

Decision 00-04-002 April 6, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission Investigation into Tariff Schedules,
etc. of all Electric and Communications Public
Utilities.

Case 8209
(Filed June 6, 1965)

ORDER OF DISMISSAL WITHOUT PREJUDICE

Summary

The petition of San Joaquin County (San Joaquin) for the modification of Tariff Rule 20A and Decision (D.) 73078 is dismissed without prejudice.

Background

In D.73078,¹ the Commission adopted a program of requiring new electric service connections to be placed underground and funded a gradual program to convert the existing overhead lines to underground service. The undergrounding program was implemented for each utility by Tariff Rule 20A that took effect in September, 1967. On December 16, 1999, San Joaquin filed a Petition for Modification of Tariff Rule 20A (Petition) seeking to have the undergrounding funds available to offset customer costs and administrative charges.

On January 6, 2000, the Commission issued an Order Instituting Rulemaking (R.00-01-005) into the implementation of Assembly Bill (AB) 1149, (Stats. 1999, Ch. 844), which requires the Commission to conduct a study as to

¹ D.73078 (67 CPUC 490, modified in D.76394 (70 CPUC 339) and D.82-01-018 (7 CPUC 2d 762)).

ways to amend, revise, and improve the rules for the undergrounding program. This study will include, but not be limited to, reviewing the provisions of Rule 20A.

On January 14, 2000, San Diego Gas & Electric Company (U 902-E) (SDG&E) filed a response to San Joaquin's Petition urging the Commission to deny the Petition.

Discussion

San Joaquin's Petition specifically asks the Commission to modify Tariff Rule 20A as follows:

1. Tariff Rule 20A should include language that requires "PG&E (Utility) to add services for overhead to underground electrical line conversions under tariff and that the Utility pay for the costs incurred to provide those services."
2. Tariff Rule 20A should include language that also requires "the Utility to allocate funds under tariff for local agencies to pay for the cost to administer the Underground Utility Districts Program."

These suggested modifications can be raised and addressed by San Joaquin during the Commission's R.00-01-005. The Commission will then have an opportunity to consider these proposals in the context of the entire undergrounding program and balance them against the concerns and issues raised by other parties.

Rule 47 of the Commission's Rules of Practice and Procedure sets forth specific requirements for any Petition for Modification of a Commission decision. San Joaquin's Petition fails to meet the procedural requirements of Rules 47(b), (c), and (d). Rule 47(b) reads as follows: "A petition for modification must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the

proceeding or to matters that may be officially noticed (Rule 73). Allegations of new or changed facts must be supported by an appropriate declaration or affidavit." San Joaquin's Petition does not contain any proposed language, contains no citations to the record nor seeks official notice of facts, and the alleged new facts are not supported by declaration or affidavit.

Rule 47(c) reads in pertinent part: "A petition for modification must be filed and served on all parties to the proceeding or proceedings in which the decision proposed to be modified was made." San Joaquin's Petition was only served on one party, Pacific Gas & Electric Company, rather than on all parties to the proceeding.

Rule 47(d) requires the following: "A petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision." San Joaquin's Petition was not timely, and contained no explanation why the petition could not have been filed within one year. The Commission's dismissal of this Petition, without prejudice, will not restrict San Joaquin's rights to participate in the undergrounding rulemaking process, and will allow the topics and issues of interest to San Joaquin to be considered by all of the parties who participate in R.00-01-005. This approach will avoid duplicating both the Commission's and the parties' resources in proceedings addressing the same issues.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util Code § 311(g)(1) and Rule 77.1 of the Rules of Practice and Procedure. No comments were received.

Findings of Fact

1. In D.73078, the Commission adopted a program of requiring new electric service connections to be placed underground and funded a gradual program to convert the existing overhead lines to underground service.

2. Tariff Rule 20A, which took effect in September, 1967, implemented the undergrounding program for each utility.

3. On December 16, 1999, San Joaquin filed a Petition for Modification of Tariff Rule 20A seeking to have the funds include consumer costs and administrative charges.

4. On January 6, 2000, the Commission issued R.00-01-005 to implement AB 1149 that requires the Commission to conduct a study as to ways to amend, revise, and improve the rules for the undergrounding program.

5. On January 16, 2000, SDG&E filed a response to the Petition.

6. The modifications suggested by San Joaquin may be raised in R. 00-01-005. It would be duplicative of the Commission's time and resources to process San Joaquin's Petition independently, yet simultaneously, with the rulemaking.

Conclusions of Law

1. San Joaquin's Petition should be dismissed for failure to comply with Rules 47 (b), (c), and (d) of the Commission's Rules of Practice and Procedure.

2. San Joaquin's Petition should be dismissed without prejudice so that the modifications advanced by San Joaquin in its Petition may be addressed in R.00-01-005.

IT IS ORDERED that the Petition of San Joaquin County for modification of Tariff Rule 20A, Case 8209, is dismissed without prejudice.

This order is effective today.

Dated April 6, 2000, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
CARL W. WOOD
Commissioners