

APR 23 1998

Decision 98-04-061 April 23, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Gloria Jean Smith,

Complainant,

vs.

Pacific Gas and Electric Company,

Defendant.

Case 97-06-005
(Filed June 4, 1997)

Jean Smith, in propria persona,
complainant.

Minami, Lew & Tamaki, by
Lauren Harris, Attorney at Law and
Mark Acuna, for Pacific Gas and
Electric Company, defendant.

O P I N I O N

Summary

Complainant Gloria Jean Smith's (Smith) request for an order requiring defendant Pacific Gas & Electric Company (PG&E) to apply the terms and conditions of its Electric Rule 15 tariff that existed before July 1, 1995, to a line extension on her property is denied, and the complaint is dismissed. This decision closes the proceeding.

Background

Smith is the owner of a 43-acre undeveloped parcel which extends along the length of a tributary canyon near the American River Canyon in Placerville.

She plans to develop this parcel by building, first, a residence, and then a center for at-risk adolescents, on portions of the property. In order to do so she will need to have an electric distribution line extension built to her homesite, which is some distance down the canyon from the nearest PG&E distribution facility on her property.

The PG&E tariff which governs the line extension is "Electric Rule 15—Distribution Line Extensions" (Rule 15). This tariff was revised in 1995, and the new version became effective July 1 of that year. In a number of instances where line extension applications were pending at the time of the change, the Commission decided that an applicant was entitled to build the extension under the terms of the older version of the rule, where the applicant had contacted PG&E before July 1, 1995, and also was ready to receive service by December 31, 1995.

Smith believes that implementation of the earlier version of the tariff would be to her advantage in light of her circumstances. She claims that the estimated cost of her line extension would be no more than \$8,000 under the old tariff, as compared to about twice that figure under the current version. PG&E contends that her application does not meet the requirements for her line extension to be "grandfathered" under the earlier version of the tariff, and refuses to proceed with the project under those tariff principles. The dispute has resulted in an impasse, and Smith has delayed work on the line extension until the applicable tariff is definitively established. Consequently, she filed this complaint before the Commission, alleging that PG&E has misapplied Rule 15 by refusing to accord her the benefit of the earlier version of the rule, and requesting an order to require PG&E to do so.

A formal evidentiary hearing (EH) was held to establish the factual record. PG&E stipulated that Smith's application meets the first prong of the test for application of the older version of Rule 15, i.e., that she had notified PG&E about

her need for the line extension before July 1, 1995, but introduced evidence to refute Smith's claim that the site was ready to receive service by January 1, 1996. This is the only issue we must decide.

Smith, who is not an attorney, represented herself at the hearing, and the administrative law judge (ALJ) allowed the parties considerable latitude to offer evidence about the readiness of the applicant to receive service. In addition, following adjournment of the hearing the ALJ and the parties made a brief visit to the property, viewing it from a location on an adjacent road where Smith has graded a steep driveway to her homesite. The proceeding was submitted at the conclusion of these events on November 3, 1997.

Discussion

Although she had earlier contacted PG&E to inquire about the cost of the line extension, the first document which specifically sets forth the information needed by PG&E to make an estimate was a written application dated August 30, 1995 (Exhibit 8). Joseph Coster, PG&E's new business representative for the territory at the time, testified that he had received this application by September 6. This document includes a copy of an assessor's parcel map indicating Smith's parcel, upon which the location of her homesite is noted. On a second copy of this attached map is a measurement of the distance from the south boundary of the property to the location along the east boundary where the temporary driveway was to be graded. A third, hand-drawn map depicts the relationships between the homesite, the temporary driveway, a creek that runs through the length of the parcel, and the location of the nearest PG&E distribution pole on the property.

Under the heading "Project Information," the application discloses that Smith planned to build a full-time residence of 1200 square feet, starting construction on October 1, 1995, with a completion date of January 31, 1996.

Under "Electric Service Requirements" Smith has identified the specific appliances to be installed in the home, all of which (including heating, cooking, and laundry appliances, and the water heater) are to be electrically operated. The application specifically indicates that there will be no gas service requirements of any sort.

Based upon the information in this application, Mr. Coster estimated that the required extension was 2932 feet. He was also able to compute the amount of free footage to which Smith would be entitled under the old Rule 15, based upon the actual installation of appliances, and was therefore able to compute the excess footage. At the hearing he testified that the total payment would be \$19,062.24, predicated upon installation of the appliances identified on the application. In comparison, under the new version of the tariff the total estimated cost of construction would be \$36,608.80; with the so-called "50% option" Smith would make a single nonrefundable payment of \$18,304.40 to have PG&E build the line. Provision of temporary power for construction under Rule 13 was not an available option, because there is no secondary voltage on the property and the expense would be prohibitive.

On October 11, 1995, John Simpson, the New Business Representative for the El Dorado District, wrote a letter to Smith setting forth the requirements for performing further engineering work before final agreement could be reached regarding the installation of the line extension. (Exhibit 9.) The letter states that PG&E would proceed with the preliminary engineering work after she paid PG&E a \$1000 deposit to cover the anticipated cost of the engineering work. This deposit would be refunded to her or credited against amounts due when installation of the facilities was complete.

According to Smith, she never furnished the deposit because she did not want to do so until she knew with some degree of certainty what the cost of the line extension would be. At this time she believed, based upon her first

telephone contact with a PG&E representative earlier in the year, that the cost of the extension would be somewhere between \$5,000 and \$8,000 under the pre-July 1 tariff, and said that she would not proceed with the project if the cost were in the neighborhood of \$18,000 or more. It is unclear, however, whether the figure she says she was quoted at first took into account refunds or allowances available for connected load under the older version of Rule 15.

Whatever the reason was for her decision, at this juncture Smith stopped pursuing construction of the home and the line extension for several months, until she obtained a grading permit on June 21, 1996 for the temporary driveway. (Exhibit 10.) The plans for her home are dated July 24, 1996, and were filed with El Dorado County thereafter. Consequently, she had neither a grading permit nor the necessary building permit until well after January 1, 1996.

In sum, as of December 31, 1995, the status of the project was that Smith owned the parcel, and was in a position to grant an easement to PG&E for the line extension; she had submitted an application for the line extension to PG&E, and therein had identified the location of the site for her home and the anticipated permanent load; and she was aware of the need to advance the \$1,000 preliminary engineering fee if PG&E was to do the work under Rule 15. On the other hand, she had not decided whether to have PG&E build the extension; she had not paid the engineering fee, nor had the engineering done by a qualified contractor; and she had not entered into an agreement with PG&E concerning the line extension. She had neither graded to her homesite, nor obtained a building permit for her home, and had no plans for the structure. In short, she was not ready to receive service as of January 1, 1996, and would not be ready, as it turned out, until at least six months later.

The result might have been different if Smith had heeded the October 11 letter and made arrangements, either with PG&E or a qualified contractor, to pursue the details of engineering design and creation of a right of way for the

line. Instead, she opted to delay her decision until after the deadline passed more than two months later. In this respect Smith's actions are clearly distinguishable from those of the applicants in Resolution E-3475, *Request of Lawrence E. and Carolyn V. Bohlke etc.* (December 9, 1996), where the applicants submitted the \$500 fee and were pursuing efforts to obtain an easement when the clock ran out. In that resolution we observed:

"It is reasonable to assume that BOHLKE could have and desired to have electric service within a reasonable period after the July 1, 1995 change in the tariff rule. BOHLKE has demonstrated diligence and effort in obtaining electric service." (Page 4.)

Smith emphasized in her testimony that she has been moving forward with her plans for the home and youth center only as quickly as her financial resources permit. We sympathize with her need to minimize costs, and we hope that she will be able to make acceptable arrangements to have the line extension built by PG&E or otherwise. However, we cannot find under the circumstances presented to us that she is entitled to the terms and conditions of the pre-July 1, 1995 version of Rule 15, whether or not she would realize the savings she expected. Accordingly, we conclude that Case (C.) 97-06-005 should be dismissed.

An application for rehearing of the decision that follows may be made pursuant to Division 1, Part 1, Chapter 9, Article 2 of the PU Code. Judicial review of Commission decisions is governed by Division 1, Part 1, Chapter 9, Article 3 of the PU Code. The appropriate court for judicial review is dependent on the nature of the proceeding. This decision is issued as an "adjudicatory proceeding" as defined in Section 1757.1. Therefore, the proper court for filing any petition for writ of review is the Court of Appeal. (See PU Code Section 17156(b).)

Findings of Fact

1. Smith owns a 43-acre parcel of property upon which she plans to build her residence and, thereafter, a center for at-risk youth.
2. She purchased the parcel in 1994.
3. Locating her residence at the site she has selected will require the construction of an electric distribution line extension from a PG&E distribution facility on her parcel to the homesite.
4. The PG&E tariff which governs the terms and conditions for construction of the line extension is Electric Rule 15.
5. Electric Rule 15 was revised, effective July 1, 1995.
6. The Commission has, in certain instances, permitted or required application of the terms and conditions of the version of Electric Rule 15 in effect before July 1, 1995, where (1) the applicant contacted PG&E before July 1, 1995, about the need for the line extension, and (2) the applicant was ready to receive electric service before January 1, 1996.
7. As of December 31, 1995, Smith had not entered into an agreement with PG&E regarding the line extension; had not created an easement for a line extension; had not arranged to have any preliminary engineering of the line extension performed; had not graded a driveway to her homesite; and had no building permit for the residence.
8. As of December 31, 1995, Smith was not ready to receive electric service at her homesite, or elsewhere on her property.

Conclusions of Law

1. Smith is not entitled to have the terms and conditions of the version of Electric Rule 15 which was in force before July 1, 1995, applied to the line extension on her property.
2. C. 97-06-005 should be dismissed.

O R D E R

IT IS ORDERED that:

1. Complainant's request for an order requiring her line extension to cost to be determined in accordance with defendant Pacific Gas & Electric Company's Electric Rule 15 as it existed prior to July 1, 1995 is denied.

2. Case 97-06-005 is dismissed, and the proceeding is closed.

This order is effective today.

Dated April 23, 1998, at Sacramento, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEPPER
Commissioners