements can be obtained without charge or condemnation."
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> * * *
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> "d. In suburban areas, charges for line extension apply as set forth in Schedule Cal. P.U.C. No. A-31."

General contends that Rule 34.A.3.d., which it has been applying to applicants' requests for service, requires one applying for service in a "real estate development" to pay the utility's full line extension cost in advance. It believes this full cost provision is of industrywide application in California, having originated in Decision (D.) 78294, Appendix C, Section III.B.1. The relevant portion of Rule 34.A.3.d., filed as a result of D.78294, states as follows:

> "d. Line extensions to and within new real estate developments in their entirety which do not satisfy the density requirements for a subdivision, will be constructed in the manner determined in A.3.a. through A.3.c. above provided:
>
> "(1) The applicant will pay in advance the estimated total cost of the Utility's construction..."

Rule 34.A.3.e. states as follows:

> "e. All other underground line extensions
>
> "If the applicant requests or is required to have underground line extensions, in cases other than those included in 3.a. through 3.d.[2/] he will pay in advance a nonrefundable amount equal to three-fourths of the estimated difference in cost between underground and equivalent aerial facilities."

There is little doubt that reading Schedule A-31 and Rule 34 together could leave the reader confused and uncertain as to the proper meaning of these sometimes seemingly ambiguous provisions. At the very least, an effort to rewrite these tariffs in more easily understood language to remove any semblance of ambiguity and confusion should be attempted. In the meantime, we will resolve the issue presented as the tariffs now read. In doing so, we will construe the tariffs according to their language, irrespective of the intentions of their framers (California Chemical Company (1965) 64 CPUC 590) and effect will be given to every word, phrase, or sentence of the tariff provision to be interpreted (Charles Brown & Sons v Valley Express Co. (1941) 43 CRC 724).

2/ Sections 3.a., 3.b., and 3.c. of Rule 34 refer to the following situations:

3.a. Within new subdivisions in their entirety where all requirements will be for residential service or where buried cable is to be used for line extensions.

3.b. Within subdivisions in their entirety where all or a portion of the requirement will be for business service and the Utility determines an underground supporting structure is needed.

3.c. From new subdivisions to the Utility's existing distribution facilities.

Assuming for the moment that undergrounding is mandatory in this situation, we shall examine General's argument that Schedule A-31, Special Condition 1.a.(2), Special Condition 8, and Rule 34.A.3.d. are applicable to complainants. These three sections relate solely to line extensions to new subdivisions and new "real estate developments" in their entirety. However, Tract 6410 is neither a new subdivision nor a new "real estate development". The tract is at least four years old and the initial developer or subdivider has long since departed. Secondly, these tariff provisions contemplate providing telephone service to new subdivisions and/or new "real estate developments" in their entirety. The individual complainants herein do not seek line extensions throughout the tract in its entirety. It is highly unlikely that an individual lot owner would be seeking to have an entire subdivision or "real estate development" wired in its entirety. The individual would be more likely to be seeking a line extension only to his own property. We believe the tariff provisions relied upon by General contemplate applicability only to the developer or subdivider of a new subdivision or a new "real estate development". Only a subdivider or a developer would be interested in having a line extension furnished to a new subdivision or a new "real estate development" in its entirety, since having utilities in and paid for is a selling point to lot purchasers. Additionally, if this were not so, and if these tariff provisions were to be applied to individual lot owners as well as to subdividers and tract developers, then what would be the purpose of Rule 34.A.3.e. and who would it apply to, since this section clearly deals with "all other underground line extensions"? The difference in cost between Rule 34.A.3.d. and Rule 34.A.3.e. could be considerable. Under A.3.d. applicant must pay the estimated total cost of the utility's construction in

advance, while under A.3.e. applicant must pay in advance only three-fourths of the estimated difference in cost between underground and equivalent aerial facilities where he requests or is required to have underground line extensions. The fact that applicants reside on property which is part of a filed tract should not differentiate them from an individual property owner residing in a suburban area which is not part of a filed tract. It would seem discriminatory and unjust to apply the tariff provisions relating to new subdivisions and/or new "real estate developments" to the individual residing on property which is part of a previously filed tract while the other individual has the less costly tariff applied where both reside an equal distance from the utility's closest existing facilities. A utility is under the duty of complying with its filed and effective tariff rules. It cannot arbitrarily apply a tariff rule to a class of individuals or situation where the particular tariff applied, when strictly construed, is not applicable. If it meant to apply a tariff governing new subdivisions or new "real estate developments" in their entirety to individual lot owners of "old" filed tract areas as well, it should be so stated in the tariff. Where there is an ambiguity in a tariff, any doubt in the interpretation is to be resolved against the utility responsible for the ambiguity (Southern California Gas Co. (1974) 60 CPUC 74). The discussion above leads us to conclude that General is applying Rule 34.A.3.d. improperly to applicants.

We now move on to whether undergrounding is required in the fact situation herein. At the outset, applicants clearly do not request undergrounding. On the contrary, applicants believe undergrounding to be more costly than aerial, since they now have aerial electric facilities serving them and they believe General could use existing electric utility poles to bring the line extension to their properties. It has been the policy of this Commission for a number of years to make undergrounding the standard for electric and communication utilities. D.78294 issued in 1971 was the last of a series of decisions dealing with undergrounding. The first case dealing with undergrounding was D.73078 issued in 1967 following hearings in Case (C.) 8209. This was an interim opinion dealing with new underground service connection and conversions of existing overhead facilities and is not pertinent to the issues herein. Two years later we issued D.76394 which dealt with the establishment of rules for the undergrounding of new construction. Appendix B of D.76394 redefines line extensions and subdivisions and sets forth the new rule to be adopted with respect to underground line extensions within residential subdivisions and in all other cases. Section II of the new rule states that "the utility will construct underground line extensions...within residential subdivisions at its expense subject to the utility being able to occupy trenches jointly, where economy dictates, upon payment by the utility of its pro-rata cost thereof." Section III covers all cases other than those included in Section II above if the applicant or customer requests underground construction. In D.77187, an interim opinion issued in 1970, we affirmed our finding in D.76394 that undergrounding should be the standard for all extensions and we ordered that underground extensions be made mandatory in <u>new residential subdivisions</u> with certain exceptions (the grandfather clause).

In February 1971 we issued D.78294 in C.8993 (which General contends is the basis for its application of Rule 34) which was an investigation to develop an updated record pertaining to underground extensions by electric and telephone utilities to commercial and industrial developments and to individual customers. The scope of the investigation was enlarged to determine whether or not the underground extension rules for residential subdivisions should be mandatory. In our findings and conclusions relating to individuals, we found that existing rules for extension of underground telephone lines to serve individuals require an applicant for the extension to contribute to the utility essentially all of the difference in cost between the underground extension and an equivalent overhead extension. Our other findings and conclusions related to new residential subdivisions, conversion of existing electric and telephone lines to underground lines, modification of present rules for extension of electric lines to serve individuals, commercial and industrial developments, and mandatory undergrounding of electric and telephone extensions serving new residential and new commercial or industrial developments unless a deviation is obtained. We concluded that present rules for extension of electric and telephone lines to serve individuals and to serve commercial and industrial developments should be modified, and we required each respondent providing communication service to file rules substantially as set forth in Appendix C attached and concurrently cancel and revise any of the present tariff sheets as necessary to make them consistent with the rules prescribed in Appendix C. General then filed Advice Letter 2583 and changes to Schedule A-31 and Schedule D&R, Definitions and Rule 34, in accordance with D.78294, which are essentially the same today. We did not order General to include

individuals within the context of Rule 34.A.3.d. Individuals were to be governed by Rule 34.A.3.e. if applicable or by Schedule A-31 if Rule 34.A.3.e. was inapplicable.

Assuming for the sake of argument that Rule 34 relating to new subdivisions was found to govern this situation, complainants would be exempt from the undergrounding requirements under the provisions of Section A.1.g., as the minimum parcel size within complainants' tract is five acres. Local ordinances do not require underground construction for lots of this size. Neither do they permit further division of the parcels involved nor allow more than one single-family dwelling on each parcel. Furthermore, it appears from the evidence that Tract 6410 is more than 1,000 feet from the edge of any designated state scenic highway and from the boundaries of designated parks and scenic areas. The only reason that undergrounding even comes into question is the contention by General that undergrounding in this location is actually less expensive than overhead facilities.

If subject to any part of Rule 34, complainants would be governed by Rule 34.A.3.e. rather than Rule 34.A.3.d., but we must conclude that that rule too is inapplicable because complainants neither requested nor are they required to have underground line extensions for the reasons discussed above. It is also obvious that A.3.e. contemplates a higher cost for underground line extensions than equivalent aerial facilities because applicant would be required to pay in advance only an amount equal to three-fourths of the estimated <u>difference</u> in cost between underground and equivalent aerial facilities due to his request for undergrounding or his being required to have underground line extensions. Since General contends undergrounding is less expensive, there should not

even be a requirement for applicants to advance any money for underground line extensions under Rule 34.A.3.e. From the above discussion we can only conclude that Schedule A-31 is the only applicable tariff governing complainants' requests for telephone service under Sections B.1. and 2. In addition, Special Conditions 3 and 4 might also be applicable.

With respect to the allegation raised by complainants in their complaint that General was charging for extra telephone lines and methods of construction which complainants did not request and which make the cost to them unreasonably high, there was insufficient evidence presented by complainants to substantiate such allegation.

General, in applying what it believed to be the correct tariff, quoted charges to several applicants for underground line extensions to serve Tract 6410 in its entirety. Although there was some testimony by one witness that General gave several different quotes, a General witness testified that the varying quotes were given over a period of time during which General revised its routing plans to serve the tract and this accounted for the varying quotes. Although the quotes were for considerable sums, they were based on actual costs and thus were not unreasonable.

As to the issue raised by complainants that General intentionally withheld information from complainants and did not cooperate with complainants in their efforts to obtain telephone service, there was no evidence presented by complainants to substantiate such allegation.

During the hearing, complainants raised two additional points. Complainants believe they should be entitled to receive service under Schedule A-12. However, complainants are mistaken in this belief. Complainants are in the Temecula exchange area and we take official notice of General's Schedule A-12 which reflects that the Temecula exchange area is not listed as one of the exchanges having a farmer-line area.

The other point raised by complainants was that several residents of Tract 6410 were able to obtain telephone service from General for the normal installation charge of approximately $20 while General seeks to charge them thousands of dollars for telephone service. General's late-filed Exhibit 5 admits that seven customers residing in Tract 6410 have telephone service. However, General's exhibit states that six of the seven customers were given service from an existing cable running along Pauba Road. This cable had previously been installed and paid for by the Rancho California Water District in 1974 for telemetering purposes. General states that no extension of telephone facilities was necessary so Rule 34. A.3.d. was not invoked for those six customers. Pauba Road is on the southernmost boundary of Tract 6410 and the six customers' properties are immediately adjacent to Pauba Road. The seventh customer resides at the far west end of the tract and was served from a line to the west of the tract. This customer was charged line extension charges under Rule 34 to receive telephone service.

If it is the intent of General that individual applicants for line extensions who reside in tracts that are neither new subdivisions nor new "real estate developments" be governed by the same tariffs as those applicable to new subdivisions or new "real estate developments" to be wired in their entirety, then General should consider revising its tariffs to reflect such intent. In the meantime, General must be held to the provisions of its tariffs as they exist and with full effect given to their wording regardless of the secret or subjective intent of the framers.

Findings of Fact

1. Complainants reside in Tract 6410, Riverside County, in what is known as the Rancho California area, located midway between Riverside and San Diego.

2. Tract 6410 is a filed tract area and is within the Temecula telephone exchange area.

3. Tract 6410 contains a total of 41 lots each of which is a minimum of five acres.

4. Local zoning ordinances do not require underground utilities for lots of five acres in Riverside County.

5. Local zoning ordinances prohibit further subdivision of Tract 6410.

6. General's Schedule A-31, Sections B.1. and 2., governs the line extension charges to an individual applicant living in a suburban area.

7. General's Schedule A-31, Special Conditions 1.a.(2) and 8, is applicable only to line extensions to serve new subdivisions or new real estate developments in their entirety only.

8. General's Schedule D&R, Rule 34.A.3.d., is applicable to line extensions to and within new real estate developments in their entirety.

9. Tract 6410 is neither a new subdivision nor a new real estate development.

10. General's Schedule D&R, Rule 34.A.3.e., is applicable to underground line extensions other than to and within new subdivisions or new real estate developments in their entirety.

11. Complainants are neither subdividers nor developers of a subdivision or a real estate development.

12. Quotations for line extensions given to complainants by General under Rule 34 were not unreasonably high under such tariff.

13. General did not willfully withhold any information from complainants.

14. General cooperated with complainants in their desire to obtain telephone service.

15. Six residents of Tract 6410 were provided telephone service for the normal installation charges from an existing cable running adjacent to their properties which had been installed and paid for by the Rancho California Water District around 1974.

16. One resident of Tract 6410 was provided telephone service in 1980 by paying for a line extension from General's closest facilities under Rule 34.

17. Underground line extensions to serve residents of Tract 6410 are less expensive than equivalent aerial construction.

18. Complainants meet the exemptions of mandatory undergrounding as described in Schedule D&R, Rule 34.1.g.(b).

Conclusions of Law

1. Schedule D&R, Rule 34.3.a., 3.b., and 3.d., contemplates a subdivider or a developer as an applicant requesting line extensions to and within new subdivisions or new real estate developments in their entirety.

2. Schedule D&R, Rule 34.3.g., contemplates individual applicants other than subdividers or developers of new subdivisions and/or real estate developments who either request underground line extensions or are required to have underground line extensions.

3. According to the wording and construction of General's tariffs, the only appropriate basic tariff schedule governing complainants' request for line extension to their properties is Schedule A-31, Sections B.1. and 2.

4. General has cooperated with complainants in their attempt to obtain telephone service but has improperly used Rule 34 as the applicable tariff upon which to estimate the cost of installing line extensions to serve complainants.

5. General should rely on Schedule A-31, Sections B.1. and 2., for extending service to complainants' properties.

6. General properly provided service at the normal installation charge to those customers in Tract 6410 whose lots were alongside an existing telephone line on Pauba Road.

7. The quotes provided by General to complainants for providing telephone service were based on Rule 34.A.3.d. and as such are not unreasonable, although they were erroneous since the incorrect tariff schedule was applied.

8. The relief requested should be granted.

O R D E R

IT IS ORDERED that:

1. The relief requested in Case 10926 is granted.

2. General Telephone Company of California shall apply tariff Schedule Cal. P.U.C. A-31, Sections B.1. and 2., (as they existed when the complaint was filed) in determining the charge to applicants for line extensions to their properties, and others in the same tract.

3. General Telephone Company of California shall estimate and give new quotations to applicants based on Schedule A-31, Sections B.1. and 2.

This order becomes effective 30 days from today.

Dated JUL 22 1981, at San Francisco, California.

President

Commissioners