ALJ/ems/jn

Decision No. 93369 AUG 4 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Allen L. Beckett, Complainant, vs. General Telephone Company, Defendant.	Case No. 10758 (Filed June 27, 1979)

Allen L. Beckett, for himself, complainant.
A. M. Hart, H. R. Snyder, and Kenneth K. Okel, by Kenneth K. Okel, Attorney at Law, for defendant.

O P I N I O N

Summary of Complaint

Allen L. Beckett, complainant, seeks an extension of telephone service to his residence at 37-095 Mason Avenue, Murrieta, California, under (tariff Schedule Cal. P.U.C. No. A-31 (Schedule A-31)[1/] (Charges for Line Extension and Service Connection Facilities in Suburban Areas) of General Telephone Company of California, defendant.

1/ If Schedule A-31 were applicable, defendant would have to pay for the 900-foot overhead extension needed to serve complainant, since the length of the extension is less than the 1,000-foot maximum free-footage allowance provided for in Schedule A-31. Defendant would have the option of installing an underground extension to serve complainant.

The complaint alleges that defendant's requirement of advance payment for the extension under defendant's Rule 34 (Line Extensions, Service Connections, and Facilities on Premises of Customer) is discriminatory since service is being made available all around him. The complaint cites cost estimates of $1,500 to $12,000 for the extension. The complaint contains a sketch identifying homes in Tract 4447, with and without telephone service.

Defendant's answer to the complaint admits that it requires advance payment for the extension under its Rule 34, but it refuses to make the requested extension under Schedule A-31.

Defendant's answer cites reductions in its estimates for the extension from $10,122 in April 1975 to $9,660 to correct a mathematical error. Its 1975 estimates were based on its belief that it could not provide access to complainant from existing telephone facilities at the corner of Los Alamos Road and Mason Avenue. In October 1977 defendant provided complainant with a new estimate of $1,558 from that intersection. Defendant also states that complainant failed to state a cause of action and requests dismissal of the complaint.

Hearing

After notice, a hearing was held in Los Angeles before Administrative Law Judge Levander on October 25, 1979. The matter was submitted subject to receipt of a letter from defendant which has been received (Reference Item A). This reference item sets forth dates when relevant tariff provisions were first made effective.

Complainant's Testimony

During the time Beckett was buying his 2½-acre lot, he was furnished with a State Real Estate Subdivision Report. He testified that the report said that telephone service would be available any time he needed it and that he discussed his need for telephone service with the realtor who sold his residential lot to him. He told the realtor that he was in the insurance business and a telephone was vital to his business since he would be living 65 miles from his office. He moved into his home near Murrieta in 1975. At that time the realtor told him that telephone service to Beckett's lot would be hooked up within three days and that Beckett would have to pay for the telephone installation.2/

He further testified that in 1975 defendant agreed to install a pay telephone on a northern corner of Los Alamos Road and Mason Avenue.

He contends that defendant discriminated in supplying telephone service to people living on Los Alamos Road, on the corner of Los Alamos Road and Mason Avenue, on Celia Avenue, and on Mary Place, including people living outside of Tract 4447, in Riverside County, but not to him.

2/ "Q. Did they tell you it would cost you anything to get the phone installed?

"A. Yes.

"ALJ LEVANDER: Did you ask?

"THE WITNESS: Yes." (RT 8.)

Defendant's Testimony

Gerald Meyer is the area construction superintendent for defendant's Murrieta Exchange Area. He testified that (a) Tract 4447 is located within defendant's Murrieta Exchange Area, but outside of the exchange's base rate areas; (b) by letter dated May 2, 1973, defendant supplied an estimate of $23,047 to provide telephone service to the entire tract to the developer, Checo Development Company, but the developer did not respond to its letter; (c) defendant classified Tract 4447 as a real estate development[3/] under its Rule 34; (d) Beckett's home is on Lot 22 of the tract (see Exhibit 2-1); (e) defendant's letter of April 16, 1975 (Exhibit 6) to Beckett requested a deposit of $10,122 (based on its Rule 34) before it would construct the facilities needed to provide him with service; (f) defendant's letter of August 29, 1975 (Exhibit 8) stated that Beckett's August 22, 1975 call alleging that defendant had not provided him with an adequate explanation of its position was unfounded and supplied him with another copy of its letter of April 16, 1975; (g) on August 18, 1976 a division manager met with Beckett to explore alternatives to provide telephone service to the tract; and that (h) defendant's letter of August 31, 1976 stated that it would probably install a temporary coin telephone near Mason Avenue and Los Alamos Road in the near future; it could provide Beckett with mobile service in a mobile unit, but not in a fixed location; and that the principal obstacle to the provision of regular service related to its Rule 34.

3/ This classification for low density subdivisions is applied when defendant forecasts a telephone main station density of less than one station per acre, three years after the extension has been completed. Defendant estimated that after three years 24 primary services might be on line in the 40-lot, 110-acre tract.

A resident engineer of defendant reviewed the original plan for the cable routing to Tract 4447 and decided that the tract would be fed from two directions to a point equidistant from defendant's Murrieta Central Office. This change reduced the cost of extensions to Beckett's home and to some of the other lots in the tract. Meyer sent letters to everyone in the tract who had been given an estimate for obtaining service whether or not it would affect them. If it did, they were given a new cost estimate, based on the provisions of Rule 34. The revised estimate provided to Beckett by letter dated October 27, 1977 was $1,558.

There were further conversations and correspondence between complainant and defendant on the revised cost, on splitting the cost between Beckett and two other property owners, on the refund provisions of Rule 34,[4/] and on the cost of extending service if Beckett dug the trench in conformity with defendant's specifications.

On May 9, 1979, after an informal complaint was filed with the Commission, the extension cost was revised to $1,486 based on defendant's then current estimates of materials, labor, and overhead.

Meyer quoted charges for the installation of facilities to serve 16 other lots in Tract 4447 and for 178 extensions in the Hemet and Perris areas involving over 200 individuals, based on defendant's Rule 34. Some of those individuals have paid to have service extended to their properties.

4/ If Beckett paid for the extension and the two other lot owners along that line received service within a three-year period, Beckett would receive a refund of approximately 40 percent of the amount paid for the extension.

Meyer also testified that if defendant was required to bear the cost of all facilities serving low density real estate developments, it would subsidize developers or real estate developments at the expense of its other customers. The testimony of Charles Jackson, a rate and tariff administrator, explained the application of Schedule A-31[5/] and Rule 34 to this dispute and cited D.76394 dated November 4, 1969 in C.8209 and D.78294 dated February 9, 1971 and D.78500 dated March 30, 1971 in C.8993 to show that the Commission had established statewide extension policies and that defendant is following that policy with respect to Beckett. He noted that Tract 4447 was recorded in 1973, about two years after the Commission adopted its undergrounding rule for such extensions. Defendant argues that Rule 34 is reasonable and provides for a sharing of extension costs in low density subdivisions.

5/ Special Conditions 1.a. and 8 of Schedule A-31 state:

"1. General

"a. Charges in this schedule are:

"(1) Applicable to aerial and underground facilities whether Utility or jointly owned or rented and to all classes, types and grades of service.

"(2) Not applicable within new subdivisions and real estate developments (Special Condition 8); or to farmer lines, toll station service and tree type construction."

"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

(Continued)

Meyer and/or Jackson also testified that (a) service connections were made to existing facilities in Los Alamos Road to Lots 1 and 12-18 fronting on Los Alamos Road and to Lot 19 on the southwest corner of Los Alamos Road and Mason Avenue; (b) a large parcel outside of Tract 4447 at the corner of Celia Avenue and Mary Place was divided into four lots, larger

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5/ (Continued)

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."

than those in Tract 4447,[6] under Parcel Map Filing 8638;[7] (c) the owners of those lots were entitled to service under Schedule A-31; (d) since the extension was less than 4,000 feet (four times the 1,000 feet per participant free-footage allowance) those participants were entitled to have an extension placed at defendant's expense; (e) Rule 34 would have applied if a subdivision of five or more lots had been created; (f) once the extension was installed, owners of lots abutting the extension on Celia Avenue and on Mary Place were provided with service without charge; and that (g) a further extension to serve residences on Lots 28 and 34 required a payment under Rule 34.

Discussion

Defendant's letter of April 16, 1975, sent in response to Beckett's verbal inquiry, states that it requires a deposit paid in advance, in accordance with its tariffs, filed with this Commission; explains the applicable refund provisions; states that since the developer had not made provisions for telephone service, Beckett would have to deposit the estimated cost of construction to his home; and invites further toll-free inquiry to resolve any remaining questions. Beckett states that defendant informed him that Rule 34 applied, but it took him almost a year to find out what Rule 34 applied to (RT 4). The record does not indicate when Beckett first reviewed Rule 34 and Schedule A-31.

6/ The average size of the four parcels is greater than three acres.

7/ The Parcel Map land division is not defined as a real estate development or as a subdivision.

Defendant revised the plan it used to provide an estimate to the developer of Tract 4447 from a configuration along rear property lines, except for Mason Avenue, to a less expensive street routing at the time it provided its original estimate to Beckett. After several years of development in various portions of the Murrieta Exchange Area, defendant again reviewed its plan for supplying Tract 4447 and determined that the tract could be supplied service from two directions.

A plan not acted upon on a timely basis may become obsolete because later installations, made to serve other tracts or to provide backbone capacity, could either use up previously available backup capacity or could provide a closer and more economical tie-in to the original tract. The revisions in plans for serving Tract 4447 occurred over a span of several years.

The filings of Rule 34 and Schedule A-31 by defendant were designed to comply with Commission orders which, in part, establish uniform criteria for extension rules and rules governing apportionment of costs in low density subdivisions.

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.

Since the minimum lot size in Tract 4447 and the size of complainant's lot are both under three acres, defendant is required to install an underground extension to complainant's property. Since rates specified in Schedule 31 are for an aerial, or at the utility's option, underground extension to plant, Schedule 31 is inapplicable. Defendant does not have the option of installing an aerial line extension.[8/]

The relevant general provisions of Rule 34 state the following:

> "A.1.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."

Sections A.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.

8/ D.93303 in C.10926 and D.93365 in C.10831, both dated July 22, 1981, order defendant to supply service under Schedule A-31 to individuals in real estate developments requesting service to their residences on lots which are larger than three acres in size.

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

Defendant contends that Rule 34.A.3.d., which it has been applying to the type of requests for service, made by complainant, 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. 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 sometime 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.[9/] 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).

Tract 4447 is neither a new subdivision nor a new "real estate development". Portions of Tract 4447 are now being served by defendant. Complainant is not seeking service to the entirety of that real estate development. 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 belive the tariff provisions relied upon by defendant 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

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9/ Had the developer of Tract 4447 requested defendant to install line extensions to serve his new real estate developments in its entirety under Rule 34.A.3.d., defendant could have used its existing line in Los Alamos Road to provide service. Such use of existing lines is not explicitly mentioned in Rule 34. Rule 34.A.3.d. does not explicitly require a subdivider to pay for a line extension to a portion of the subdivision or real estate development in a multiphased project where portions of the development would otherwise qualify under Rule 34.A.3.d.

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"?

Defendant should have applied Rule 34.A.3.e. to extend its line to complainant. Defendant does not have authority to apply Rule 34.A.3.d. to a line extension to serve a portion of a real estate development. At the time D.78294 was issued the cost of underground line extensions was generally more expensive than overhead extensions. An applicant under Rule 34.A.3.e. would have paid three-fourths of the differential cost based on the assumption that underground construction was more costly than overhead construction. If an underground extension to serve complainant is not more costly than an overhead extension, there should be no line or service connection charge for providing service to complainant. The cost to defendant for providing the 900-foot extension to serve complainant does not appear to be unreasonable compared to its providing service under Schedule A-31 to the four lots in Parcel Map Filing 8638. Schedule A-31 provides for a 1,000-foot free footage allowance per connection. A comparable limitation for an extension under Rule 34.A.3.e. would provide a reasonably comparable apportionment of the cost between defendant and individuals seeking extensions under either Schedule A-31 or under Rule 34.A.3.e. Defendants could file an advice letter to limit the free or reduce costs for an underground extension under Rule 34.A.3.e. and to apply Rule 34.A.3.d. to a portion of the subdivision or real estate development in a multiphase project.

Defendant will be ordered to extend service to complainant based upon application of Rule 34.A.3.e. and/or to refund the difference between an advance received under Rule 34.A.3.d. and the advance due under Rule 34.A.3.e. for an extension made after submission of this proceeding.

Findings of Fact

1. Complainant lives at 37-975 Mason Avenue, near Murrieta, California. His home is on the 2½-acre Lot 22 of Tract 4447 in Riverside County.

2. The developer of Tract 4447 did not elect to install facilities to provide telephone service to Tract 4447, which were based on defendant's Rule 34.A.3.d.

3. The realtor who sold Lot 22 to complainant advised him that he would have to pay to get an extension of telephone service to that lot.

4. Defendant has furnished complainant with estimates for onstruction of an extension to serve his home based on Rule 34.A.3.d. of its filed tariffs.

5. With the passage of time the route for extending service to complainant's home has changed. Defendant's cost estimates changed to reflect changes in routing, to correct a mathematical error, and to reflect changes in underlying costs. Defendant's latest estimate for an extension is $1,486.

6. Defendant constructed an extension of its system capable of serving the four lots in Parcel Map 8638 in accordance with its Schedule A-31. The length of the extension was less than the maximum 4,000-foot free-footage allowance in Schedule A-31.

7. Defendant provided service without extension charges to customers in Tract 4447 whose lots were alongside an existing facility in Los Alamos Road.

8. Defendant provided service without extension charges to customers in Tract 4447 whose lots were alongside the facilities constructed to serve lots in Parcel Map 8638.

9. Defendant received payment for a subsequent extension of service to residences on Lots 28 and 34 of Tract 4447 based on its Rule 34.A.3.d.

10. Rule 34.A.3.d. applies to line extensions to and within new real estate developments in their entirety. It does not apply to line extensions to a portion of a real estate development. Extensions to Lots 22, 28, and 34 of Tract 4447 should not be based on Rule 34.A.3.d.

11. Defendant is required to construct an underground extension to serve the two and one-half acre lot owned by complainant.

12. Charges under Schedule A-31 are for an aerial or, at the defendant's option, underground extension to plant. This schedule can not be used for extending service to complainant.

13. Defendant should extend service to defendant based on Rule 34.A.3.e. which is applicable to all other underground extensions.

Conclusions of Law

1. Defendant is required to construct an underground extension to serve the two and one-half acre lot owned by complainant.

2. Charges under Schedule A-31 are for an aerial or, at the defendant's option, underground extension to plant. This schedule can not be used for extending service to complainant.

3. Defendant improperly used Rule 34.A.3.d. in extending service to Lots 28 and 34 in Tract 4447.

4. Defendant properly applied its tariff Schedule A-31 in extending service to the lots in Parcel Map 8638.

5. Defendant properly provided service at no line extension charge to those customers in Tract 4447 whose lots were alongside an existing facility.

6. Defendant should base its charges for an extension of service to complainant's home based on its Rule 34.A.3.e.

O R D E R

IT IS ORDERED that General Telephone Company of California (defendant) is ordered to provide an extension of service to the home at Allen L. Beckett at 37-095 Mason Avenue, Murrieta, California, based on its Rule 34.A.3.e. If the extension has been installed, any charges collected for the extension in excess of those based on Rule 34.A.3.e. shall be refunded by defendant.

This order becomes effective 30 days from today.

Dated AUG 4 1981, at San Francisco, California.

President

Commissioners