

ORIGINAL

Decision No. 93365 JUL 22 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Deane L. Ellickson, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 General Telephone Company of )  
 California, )  
 )  
 Defendant. )  
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Case No. 10831  
(Filed February 4, 1980)

Deane L. Ellickson, for himself, complainant.  
Richard E. Potter, Attorney at Law, for  
 General Telephone Company of California,  
 defendant.  
Robert Howard, for the Commission staff.

O P I N I O N

Complainant (Ellickson) contends that Rule 34 of Schedule Cal. P.U.C. No. D & R, as maintained and interpreted by defendant (General), would cause undue hardship to residents of the La Cresta<sup>1/</sup> section of Rancho California (La Cresta) in Riverside County.

A duly noticed prehearing conference was held before Administrative Law Judge Norman B. Haley on May 16, 1980 at which time the appearances were taken. Public hearing was held at Los Angeles on August 4, 1980, and the matter was submitted.

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<sup>1/</sup> The record shows that some points in La Cresta are about 15 miles from Murrieta and about 16 miles from Temecula.

Ellickson's Presentation

Ellickson contends that the filing and approval of a development plan for La Cresta in August 1969 preceded the filing and approval of General's Rule 34 in May 1970. He explains that Boise Cascade Properties, Inc. of Delaware (Boise Cascade) subsequently sold its interest to individual investors without initiating development of La Cresta, thereby leaving no principal developer. There is no wireline telephone service to the area.

Ellickson requests that General be directed to waive application of Rule 34 of its tariff, including the deposit requirement, and to extend telephone cables and service to residents of the La Cresta area without undue delay. It is Ellickson's position that since the subdivision report preceded establishment of Rule 34, some updating of a \$5,000 figure appearing in the subdivision report is more appropriate than application of Rule 34 under which much higher estimates have been made. Assertedly, the \$5,000 figure came from General's Schedule Cal. P.U.C. No. A-31. General holds itself out to provide the sought line extension under Rule 34.

Ellickson testified on his own behalf and produced eight other witnesses. Ellickson's Exhibit 1<sup>2/</sup> is a final subdivision public report of the California Department of Real Estate, File No. 28773, for La Cresta Unit No. 1. It was issued October 24, 1969

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2/ Exhibit 9 is the parcel map which accompanies Exhibit 1.

(2nd amendment, December 19, 1972) pursuant to application of the First American Trust Company as trustee. There is a reference on page 7 to utilities,<sup>3/</sup> as follows:

"GAS, ELECTRICITY AND TELEPHONE: No utilities are available within the project. An estimate of the cost to extend such facilities to the most distant parcel in the project, submitted by utilities companies, is as follows:

Gas:	55,440 lineal feet at \$2.12 per lineal foot	\$117,532.00
Electricity:	30,340 lineal feet at \$1.30 per lineal foot	\$ 39,442.00
Telephone:	50,000 lineal feet at \$0.10 per lineal foot	\$ 5,000.00"

Exhibit 8 is a similar final subdivision report bearing the same file number and issued date. That report was issued pursuant to application of Boise Cascade. The same statement relative to utilities appears on page 4 of Exhibit 8 as appears on page 7 of Exhibit 1.

Ellickson contends that General's Rule 34 should be modified or changed entirely to protect unsuspecting real estate purchasers from land developers who are either unscrupulous, lax, or go bankrupt. He said the resulting burden on purchasers of property can be very substantial.<sup>4/</sup> He stated that the deposit

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<sup>3/</sup> Developers heretofore have been required to provide facilities for electric and water service. In 1980 Section 66473.2 was added to the Government Code to read:

"The legislative body of a city or county may, by ordinance, require the design of a subdivision for which a tentative map is required pursuant to Section 66426 to provide for the availability of individual household telephone service to each residential parcel in the subdivision."

This was pursuant to Senate Bill No. 1496 (Craven).

<sup>4/</sup> The correspondence section of the formal file in this matter contains letters from 45 homeowners, potential homeowners, and others complaining about lack of telephone service in the La Cresta area and of high cost estimates received from General relative to obtaining service.

General requires of him under Rule 34 to connect individual telephone service to his property is approximately \$100,000. Ellickson's Exhibit 2 is a three-page letter dated June 14, 1979 from the president of the Commission to Senator William Craven with copies to Ellickson and others. Among other things, the letter suggests that an appropriate remedy for Ellickson and others in his situation would be to file a formal complaint with the Commission.

Ellickson said every 60 days new estimates are made by General escalating the cost. He concluded that no matter how many people live in the area they are not going to be close enough together to make an affordable division of total cost to pay for service to the area. He said if service could be obtained for 10 people at \$200,000, the \$20,000 that each would be required to pay would still be prohibitive. He believes the area will never get to the density rate required under Rule 34 which is at least one telephone per acre. He said La Cresta has 20-acre parcels, some of which have been subdivided into five-acre minimum parcels.

Ellickson explained that when he purchased his property in La Cresta, he asked the real estate agent about telephone service and was informed that it would be available in a few months. He said this appeared to be a reasonable answer because General's markers for buried cable had been placed throughout the area on Clinton Keith Road and on Avenida La Cresta and that he had taken pictures of them. He said that houses in the area are prewired for telephone service and there are cables from the houses out to the easement lines. Assertedly, there was nothing in the escrow papers or other documents pertinent to the sale to alert purchasers to a problem relative to telephone service. This was confirmed by testimony of a real estate agent. It was Ellickson's opinion that residents and

potential residents in the community would be willing to negotiate some kind of a reasonable arrangement, such as a surcharge on telephone service to pay for putting the lines in now.

Ellickson called Warren Baker, a property owner in the La Cresta area. He was employed by Boise Cascade at the time the development was filed. He said the white slip or public report for the development was issued in 1969, and thereafter in a two- or three-week period he sold the subdivision to individual property owners mostly in 20-acre parcels. Shortly thereafter Boise Cascade got into serious financial trouble and withdrew from the area. Assertedly, it also got out of the land business, the building business, and many other businesses. He said Boise Cascade was the original developer of La Cresta which was part of Rancho California. Kaiser-Macco assertedly was the original developer of Rancho California and owned it at the time Boise Cascade purchased La Cresta. It was his understanding that the purchase was for cash which Kaiser-Macco needed at the time. He said Boise Cascade did not initiate or complete any substantial development in La Cresta but merely got out of it by selling off lots. He said there is at present no single developer for La Cresta. Economic Consultants, a corporation, assertedly had an agreement with Boise Cascade six or seven years ago to buy property back from owners needing to sell it back, and then to resell it to other people. The witness said that company did no developing either.

Ellickson called Gerald Meyer, a construction superintendent with General. The witness has been with General for 30 years and was familiar with its expense-estimating procedures. It was his understanding that Rule 34 became effective in May 1970 and, prior

to that, line extensions came under Schedule A-31. The basic provision of Schedule A-31 is for 1,000 feet of line extension without charge with a charge of \$10 per 100 feet thereafter.

Meyer said that under Rule 34 each person requesting service is considered to be an applicant. He explained that General's accounting department updates records monthly for costs of labor and materials. Whenever a line extension cost estimate is required, it is based on the latest cost factors in the records. The cost estimates given to each individual in the La Cresta area under Rule 34 contemplated laying a sizable cable capable of serving others as well.<sup>5/</sup>

Eileen Sarace is in the real estate business in La Cresta. She testified that at the present time there are 22 occupied homes and another one that will be occupied. In addition, there are six homes that have been constructed and are for sale. She said she would like to have telephone service for her business, but the initial deposit requirement of General is \$254,000. She was aware there were no telephones available in La Cresta at the time she purchased her property there. She assumed it was probably just a matter of six months to a year before service would be installed. The witness stated that if she had a telephone at her location at La Cresta, approximately 90 percent of the calls would be long - distance toll calls since she would be calling principally to the Temecula area, which is approximately 16 miles away.

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<sup>5/</sup> At the prehearing conference Meyer estimated that the cost of bringing sufficient line capacity to the La Cresta area with distribution plant throughout the entire development would be approximately \$900,000.

Witness Marlene Rickard has been preparing to build a home in La Cresta. Construction assertedly has been delayed because of the absence of a telephone. She said she was aware when she purchased her property that there was no telephone service. She received an estimate from General of \$241,359 to bring a line to her house. Her husband is an electrician on 24-hour emergency call and uses a telephone to a great extent. If he had a telephone in La Cresta, he would make a great number of business calls outside the area. The witness purchased her property approximately three years prior to February 1980. At that time she was told by a real estate agent that telephone service would become available as soon as a few more people came into the area. She did not speak directly with the telephone company at the time.

Witness Beverly Walter resides in La Cresta on property known as the PC Bar Ranch. She and her husband recently leased a 10,000-acre place nearby where they run between 500 and 1,000 cattle. She had been aware there was no telephone service when she purchased her property. She received an estimate of \$272,827 from General to provide telephone service. She said if she had a telephone, 99 percent of her calls would be long distance. She said that the absence of a telephone is a hardship for her. She knew that the house they purchased was wired for telephone service and assumed it would be a short time before service was installed. In the meantime they have been driving 15 to 30 miles one way to pay telephones, and the cost has been approximately \$150 per month. In addition, there is the cost of gasoline and the amount of time that it takes to travel back and forth. The witness estimated that if mobile radiotelephone service were available, it would cost about \$350 per month. She said she was aware there had been problems with mobile radiotelephones because of poor reception in the area.

Witness Orien Fadler is a general contractor and resident of La Cresta. He was aware that telephones were not available when he purchased his property. He had seen General's markers along Avenida La Cresta and had gained the impression that telephones would be available in the near future. After moving in he had a mobile radiotelephone installed in his house. He said it was not an efficient method of communication. On April 9, 1980 he received a letter from General stating that because of Federal Communications Commission's rules, the mobile radiotelephone had to be removed from his residence by June. It was his understanding that this was because there is a shortage of facilities relative to the use of mobile radiotelephones in vehicles. He chose not to install one in his truck because even if it worked well, he would have had to spend most of his evenings in the truck.

General's Presentation

Counsel for General stated that charges made for line extensions are those on file and in effect at the time application for service is made. He contended that the date of the original subdivision is not relevant to the issues involved. Rule 34 became effective after the date of subdivision, and Ellickson's request for service was substantially after that.

General's counsel pointed out that Rule 34 is the direct result of Decision No. 78294 (1971) 71 CPUC 803 and Decision No. 78500 (1971). Both decisions were in Case No. 8993, which was a statewide investigation into line extension rules of all electric and telephone utilities. Among other things, each telephone utility was directed to file revised service connection rules consistent with provisions of Appendix C of Decision No. 78294.



Discussion

Section A.1.g. of Rule 34 defines real estate development as a project which does not meet the subdivision density requirements. A subdivision is defined as a development with a one station per acre density. Since La Cresta does not meet the density requirements of a subdivision, General believes it is a real estate development. This is a residual classification which General believes can include an individual's home, and since Ellickson is within a real estate development by definition, General thinks A.3.d. of Rule 34 applies. That section would require Ellickson to pay in advance the total cost of construction. General's tariff allows for refunds of construction cost if other people move in the area at a later date. (See Appendix A.) We disagree.

The question we must decide is whether, given the language of General's tariff, Ellickson is a new real estate development, since he does not meet the density requirements of a subdivision. General's rationale seems to be that since Ellickson's parcel is in an area failing to meet requirements of a subdivision, he automatically falls in the category of a new real estate development. This issue was addressed and resolved in Case No. 10976, Belfanz et al. v General Telephone. There we found individual lot owner applicants for service who are situated in a tract that at one time may have been a subdivision or real estate development are not, taken individually, new real estate developments. General's tariff is unclear. General's belief is that individual applicants for line extensions who reside in tracts which, at the time the individuals apply, are neither new subdivisions nor new real estate developments, and that they should be governed by the tariff provisions covering new subdivisions or developments (which are ordinarily wired in their entirety). However, we cannot construe the language of the tariff to reach this result. Accordingly, since the tariff provisions are unclear, we must find for Ellickson. It is not fair to apply unclear tariff provisions against the ratepayer. The tariff is the contract that governs when, how, and at what price a utility provides service.

The tariff language is set by General and the Commission, as the regulator approving tariffs: thereafter the individual seeking service comes as a new party. He was not a party when the tariff or contract was drawn. To bind him with uncertain or unclear language that has considerable economic impact, and to which he was not a party to the making, is onerous and unjust. These circumstances illustrate why utility tariffs must be carefully drafted. What confidence can the public have if, when questions such as this arise, its members are told: well, although it is not clear, the intention of the utility and the Commission is, reading between the lines, you really do fall in this category. Simply put, a utility's tariffs, or contract with the public under which it holds out service, must be clear.

General notes that even if Ellickson and similarly situated neighbors have suffered some injustice because the original developer walked away without following through with making phone service available, it would be unfair for all other ratepayers to bail them out by essentially subsidizing extending service. In a limited sense General's observation is technically correct. However, in a complaint proceeding we must look to the grievance before us which was brought by the individual, and apply tariff provisions, which is why tariffs, when established or modified, must be clear. It is when setting rates or establishing new tariff provisions that we look primarily to balancing the burdens among all ratepayers. We note that the revenue requirement effect on all ratepayers from granting Ellickson relief is de minimis.

Prospectively, at least, the recent amendment to Section 66473.2 of the Government Code (see footnote 3 infra) should go far in alleviating the potential for complaints such as this.

Findings of Fact

1. La Cresta is the name applied to an area in Riverside County near Rancho California. Some points in La Cresta are about 15 miles from Murrieta and about 16 miles from Temecula. Ellickson owns a home in La Cresta.

2. There is no public utility wireline telephone service in La Cresta.

3. The record shows there have been some difficulties with reception with mobile radiotelephones in the La Cresta area and monthly costs have been high.

4. Ellickson's home in the La Cresta area is about four miles from General's nearest line. General's initial deposit requirement to provide service to Ellickson is about \$100,000 under Rule 34.

5. Three witnesses own homes in the La Cresta area which are located greater distances from General's nearest line than Ellickson's home. General's initial deposit requirements to provide service to those homes range from \$241,359 to \$272,327 under Rule 34, using current costs of labor and material.

6. There are about 22 occupied homes in La Cresta. There also are a few more that are unoccupied or under construction.

7. The homes in La Cresta are on lots ranging in size from 5 to 20 acres.

8. There is no principal developer in La Cresta. Lots formerly owned by Boise Cascade were sold to individual owners sometime subsequent to 1969.

9. There was no requirement that Boise Cascade, Economic Consultants, or any other party include provision for telephone service with lots sold to individuals in the La Cresta area.

10. Rule 34 provisions pertaining to real estate developments would cause economic hardship to residents of La Cresta. Section A.3.d. of Rule 34 requires an applicant to pay in advance the total cost of construction.

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11. The \$100,000 amount estimated by General as the cost for constructing a line to Ellickson's home is not in dispute as being an inaccurate calculation of cost.

12. La Cresta does not meet the density requirements for a subdivision under Rule 34.

13. The applicable tariff provisions for line extensions are those on file and in effect at the time application for service is made.

14. Ellickson is an individual lot owner in a tract that at one time, for the original developer, was a new real estate development. He is not a real estate developer and his lot, taken alone, is not a new real estate development.

Conclusions of Law

1. General improperly applied its Rule 34 in estimating costs for line extensions to Ellickson and other individual homeowners in La Cresta.

2. The relief requested should be granted. General should apply its Schedule A-31, Sections B.1 and 2 to determine charges for individuals in La Cresta to receive line extensions for telephone service.

ORDER

IT IS ORDERED that:

1. The relief requested in Case No. 10831 is granted.
2. General Telephone Company of California shall apply Tariff Schedule Cal. P.U.C. A-31, Sections B.1 and 2 in determining the charge to complainant and lot owners in La Cresta for line extensions to their properties, *based on today's rate.*
3. General Telephone Company of California shall estimate and give quotations to applicants based on Schedule Cal. P.U.C. A-31, Sections B.1 and 2.

This order becomes effective 30 days from today.

Dated JUL 22 1981, at San Francisco, California.

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*Richard D. [Signature]* President  
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*[Signature]*  
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*[Signature]*  
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*[Signature]* Commissioners

Commissioner JOHN E. BRYSON

Present but not participating.

APPENDIX A

General's Rule 34(A) (3) (d) :

"d. Line extensions to and within new real estate developments in their entirety which do not satisfy the density requirement 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. 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. This adjusted advance, excluding any payments required by A.3.c.(2) above, is refundable as provided in A.3.d.(2) below.

"(2) When, within the first three-year period after completion of the Utility construction, the subdivision density requirement has been met, the Utility will refund the refundable advance in A.3.d.(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 refundable advance proportional to the ratio of the then permanent main telephone and PBX trunk line termination density to the subdivision density requirement. No interest will be paid on such advances."

(Schedule Cal. P.U.C. No. D&R, 5th Revised Sheet 65.1.)

General's Definition of "Subdivision":

"Improved or unimproved land under a definite plan of development wherein it can be shown that there are reasonable prospects within the next three years for five or more nontemporary main telephones and/or PBX trunk line terminations at a density of at least one per acre." (Schedule Cal. P.U.C. No. D&R, 9th Revised Sheet 12.)