

AUG 14 1995

Decision 95-08-059 August 11, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Matrix Cablevision, Inc.,)
 Complainant,)
 vs.)
 GTE California Incorporated,)
 Defendant.)

(ECP)
 Case 94-09-043
 (Filed September 19, 1994)

ORIGINAL

Brad Daniel, for Matrix Cablevision, Inc.,
 complainant.
Sandra Newmark, for GTE California
 Incorporated, defendant.

O P I N I O N

Brad Daniel, owner of Matrix Cablevision, Inc., complainant, alleges that defendant, GTE California Incorporated (GTE), violated General Order (GO) 95, Rules for Overhead Electric Line Construction. Daniel alleges GTE attached its service line to his cable television (CATV) line during 1991-1994 by installing a second bracket onto his brackets. Daniel alleges that these acts damaged 1/2 mile of his CATV line and caused disruption of his television system. He also alleges that GTE completely severed the CATV line at one location. Complainant requests that his pole rental charges be waived for the entire period of his rental of space from defendant.

GTE denies these allegations and requests that the complaint be dismissed or denied.

A hearing under the Commission's expedited complaint procedure was held in San Francisco, California on November 2, 1994. Both parties presented testimony and documentary evidence. We conclude that GTE has violated GO 95 and we grant complainant's

request to waive pole rental charges. We order the Safety and Enforcement Division (Division) to investigate the issue of fines or penalties and whether a formal investigation of the GTE practices identified in this proceeding is justified.

The Hearing

In January 1990 Daniel submitted to defendant an application requesting approval to sublease pole attachment space for CATV facilities within space leased by GTE from Pacific Gas and Electric Company (PG&E). The sublease of such space by defendant is an unregulated utility activity. The Commission's only jurisdiction concerning pole attachment fees is to determine the charges if the parties cannot agree.¹ However, the construction and maintenance of overhead power lines is regulated under GO 95.

In January 1991 complainant received a letter from defendant. The letter indicated that review of his application was delayed because GTE was engaged in major rebuilding of the telephone line in the Los Gatos and Saratoga areas. However, defendant authorized complainant to start construction of his CATV facilities in space within specified standards on telephone poles leased by GTE. GTE informed complainant that he was solely at risk for his facilities and may be required to remove or rearrange them at his own expense in the future due to GTE's rebuilding.

(Exh. 3.) Subsequently, complainant installed a coaxial CATV system within boundaries prescribed by GTE.

Sometime prior to April 1994 defendant began to attach its line to that of complainant in the Saratoga area. Daniel had had the same problem in 1990 in another location.² When he inspected his line in Saratoga, complainant discovered that his

1 See Public Utilities Code § 767.5.

2 This complaint is limited to post-1991 events.

cable was flattened and bent in numerous locations. At one location where a tree fell onto a home and PG&E trimmed trees to prevent further damage, complainant's line was completely severed. Witnesses to the incident told complainant it was defendant's employees who cut the CATV line. Defendant's employees reported that PG&E cut the line.

Shortly after he reported the cut line to defendant, Daniel met with one of defendant's employees, an unidentified construction worker, and complained. In July 1994, Daniel met with Chuck Cernicky, GTE's Bay Area construction coordinator, to voice the same complaint. After this meeting, Cernicky instructed workers not to attach GTE's line to that of complainant and this action ceased. However, the existing attachments remained. Cernicky testified that these conditions continued for one year.

Daniel provided photos of numerous locations where in 1994 he removed GTE brackets from his brackets. Several photos show how Daniel secured GTE's line to the telephone pole with rope after removing it from his brackets. One photo shows a second bracket installed in the hole with complainant's bracket. The second bracket is holding GTE's line roughly 2-4 inches from the CATV line. One photo shows snarled coaxial cable. Another photo shows the severed coaxial cable. (Exh. 2.)

Defendant argues that these photos are undated. However, complainant testified that they were taken early in September 1994 and presented the developing envelope dated September 15, 1994. This evidence verifies complainant's testimony on this issue.

Defendant's construction supervisor, Ronald Thiesen, admitted that the work crew attached GTE's service line to the CATV line as complainant described. He explained that this was necessary to maintain the required 18-foot clearance above the streets and to avoid drilling another hole at the top of the pole. He explained that a second hole too close to either the old hole

for GTE's cable or the hole for complainant's cable would have weakened the top of the pole.

Defendant's construction coordinator, Cernicky, explained the rebuilding project was delayed because of GTE's budget and the delay in obtaining new poles for certain locations. Once under way, GTE transported its construction crews from throughout the state to complete the project. GTE did not notify Daniel when the project actually began in 1993-1994. The only notice of the project GTE provided to Daniel was the 1991 letter sent to authorize construction of his system. GTE argues that this 1991 notice is sufficient to satisfy GO 95 requirements. GTE contends that Daniel was aware the project had begun from his frequent visits to inspect his own facilities.

Cernicky testified that it is a common practice for GTE to attach its line to CATV line on poles and in mid-span sections, such as a line over a street. He believes complainant's removal of GTE's line from brackets and attaching line to poles with rope created a hazardous condition. He believes that the rope used would not prevent the line from falling if a high wind or rain occurred.

Both parties agree that the attachment conditions no longer exist, and GTE's line replacement project in complainant's area is completed. GTE contends that the conditions in dispute existed only temporarily for a period of one year, and were safe. Therefore, no violation of GO 95 should be found.

Discussion

GO 95 requires that in locating and constructing lines, efforts be made to avoid creating any conflicts with other lines. (Rule 31.3.) It was obvious to GTE that repositioning its old line might conflict with complainant's CATV line. However, Rule 31.3 requires GTE to attempt to resolve the conflict between lines prior to such installations. Daniel was never consulted before GTE attached its line to his. Therefore, GTE has violated Rule 31.3.

GO 95 specifies that any party contemplating construction or reconstruction which would create a conflict with a line of another classification is required to notify the party operating the other line in advance of the construction, giving full information about the location and character of the proposed construction. The parties are required to cooperate to avoid conflicting lines and minimize the hazard. (Rule 31.4.) Although GTE notified Daniel of the general rebuilding project, it did not provide full information about the location and character of the attachment of GTE lines to Daniel's line. Neither was Daniel offered the opportunity to provide his views of how any hazards might be avoided. Therefore, GTE has violated Rule 31.4.

Where there is joint use of poles, each party should definitely designate its space requirements which shall not be occupied by the equipment of another party without consent. (Rule 31.5.) GTE has violated Rule 31.5 by not obtaining the prior consent of Daniel before invading the space allocated to him on the telephone pole.

Rule 38 requires a 12-inch vertical clearance between wires at crossings and supports. (GO 95, Table 2, Case 8C.) GTE has violated this requirement by maintaining vertical clearances between its old line, after GTE repositioned it, and defendant's line of less than 12 inches for a period of one year without Commission approval.

Daniel requests that GTE be penalized for its acts and ordered to waive his monthly charges which have not yet been billed. We have jurisdiction to set the pole rental fee if it is in dispute. Complainant's use of pole space was unlawfully invaded by defendant. In essence, he did not have exclusive use of the agreed space during the period GTE repositioned its lines. Therefore, we grant complainant's request to waive rental charges for this period. We will defer the issue of fines and penalties until further investigation by the Division. We are concerned that

the violations in this proceeding and the admitted practice of repositioning GTE lines in violation of GO 95 create unsafe conditions which GO 95 seeks to avoid. Therefore, we will order the Division to informally investigate GTE's practices of attaching its line to that of other cable television lines. The Division should advise us if a formal investigation is justified.

ORDER

IT IS ORDERED that:

1. The requested waiver of charges for the rental of telephone pole space is granted.
2. The Commission Safety and Enforcement Division (Division) shall review the issue of fines and penalties and the safety of GTE California Incorporated's practice of attaching its line to that of cable TV as described in this proceeding. The Division shall request a formal investigation of these practices if such an order appears to be justified.

This order is effective today.

Dated August 11, 1995, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY

Wesley Franklin
Acting Executive Director