

Decision 99-02-083 February 18, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

James W. and Tammy M. McKenney,

Complainants,

vs.

Pacific Gas & Electric Company (PG&E),

Defendant.

ORIGINAL

Case 98-02-014
(Filed February 4, 1998)

James W. and Tammy M. McKenney, complainants.
Ann H. Kim, for Pacific Gas and Electric Company, defendant.

OPINION

Summary

James W. and Tammy M. McKenney (the McKenneys), complainants, allege that defendant, Pacific Gas and Electric Company (PG&E), refuses to provide utility service to their newly constructed residence and barn until complainants pay PG&E's estimate of costs for providing service. PG&E states these costs to be \$14,615.38 for relocating power lines on complainants' property and \$3,735.63 for installing underground service to complainants' barn, for a total of \$18,351.01. Complainants deny requesting underground service and contend that the power line relocation charges are inaccurate and excessive.

We conclude that complainants should be charged for the costs of the power line relocation as stated in PG&E's original pole relocation estimate of October 18, 1996, in the amount of \$11,209. We further conclude that

complainants should not be charged for the costs of providing underground service, because complainants did not execute the agreement for installation of underground services which was tendered by PG&E.

Appeals by Parties

On December 24, 1998, both parties appealed the presiding officer's decision (POD) and, on January 6 and 7, 1999, each party responded to the other's appeal.

The McKenneys allege that the POD errs by not discussing and making findings regarding PG&E's easement. They believe that PG&E's original poles were not within PG&E's then-existing easement, and that PG&E should have relocated one or more poles within its easement which would have avoided placing the house under power lines. The McKenneys cite the transcript and offer new evidence to prove their contention. PG&E disputes the McKenneys' contention and objects to the introduction of unsubstantiated new evidence.

The McKenneys raise in their appeal an argument not previously raised and seek to introduce evidence not presented during the hearing. We reject such argument and new evidence. In addition, the transcript references cited to support their contention do not clearly do so. Thus, there are no grounds to alter the POD.

In their response to PG&E's appeal, the McKenneys present more new evidence to show the date they reported the broken pole, August 13, 1996, and the date of a county inspection, September 9, 1996, alleging that construction of their house had begun when the pole was replaced and that PG&E is unwilling to supply the exact date of the replacement since it would show that the replacement was not accomplished on an emergency basis. In the POD, we concluded that the replacement date is not crucial, and we are not persuaded to change that conclusion. Instead, we rely on evidence that PG&E had promised

the McKenneys that it will coordinate the pole replacement with their construction and then failed to do so.

PG&E alleges that the POD errs because it orders PG&E to: 1) reduce the relocation bill to \$11,209; 2) allow this amount to be paid in 36 installment payments; 3) connect service at the time of the first installment payment; and 4) provide underground service without payment.

We are persuaded that complainants should be ready and willing to pay the originally estimated amount of \$5,000, because that estimate was provided to them well before they began construction. Since the total bill is significantly higher, we disagree that installments are not reasonable. We also disagree that PG&E's cited tariff prohibits our extension of payments beyond 12 months. However, we reduce the number of payments from 36 to 24 because the remaining balance is reduced due to the \$5,000 initial payment. We also revise the decision to show that the underground construction is not yet complete, since PG&E clarifies that this is the case and the McKenneys do not dispute this representation. We do not order complainants to pay for underground construction since they have clearly testified they do not want underground service because it is more expensive. We revise the POD accordingly. All other arguments by PG&E are without merit.

Procedural History

No prehearing conference was held in this proceeding.

The assigned Commissioner issued a scoping memo on June 24, 1998 and the parties waived their right to 10 days' notice so that an evidentiary hearing could be held in Fresno, on June 29, 1998.

At the scheduled hearing the parties presented testimony and documentary evidence. PG&E agreed to file a post-hearing brief on or before

August 10. Complainants indicated they would not file a brief and made a closing statement instead.

PG&E filed its post-hearing brief on August 10, 1998. Contrary to their representation at the hearing, complainants filed a post-hearing brief on August 19 with a map and other additional documents attached.

On September 2, PG&E filed a motion to strike the McKenneys' brief because it was untimely and contained documents not presented at the hearing.

On September 16, the McKenneys filed a response to the motion to strike explaining that they left messages for PG&E regarding the brief which were unanswered and that the documents attached were those discussed at the hearing but unavailable at that time. In an Administrative Law Judge Ruling on October 28, PG&E's motion to strike was denied, the maps and documents attached to complainants' brief were received as late-filed exhibits, and PG&E's comments on the late-filed exhibits were included in the record as closing argument. The submission date was reset to September 16, 1998.

Discussion

In 1994 complainants purchased 16-½ acres of property in Piedra, California next to the Kings River, upon which they planned to build a house and barn. The Fresno County Building Department told the McKenneys that any structure built on the property would have to be located on a 200-year flood plain. The only part of the property which met this requirement was located directly beneath PG&E's 12-kV power lines. Thus, certain poles and power lines would need to be relocated in order for the McKenneys to build their house and barn.

This proceeding involves two separate amounts charged by PG&E. The first charge involves the costs of relocating the poles and related power lines.

The second charge involves PG&E's costs of providing underground service to complainants' new residence and barn. We will discuss each issue in turn.

Power line relocation

In August 1995, a PG&E employee met with the McKenneys at their property and informed them that they could not build any structure within 10 feet of PG&E's power lines and that to do so would create a safety hazard. PG&E provided an oral estimate of \$2,500 per pole to relocate two poles. On August 22, 1995, PG&E sent a letter to the McKenneys. This letter noted the McKenneys' request that the power lines be relocated and indicated that PG&E would prepare a job estimate. On October 18, 1996, PG&E submitted a letter requesting \$11,209 for relocation of the power lines on complainants' property. On April 9, 1997, PG&E sent the McKenneys a revised pole relocation estimate requesting \$14,615.38. With both letters, PG&E also enclosed a standard work performance agreement.

As a general rule, PG&E obtains prior written agreement and payment for its facility relocation projects. However, in this instance the complainants did not sign the agreements tendered by PG&E and, instead, began construction of their home within 10 feet of the power lines. On April 25, PG&E wrote to the McKenneys, informing them that PG&E would have to relocate the power lines in order to eliminate a safety infraction that was created by complainants' construction.

The pole relocation projection was completed between April 28, and May 5, 1997.

We find that it was reasonable for PG&E to relocate the power lines even though the McKenneys had not executed the work performance agreement because complainants created a hazardous condition by beginning to build within 10 feet of PG&E's power line.

We also find that the McKenneys should be responsible for the reasonable costs of relocating the power lines, because it was the complainants' own construction which created the hazardous conditions requiring relocation of the power lines. We find that the McKenneys should pay PG&E the original pole relocation estimate of \$11,209.

The revised pole relocation estimate is not a reasonable estimate of the costs because it includes the costs of relocating an additional pole which was replaced by PG&E. This pole, which was badly deteriorated, was located close to the site of the McKenneys' new residence. There is confusion on this record concerning when PG&E replaced this deteriorated pole. PG&E states that the pole was replaced in early 1996. The McKenneys state that the pole was replaced on October 2, 1996. Regardless of the precise date, the record is clear that PG&E replaced this pole after the McKenneys requested that PG&E relocate these power lines. We find that PG&E promised to coordinate this pole replacement with the proposed construction and should have acted with greater care in replacing the pole in a manner which would not necessitate its relocation by a few feet months later. PG&E knew this customer would build a house at this approximate location and PG&E had preliminary plans for moving the power line. There is dispute between the parties regarding whether the foundation was staked at the time PG&E replaced the pole. However, even if the house was not staked at the time of replacement, PG&E should have consulted the McKenneys about their plans regarding the location of the house before PG&E replaced this pole and located it where it did. Since PG&E is responsible for the replacement of the pole and unreasonably placed the pole, PG&E should bear the cost of later having to move it.

Underground service

On March 14, 1995, the McKenneys submitted an application for overhead service to their barn. Thereafter, on August 4, 1995, the McKenneys submitted an application for overhead service to their home. On August 22, 1995, PG&E sent the McKenneys a letter confirming their request for overhead service.

On March 19, 1997, PG&E discussed service issues with the McKenneys. PG&E claims that the McKenneys verbally requested underground service to the barn. The McKenneys claim that they merely requested an estimate of the costs of underground service. A cryptic field note by a PG&E employee dated 3-19-98 indicates that "cust wants ug svc." PG&E apparently interprets this note as indicating that the McKenneys consented to receive the service even before the cost had been estimated. On May 22, 1997, PG&E sent the complainants an estimate for electric underground service to the barn. Enclosed with the estimate was a standard "Extension and Service Agreement Declaration." PG&E's letter indicated that upon receipt of the signed agreement and payment of \$3,985.63, PG&E would construct the underground extension. At the hearing, the McKenneys testified that they do not want underground service. Therefore, we find that PG&E may not charge the McKenneys for the cost of providing underground facilities which the McKenneys did not agree to receive.

Conclusion

Based upon the foregoing resolution of the disputed facts, we conclude that the McKenneys should pay PG&E \$11,209 for the relocation of power lines on complainants' property. PG&E should rebill the McKenneys \$11,209 and allow this amount to be paid in a first payment of \$5,000 and 24 equal monthly installment payments, plus interest at 12% per annum on the remaining balance during the installment payment period. PG&E will connect service after payment of \$5,000.

Findings of Fact

1. PG&E relocated power lines on complainants' property.
2. PG&E billed complainants \$14,615.38 for relocating power lines and \$3,735.63 to install underground service.
3. The McKenneys' construction of a residence within 10 feet of PG&E power lines created a safety hazard.
4. In light of the hazard created by the construction of the residence, it was reasonable for PG&E to relocate the power lines.
5. The complainants should pay the reasonable costs of relocating the power lines.
6. PG&E's original written estimate of \$11,209 reflects the reasonable costs of relocating the power lines, even though the initial oral estimate was \$2,500 per pole.
7. Sometime in 1996, at the time PG&E replaced a deteriorated pole near the McKenneys' new residence, PG&E should have placed the pole in a manner which did not require its subsequent relocation later.
8. The deteriorated pole was unreasonably placed in a location close to complainants' house during a period when PG&E knew or should have known the planned location of the house.
9. Complainants should not have to pay the costs of the subsequent relocation of the replaced pole.
10. The McKenneys submitted written applications for overhead electric service to their residence and barn.
11. The McKenneys did not submit a written acceptance of the agreement for installation of underground service. Therefore, they are not responsible for these charges.

12. It is reasonable to allow lenient installment payments after the initial payment of \$5,000 since the original estimate of \$2,500 per pole differs substantially from the resulting bill for \$11,209.

Conclusions of Law

1. Complainants should pay PG&E \$11,209 for relocation of the power lines on their property.
2. Due to the complainants' need to initiate service as quickly as possible, this decision should be effective today.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) should reduce complainants' bill for relocation of power lines to \$11,209.
2. PG&E shall offer complainants 24 equal monthly installments, plus interest at 12% per annum, to pay the balance due after an initial payment of \$5,000.
3. PG&E shall connect service to complainants' new residence within 15 days after receipt of the payment of \$5,000, provided facilities installed by complainants meet PG&E's established standards for connection. If these standards are not then met, PG&E shall connect service within 15 days after standards are met. This proceeding is closed.

This order is effective today.

Dated February 18, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners