

ALJ/BDP/sid *

MAILED 5/21/98

Decision 98-05-048 May 21, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LEW A. GARBUTT,

Complainant,

vs.

PACIFIC GAS & ELECTRIC COMPANY,

Defendant.

ORIGINAL

Case 96-12-005
(Filed December 2, 1996)

Lew A. Garbutt, Attorney at Law, complainant.
Donald K. Tamaki, Attorney at Law, for Pacific
Gas and Electric Company, defendant.

O P I N I O N

Summary

This decision denies a complaint against Pacific Gas and Electric Company (PG&E).

Lew A. Garbutt (Garbutt) requests that the Commission order PG&E to share the cost of relocating and undergrounding his existing overhead electric service line to his residence located in a rural area in Anderson, California. PG&E refused Garbutt's offer to share the cost of the project, contending that its tariffs require the customer to pay the entire project cost. PG&E contends that it would not receive sufficient benefit from undergrounding the service line at ratepayer expense to justify the capital cost.

The Commission concludes that under Tariff Rule 20C, Garbutt, not PG&E, should bear the entire cost to replace his existing electric overhead service line with an underground line. The economic argument proffered by Garbutt does not justify rerouting the line at ratepayer expense.

Evidentiary hearing on this matter was held on September 19, 1997 in Redding.

Positions of the Parties

Garbutt's residence is located on a large parcel of scenic undeveloped land bounded on its east side by the Stillwater Creek, and on its south side by the Sacramento River. The existing overhead electric line enters Garbutt's land from the east. It crosses the creek bed and traverses through tall trees that line the creek before it reaches Garbutt's residence. The line is approximately 4,000 feet long.

The relocated line would enter Garbutt's land from the west. It would originate from a different part of PG&E's system, traverse pasture land, and be on the opposite side of the property, away from the creek and tall trees. The line would be underground.

Garbutt argues that undergrounding would eliminate the winter storm-related and tree-related problems associated with the existing overhead service which traverses the often-flooded creek bed and the stretch of fast-growing shallow-rooted trees. During past winter storms, fallen trees have interrupted his service for several days.

Garbutt states that at regular intervals between 1992 and 1996, he was urging a cost-sharing approach with PG&E. He argues that that even a cursory cost benefit analysis would have led PG&E to conclude that relocating the line, even if it were done entirely at PG&E's expense, would be economically prudent. According to Garbutt, in 1996, that opportunity was lost when Pacific Bell

decided to abandon its east side creek crossing and relocated his telephone line to the west side of his residence.

Later in 1996, after Pacific Bell relocated its telephone line, PG&E provided Garbutt with an estimate of \$34,000¹ to relocate his electric service. He contends that even at \$34,000, it was economically prudent for PG&E to relocate his service line entirely at PG&E's expense.

Garbutt contends that for the past five years since 1992, PG&E has spent \$10,000 for emergency work during a major storm in the winter of 1993-1994, \$8,000 for two pole replacements on either side of Stillwater Creek, and \$6,000 for annual maintenance (average of \$1,200 x five years), for a total of \$24,000. To this figure, Garbutt adds \$1,000 per year for tree trimming. And since the remaining poles are now 22 to 30 years old, assuming a 25- to 30-year life, Garbutt contends that PG&E, over the next three to eight years, will have to spend \$48,000 to replace these aging poles.

Further, Garbutt contends that during future winter storms, as experienced in 1995/1996, because of their shallow root systems the larger trees will fall causing him to be without electric service for days. Garbutt submits that if PG&E relocates the service line, the savings over the next five years would exceed the \$34,000 relocation cost figure. According to Garbutt, PG&E's stated rationale for its unyielding position – costs exceeding benefits – is not and never was supported by facts.

¹ \$33,868 rounded to \$34,000. PG&E explained that the significant difference between the 1992 figure of \$14,000 and the 1996 figure of \$34,000 was largely due to a change in its undergrounding construction practices. In 1992, electric cable was directly buried in the ground. In 1996, underground electric cable was encased in conduit for easy repair and replacement.

PG&E disputes Garbutt's economic analysis. PG&E contends that Garbutt misinterpreted the systemwide recorded maintenance dollar figures it provided. According to PG&E, Garbutt's \$6,000 figure for average annual maintenance is in error.

PG&E contends that because the cost of undergrounding Garbutt's service line does not provide a substantial benefit when compared to leaving the overhead lines intact, it would not be prudent for it to bear the cost of undergrounding. In 1996, when PG&E estimated the replacement cost at \$34,000. PG&E's system average for maintenance of overhead lines and underground lines was \$1,235 and \$1,041 per-mile per-year, respectively. Adjusted for the difference in length of the overhead and underground lines to serve Garbutt's residence, PG&E estimated annual maintenance costs would be \$960 and \$250, respectively, for a saving of \$710 per year. Given the capital cost of \$34,000, PG&E concluded that the maintenance cost savings did not justify PG&E bearing the cost of rerouting Garbutt's service line underground.

PG&E states that it has recently replaced a few of the wood poles that support the existing overhead line at the creek crossing and the line is in good condition. PG&E does not anticipate any pole replacements in the near future. And according to PG&E, even considering recent pole replacements and necessary tree trimming, the existing overhead line does not require above-average maintenance.

Also, PG&E states that its decision, whether it would benefit from relocating and undergrounding Garbutt's service line, was impacted by the potential for future use of the existing overhead line. PG&E believes that since the existing overhead line is the dead-end of electric distribution from a transmission line that runs to the east of Garbutt's property, the line may be of future use to PG&E. According to PG&E, there is potential for utilizing that line

as a backfeed and tie-in to service future development on the west side of Garbutt's property. Therefore, PG&E contends that, as a consequence of removing the existing line, it would lose the future benefit of added system reliability.

Discussion

PG&E is required to follow its Commission-approved tariffs in determining who bears the cost for undergrounding Garbutt's service line. Rule 20C states:

"[W]hen mutually agreed upon by PG&E and an applicant, overhead electric facilities may be replaced with underground electric facilities, provided the applicant requesting the change pays, in advance, a non-refundable sum equal to the estimated cost of the underground facilities less the estimated net salvage value and depreciation of the replaced overhead facilities. Underground services will be installed and maintained as provided in PG&E's rules applicable thereto."

Thus, under Rule 20C, Garbutt, as the requesting applicant, not PG&E, must bear the entire cost to replace his existing overhead service line with underground electric lines. Moreover, under Rule 16G2:

"If relocation of a service, including PG&E-owned transformers, is for the convenience of the applicant or the customer, such relocation will be performed by PG&E at the expense of the applicant or the customer."

Garbutt does not dispute that he is requesting that the line serving his property be relocated and buried underground. Because undergrounding and relocating the existing overhead line is at Garbutt's request, PG&E must comply with Rules 20C and 16G2 and charge him the cost of undergrounding his service line.

Essentially, Garbutt's argument is that the proposed relocation and undergrounding is *not* "for the convenience of the applicant or customer" as

referred to in Rule 16G2. Rather, he contends that the proposed relocation and undergrounding is for the convenience of PG&E, and his economic analysis confirms that this is so. According to Garbutt, it is a win-win situation for everybody, including PG&E and its shareholders. Garbutt argues that it would have been a prudent decision in 1992 for PG&E to have relocated the line at its expense given the subsequent expenditures it incurred to maintain the line. And Garbutt believes that it is still a prudent decision for PG&E to relocate the line at its expense.

Rule 20C clearly requires that the applicant pay for undergrounding. An economic analysis is not the determining factor in applying Rule 20C. However, Garbutt raises an interesting argument based on his interpretation of Rule 16G2. Also, the storm-damage history of this overhead line suggests that we should review the economics of the relocation and not dismiss Garbutt's request solely on the basis of a strict interpretation of Rule 20C.² Part of PG&E's responsibility in providing service is to assess whether undergrounding a particular route makes economic sense or would improve reliability.

Assuming Garbutt's calculations are correct, which PG&E disputes, it may have been economically justified in 1992 for PG&E to have shared the originally estimated \$14,000 capital cost with Garbutt and Pacific Bell. This would have saved the subsequent expenditures to repair storm damage which Garbutt estimates cost \$10,000 and \$8,000, respectively.

Likewise, it may have been economically justified in early 1996 for PG&E to have shared the revised capital cost of \$34,000 with Garbutt and Pacific Bell,

² A utility's tariffs are strictly construed (*San Francisco Corp. v. Southern Pac. Co.*, 187 Cal 2d 257, 265).

before Pacific Bell relocated its line. However, the situations that existed in 1992 and 1996 are now history and are no longer options.

The situation now is that the overhead line is in a state of good repair. PG&E claims that the line should not require above average maintenance in the near future and that the problems with this line have been eliminated. Also, PG&E contends that in the event of development occurring in the area west of Garbutt's property, the line would provide valuable service for the additional load and provide a backfeed to its line coming in from the west. This would improve system reliability for the whole area.

On balance, we find PG&E's position more persuasive. Based on PG&E's system average maintenance figures adjusted for additional tree-trimming expense, we are not persuaded that the economics justify relocating and undergrounding the line at ratepayer expense. Accordingly, Garbutt's request must be denied.

This is a complaint case *not* challenging the reasonableness of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1.

Findings of Fact

1. Garbutt requests that the Commission order PG&E to relocate and underground the existing overhead line to his residence. Such undergrounding would be at ratepayer expense.
2. Since 1992, the line has suffered above average storm-related damage which was repaired by PG&E.
3. The prior problems with this line have been rectified, the line is now in good condition, and above-average expense would not be required to maintain the line.

4. The expected savings from relocating and undergrounding the line would be \$710 per year based on PG&E's system average maintenance costs for overhead and underground lines.

5. In 1996, PG&E estimated the capital cost of relocating and undergrounding service to Garbutt's residence at \$34,000.

6. Since Garbutt's residence is at the end of the existing overhead line east of Garbutt's land and Garbutt is the only customer on that line, PG&E would have to abandon the line if it is required to provide the new relocated underground service requested by Garbutt on the west side of his land.

7. If the line is abandoned and development does take place in the area west of Garbutt's land, PG&E will lose an alternate feed which would have otherwise improved system reliability in that area.

8. Since the overhead line has been restored to system average condition, it is reasonable to use PG&E's system average maintenance figures adjusted for additional tree-trimming expense for purposes of evaluating the economics of relocating and undergrounding the line.

9. Garbutt's estimate of future repairs and tree-trimming expense is overstated. PG&E's estimate, adjusted for additional tree-trimming expense would be reasonable.

10. Assuming a two-year cycle (since the trees are alongside the creek bed), and there are 60 trees to be trimmed at a cost of \$35 per tree, tree-trimming expense would be \$1,050 per year.

11. Assuming a maintenance expense savings of \$710 per year and tree-trimming expense of \$1,050 per year, a capital expenditure of \$34,000 would be amortized in approximately 19 years.

Conclusions of Law

1. Rule 20C requires that the applicant requesting undergrounding of an existing overhead service pay for the undergrounding.
2. Economics are not the ultimate determining factor in the application of Rule 20C.
3. Based on PG&E's system average figures, the expected savings on maintenance expense from relocating and undergrounding the line do not justify a capital expenditure of \$34,000.
4. Garbutt's request that the Commission order PG&E to relocate and underground the service line to his residence at ratepayer expense should be denied.
5. This is a complaint case not challenging the reasonableness of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1.

O R D E R

IT IS ORDERED that:

1. The complaint of Lew A. Garbutt against Pacific Gas and Electric Company is denied.
2. Case 96-12-005 is closed.

This order is effective today.

Dated May 21, 1998, at San Francisco, California.

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

DECISION NO. 98-05-049 CASE NO. 95.04-010 APP. NO. _____

ALJ/GEW/jva

Mailed 5/21/98

Decision 98-05-049 May 21, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Acorn Supply Company, Inc.,

Complainant,

vs.

Industrial Freight System, Inc.,

Defendant.

And Related Cases.

Case 95-04-010
(Filed April 3, 1995)

ORIGINAL

See Attachment A

O P I N I O N

Summary

Because the underlying Bankruptcy Court proceedings in these matters have been dismissed, this decision dismisses 28 cases filed with this Commission by shippers protesting claims for alleged tariff undercharges brought by the bankruptcy trustee for Industrial Freight System, Inc.

Discussion

Industrial Freight filed for Chapter 7 bankruptcy liquidation in 1994. Its appointed trustee, Duke Salisbury, subsequently filed adversarial claims in Bankruptcy Court against hundreds of shippers, claiming that services performed by Industrial Freight had not been billed at the full tariff rates. A total of 525 of these shippers, while opposing the claims in Bankruptcy Court, also filed complaints with this Commission under Public Utilities Code § 737, alleging that the claimed charges were unlawful.

With the cooperation of counsel, the 525 complaints were consolidated into 132 docketed Commission cases. A prehearing conference was conducted in the Commission's Los Angeles courtroom on December 13, 1995. The Commission designated six lead cases, set dates for discovery and submission of written testimony, and scheduled a hearing for the week of March 25, 1996.

Bankruptcy Judge Ernest M. Robles by order dated February 15, 1996, stayed further proceedings in the Commission cases pending various motions and appeals in the Bankruptcy Court. Accordingly, the Commission stayed its March 25, 1996, hearing. Judge Robles, meanwhile, dismissed the trustee's intrastate claims (that is, claims for transportation wholly within California) on grounds that they were preempted by federal law.¹

The Bankruptcy Court dismissal was affirmed on November 1, 1996, by the U.S. District Court for the Central District of California, acting as the reviewing court. The District Court held that the trustee was precluded from enforcing California intrastate claims because of California Senate Bill 415 (the Repeal Act), which added Section 737.3 to the Public Utilities Code. That statute, which took effect on June 21, 1996, provides that no carrier may collect California intrastate freight charges in addition to those already billed and collected, except for mutual mistake or fraud. On March 31, 1997, the trustee's motion for reconsideration of the District Court decision was denied.²

¹ The Court on January 25, 1996, granted shipper motions for judgment on the pleadings on grounds that the trustee's intrastate claims, which were based on the so-called "filed rate doctrine" codified in the Public Utilities Code, were preempted by Title VI of the Federal Aviation Administration Authorization Act of 1994, Pub. L. No. 103-305, 108 Stat. 1605 (1994).

² SA CV 96-333 AHS; Bank. Ct. Case No. LA 93-41245 ER; Adv. Proc. No. LA 95-3450 ER, U.S. District Court, Central District of California, Southern Division.

On July 7, 1997, Judge Robles granted a motion by the Industrial Freight trustee for authority to abandon most of the intrastate undercharge claims before the Bankruptcy Court. The Court agreed that adverse court rulings and statutes had rendered such claims of inconsequential value. On August 11, 1997, the trustee began filing dismissals of the intrastate claims.

Status of Commission Cases

By letter dated December 23, 1997, and a follow-up letter dated February 13, 1998, the assigned administrative law judge (ALJ) in the cases before the Commission wrote to the 70 attorneys and others representing complainants. Noting that the Bankruptcy Court had dismissed most of the intrastate claims, the ALJ advised complainants that they could withdraw their complaints before the Commission by sending a letter to this agency stating that intent. Most of the attorneys and other representatives responded, electing to withdraw their Commission complaints. Since January 1998, by Executive Director order, the Commission has accepted the withdrawal of approximately 90 docketed complaints (and approximately 400 additional complaints consolidated in the docketed cases) and closed those cases.

There remain 37 docketed cases. Nine of these will remain open temporarily at the request of counsel, pending various administrative matters in the Bankruptcy Court. In 28 of these cases, however, there has been no response from counsel to the ALJ's inquiries, or letters to counsel have been returned as undeliverable. We have confirmed that the intrastate claims in these 28 cases have been dismissed by the Bankruptcy Court. Since the underlying allegations in these cases appear to be moot in view of the Bankruptcy Court dismissals, we will dismiss these complaints as moot or, alternatively, for want of prosecution.

Findings of Fact

1. A total of 525 complaints, consolidated into 132 docketed cases, have been filed with the Commission against Industrial Freight System, Inc., in connection with tariff undercharge claims in Bankruptcy Court.

2. The Bankruptcy Court has dismissed the underlying intrastate claims in most of these cases.

3. In response to inquiry by the ALJ assigned to this matter, approximately 90 docketed cases and approximately 400 complaints consolidated therein have been withdrawn by complainants, and these cases have been dismissed.

4. In 28 cases, there has been no response to inquiries by the ALJ, or letters to complainants and their representatives have been returned as undeliverable.

5. The underlying intrastate claim in each of the 28 cases has been dismissed by the Bankruptcy Court.

Conclusion of Law

Those cases in which no response has been made to Commission inquiries should be dismissed as moot because of the Bankruptcy Court dismissals, or, alternatively, they should be dismissed for want of prosecution.

O R D E R

IT IS ORDERED that:

1. The following cases are dismissed as moot or, alternatively, are dismissed for want of prosecution:

C.95-04-010	C.95-04-030	C.95-05-005	C.95-05-006
C.95-05-066	C.95-06-067	C.95-07-037	C.95-08-043
C.95-08-064	C.95-08-065	C.95-09-033	C.95-09-045
C.95-09-049	C.95-09-051	C.95-10-057	C.95-10-053
C.95-11-010	C.95-11-022	C.95-11-033	C.95-11-041
C.95-11-048	C.95-11-050	C.95-12-013	C.95-12-019
C.95-12-023	C.95-12-036	C.95-12-041	C.95-12-057

2. These cases are closed.

This order is effective today.

Dated May 21, 1998, at San Francisco, California.

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

ATTACHMENT A

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INDUSTRIAL FREIGHT CASES

Case	Number	Date Filed
Web Service Company, Inc.	C.95-04-030	4/17/95
Takessian, Ross & Associates	C.95-05-005	5/2/95
Joico Laboratories, Inc.	C.95-05-006	5/2/95
Hydraulic Electric, Inc.	C.95-05-066	5/26/95
El Progreso	C.95-06-067	6/27/95
Remco Wholesale, Inc.	C.95-07-037	7/19/95
Diversified Hardwoods Corp.	C.95-08-043	8/8/95
Consolidated Electrical Distributors, Inc.	C.95-08-065	8/25/95
Homa Ranch	C.95-08-064	8/30/95
Orange Bang, Inc.	C.95-09-033	9/7/95
Orange Bang of NV, Inc.	C.95-09-045	9/14/95
Aroma Cosmetics, Inc.	C.95-09-049	9/19/95
Flamemaster Corporation	C.95-09-051	9/19/95
Frank C. Mendes Co., Inc.	C.95-10-057	10/6/95
Levi Strauss & Co., Inc.	C.95-10-053	10/30/95
Parks Corporation	C.95-11-010	11/8/95
Frye Copysystems, Inc.	C.95-11-022	11/16/95

ATTACHMENT A

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Case	Number	Date Filed
Withrow, Zerwekh Warehouse	C.95-11-033	11/21/95
The Vendo Company	C.95-11-048	11/21/95
Sharp Electronics Corporation	C.95-11-041	11/22/95
Aqua Treat Chemicals, Inc.	C.95-11-050	11/27/95
Perfect Data Corporation	C.95-12-013	12/6/95
Eastman Kodak Company	C.95-12-019	12/8/95
Sun-Maid Growers of California	C.95-12-023	12/11/95
Hughes Electronics Corporation	C.95-12-036	12/12/95
American Prolmage, Inc.	C.95-12-041	12/15/95
Osram Sylvania Inc.	C.95-12-057	12/18/95

(END OF ATTACHMENT A)