

Decision 96-09-093 September 20, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION (OF THE STATE OF CALIFORNIA)

California Alliance for Utility Safety and Education,
Complainant,

ORIGINAL

Case 96-03-027

vs. Rancho Bernardo (Filed March 14, 1996)

San Diego Gas & Electric Company,
Defendant.

Future completion of a link between Sycamore and Ranch Canyon substations along a route in Rancho Bernardo that CAUSE alleges is not a route preferred by the community.

1. Summary: The complainant alleges that SDG&E engaged in this project. This decision dismisses the complaint against San Diego Gas & Electric Company (SDG&E) for failure to state a claim upon which relief can be granted, and that the utility should be ordered to construct or upgrade certain power lines in the community of Rancho Bernardo in the City of San Diego. The complaint is not altogether clear, but it appears to target four SDG&E projects conducted over the past 17 years. These are said to be construction in 1979 of a 7-mile overhead 69-kilovolt transmission line and a 12-kilovolt line intended (according to SDG&E) to eliminate equipment overloads and low voltage in the area.

2. Nature of the Complaint

The California Alliance for Utility Safety and Education (CAUSE), an unincorporated association, alleges in its complaint that SDG&E had acted unreasonably and had violated Commission policy in constructing or upgrading certain power lines in the community of Rancho Bernardo in the City of San Diego. The complaint is not altogether clear, but it appears to target four SDG&E projects conducted over the past 17 years. These are said to be construction in 1979 of a 7-mile overhead 69-kilovolt transmission line and a 12-kilovolt line intended (according to SDG&E) to eliminate equipment overloads and low voltage in the area.

SDG&E in its answer also addressed what it assumed to be another contested project, the construction of a 69-kilovolt overhead line in 1994-95 in the Sycamore Canyon-Bernardo area 340 feet within the Rancho Bernardo boundary. CAUSE in its response to the motion for summary judgment (20 pages long and refers to 60 pages of attachments.

- * Construction and upgrading (or reconductoring) of overhead 12-kilovolt distribution lines adjacent to where the Bernardo Heights school was later erected. SDG&E states that this work was done to eliminate overload conditions in the area.
- * Upgrading of a 69-kilovolt overhead transmission line in 1993 in a neighborhood of Rancho Bernardo, which SDG&E states was done to improve electric reliability.
- * Future completion of a link between Sycamore and Ranch Carmel substations along a route in Rancho Bernardo that CAUSE alleges is not a route preferred by residents of the community.

The complaint alleges that SDG&E engaged in these projects in violation of its tariffs and Commission rules, that the utility acted unreasonably in not placing these lines underground instead of overhead, and that the utility failed to give proper notice or establish the need for improvements in some or all of these projects.

3. Response by SDG&E

SDG&E denies the allegations of wrongdoing and asserts that it followed all applicable state and local laws in each and every project. Complainant criticizes (Answer, p. 34) It states that it works directly with municipalities, including the City of San Diego, on when and where to establish undergrounding projects pursuant to its tariffed Electric Rule 20. SDG&E alleges that it has made numerous home visits and communicated frequently since

² SDG&E in its answer also addressed what it assumed to be another contested project, the construction of a 69-kilovolt overhead line in 1994-95 in the Sycamore Canyon-Bernardo area 340 feet within the Rancho Bernardo boundary. CAUSE in its response to the motion to dismiss states that this project was not part of its complaint.

assertions are false or misleading, and that many of the claims are or should be time-barred in law or in equity.³ CAUSE in its response again urges the Commission to require SDG&E to remove the overhead lines that are the subject of the complaint and replace all or part of these lines with what it believes could be "approximately 2.2 miles of underground 69 kV (kilovolt) transmission and 12 kV distribution lines (with additional infrastructure for future lines) along Camino del Norte, a shorter route which would replace approximately 5.5 miles of existing overhead 69 and 12 kV lines." (Response to Motion to Dismiss, p. 2.) CAUSE also sets forth the laws and Commission orders upon which it bases its complaint, specifically: (1) Rule 15.1, (2) Kramer-Victor Decision 90-09-059, and (3) Decisions E73078 and 85497. (Response to Motion to Dismiss, p. 2.)

In order to determine whether the complaint states a cause of action upon which relief can be granted, we will examine each of the laws and Commission orders which CAUSE states have been violated in one or more of the SDG&E projects in Rancho Bernardo.

Rule 15.1 Tariff Rule 15.1, which in July 1995 was superceded by SDG&E Tariff Rule 15, deals with underground extensions within new residential developments. The rule was in effect when SDG&E in 1986 constructed 2.5 miles of overhead line extensions in Camino

del Norte. SDG&E also alleges that the requested relief would be

contrary to the interests of SDG&E customers as a whole since
³ Because we find that the complaint fails to state a cause of action upon which relief can be granted, we do not reach the issue of timeliness. We note, however, that the relief sought here is of an equitable nature, thus giving rise to the doctrine of laches, which prevents relief as to stale claims. (In re Alternative Regulatory Frameworks (1994) 55 CPUC2d 681, 687.) Obviously, it would be difficult for the Commission and for the parties to explore at this late date the two complained-of projects that are 17 years old and 11 years old, respectively.

Bernardo, a new residential subdivision of 351 lots in Rancho Bernardo. CAUSE alleges that Rule 15.1 requires that "all electric distribution systems within new residential subdivisions be installed underground and that only the Commission can approve the exceptions." (Complaint, p. 4.) In fact, the rule on its face addresses extension of underground distribution lines at available standard voltages necessary to furnish permanent electric service within a new subdivision (Rule 15.1, sheet 1). Based on exhibits within the complaint, the Camino Bernardo development did not involve extension of underground lines and, in any event, the developer obtained an underground waiver from the City of San Diego covering SDG&E's construction and permitting extension of existing overhead lines (Complaint, Exp B).

Since SDG&E proceeded by way of underground waiver from the City of San Diego, and since there is no showing that the provisions of Rule 15.1 were applicable to the type of construction at issue, the complaint fails to show that the 1986 construction was done in a manner that violated Rule 15.1.

Kramer-Victor Decision

In Kramer-Victor (Re Southern California Edison (1990) 37 CPUC2d 413), the Commission authorized Southern California Edison Company (Edison) to construct a new transmission line between Edison's Kramer and Victor substations in the Mojave Desert. The line was needed for delivery into Edison's load center of electricity from certain qualifying facilities, or independent power producers. The decision examined the controversy regarding health effects of electromagnetic fields (EMF) emanating from electric transmission lines. While noting that the environmental report found such risks to be speculative, the Commission nevertheless required Edison to notify residents of the controversy and to take reasonable steps to minimize any increase in EMF along the route of the installation.

CAUSE alleges that SDG&E's upgrading of a 69-kilovolt overhead transmission line in 1993 violated the EMP policy set forth in the Kramer-Victor decision. SDG&E responds that Kramer-Victor stemmed from an application, and therefore was limited to the facts and parties involved; that it dealt with transmission lines in excess of 200 kilovolts, not 69 kilovolts; and that, in any event, it set no industry standard for EMP. SDG&E asserts that the Commission's statewide EMP design policy is set forth in a November 1993 decision, based on a formal investigation (Re Potential Health Effects of Electric and Magnetic Fields of Utility Facilities (1993) (2 CPUC2d.1.)) While Kramer-Victor expressed the Commission's concerns about EMP, we agree with SDG&E that it did not set a statewide policy applicable to overhead line construction. That was done in the November 1993 investigation decision, which created a \$5.6 million research program and a \$1.5 million statewide EMP education program, and which imposed statewide EMP design criteria on California electric utilities. CAUSE's complaint appears to allege no violation of this later decision, and its reliance on the more limited guidelines applicable to Edison in the Kramer-Victor project is misplaced.

Decisions 73078 and 85497 (the Commission's decision on CAUSE's complaint) (D. 73078 (67 CPUC 490 (1967)), and D. 85497 (79 CPUC 503 (1976); digest only) has standing for the proposition that electric utilities must seriously consider and undergrounding of transmission lines if that is impractical, or rerouting overhead lines for aesthetic and economic reasons. More precisely, what these decisions did was to require adoption of tariff rules for residential and commercial undergrounding typified in SDG&E Rules 15.10 and 15.21 (superceded in 1995 by Rule 15). Order D. 73078 also required each electric utility, including SDG&E, to set aside funds each year for undergrounding projects to be recommended by cities and counties served by each utility.

SDG&E's tariffs, city recommended conversion is covered by Rule 20 (Replacement of Overhead with Underground Electric Facilities) CAUSE alleges that SDG&E's reconductoring of overhead 12 kilovolt distribution lines in 1985 in an area where the Bernardo Heights school was later erected violated the Commission's directions as set forth in D.73078 and D.85497 because Rancho Bernardo's master plan required that all utilities be placed underground for aesthetic reasons. (Response to Motion, p.6.) Actually, the decisions cited by CAUSE established a system in which a municipality (in this case, the City of San Diego (City)), and not SDG&E, set the priority for undergrounding power lines in its region. The City has two options in requiring undergrounding. As part of its approval process for new developments, it can require all existing overhead lines to be buried. Or the City can include existing overhead lines in its Rule 20 conversion program. The City of San Diego chose not to exercise either option for the lines disputed in this complaint. (Motion to Dismiss, p.3.)

While D.73078 and D.85497 established an ambitious program for encouraging undergrounding where practical, CAUSE directs us to no requirement in those decisions that would suggest a violation of Commission rule in the installation in question. It argues that SDG&E acted "unreasonably," but it fails to link any "unreasonable" act with a requirement or ordering paragraph of the decisions cited.

Other Finally, as to the Sycamore-Rancho Carmel substation work proposed in the future, we are unable to find in the complaint or

The complaint fails to show that the construction projects at issue were conducted in a manner that violated the

4 CAUSE states that the Rule 20 underground conversion program is not at issue in this complaint. It states that "misuses of the 20-A program" are the subject of another complaint that it has filed with the Commission.

in the response to the motion to dismiss any allegation that SDG&E's proposed routing constitutes a violation of a Commission rule or order. The allegation that many residents would prefer another route is insufficient to state a cause of action upon which the Commission can act.

7. Conclusion

Complainants have failed to state a cause of action upon which the relief requested (essentially rerouting and undergrounding of the disputed lines) can be granted. There is no showing of a violation by SDG&E of any provision of law or of any order or rule of this Commission, as required by PUC Code § 1702.10. Accordingly, we will grant the motion to dismiss.

Findings of Fact
1. CAUSE filed this complaint on March 14, 1996, alleging violations by SDG&E in its construction or upgrading of four power line projects since 1979 in the community of Rancho Bernardo in the City of San Diego.

2. After filing its answer, SDG&E on May 22, 1996, filed a motion to dismiss, alleging that the complaint failed to state a cause of action on which the Commission could grant the relief requested.

CAUSE responded to the motion to dismiss on June 5, 1996, stating that its complaint was based on alleged violations of SDG&E's tariff Rule 1571 (D.90-09-059; D.73078; and D.85497).

Conclusions of Law

1. The complaint fails to show that the construction projects at issue were conducted in a manner that violated Rule 1571.

2. The complaint fails to show that the construction projects at issue were conducted in a manner that violated BMP requirements.

CAUSE states that the Rule 1571 program is not at issue in this complaint. It states that "mistake of the 20-A program" are the subject of another complaint that it has filed with the Commission.

3. The complaint fails to show that the construction projects at issue were conducted in a manner that violated the undergrounding requirements of D.73078 or D.85497.

4. The motion to dismiss for failure to show a cause of action should be granted.

O P I N I O N

IT IS ORDERED that:

1. The motion of San Diego Gas & Electric Company to dismiss the complaint is granted.

2. This case is dismissed for failure to state a claim upon which relief can be granted.

3. Case 96-03-027 is closed.

This order becomes effective 30 days from today.

Dated September 20, 1996, at San Francisco, California.

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