

Decision 00-04-029 April 6, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Reuben Bercovitch and Blanche Bercovitch,

Complainants,

vs.

San Diego Gas and Electric Company,

Defendant.

Case 98-11-027
(Filed November 9, 1998)

Reuben and Blanche Bercovitch, complainants.
Eric A. Swenson, Attorney at Law, for San Diego
Gas & Electric Company, defendant.

OPINION

1. Summary

This decision resolves a complaint against San Diego Gas & Electric Company (SDG&E) to restore, at SDG&E's expense, lines to complainants' property that SDG&E removed. The central controversy is whether the lines were abandoned. This decision finds that SDG&E took inappropriate steps in deeming as abandoned the lines to complainants' property. This decision orders SDG&E to restore the lines that it removed.

2. Background

Reuben Bercovitch and Blanche Bercovitch (complainants) own a parcel of land (assessor parcel number 199-110-14-00) that is approximately 130 acres and

is located at 2909 Borrego Valley Road, Borrego Springs, California (Bercovitch property).

The complainants bought the Bercovitch property in February 1960. The Bercovitch property formerly belonged to Lon Chaney Jr., the actor. Chaney's doctor bought the Bercovitch property from Chaney and subsequently sold the property to complainants in February 1960. The Bercovitch property sits on an aquifer. The property contains improvements including a home. Starting in 1960, the Bercovitch property was primarily used for growing crops. The complainants' first tenant was the son of Lon Chaney Jr., who farmed on the property. In 1969, the Bercovitch property was leased to Curtis Bowen, who grew alfalfa there until 1986. From 1986 through January 1990, the property was leased to a series of tenants, none of whom complainants found completely satisfactory. Since 1990 and to the present, complainants have continuously attempted to sell the Bercovitch property. Maintenance of the improvements appears to have been neglected.

Currently, the Bercovitch property lacks a meter for taking electrical service from SDG&E. Complainants contend the property has been vandalized and thus it makes no sense to install meter equipment until the property is sold or leased.

Complainants also state that in 1993 they communicated to SDG&E their intention to install a smaller electric panel for a new tenant. According to complainant, the old electric panel that had been used to run pumps for farming operations was "overkill" for the new tenant's intended use of horse boarding. However, the potential tenant decided not to lease the property after complainants had installed a new electric panel but prior to when SDG&E had executed the service order. When complainants called SDG&E in June 1993 to cancel the service order, complainants assert an SDG&E representative told them

that there was nothing they had to do to keep the line active or any time limit within which to request to have power turned on.

On April 7, 1997, a work order was prepared by SDG&E personnel to remove lines¹ used in the past to provide electrical service to the Bercovitch property. On July 17, 1997, the work order was signed and on October 8, 1997, SDG&E completed removal of the lines to the Bercovitch property. No notice was given to complainants that the lines to the property would be removed.

3. Procedural History

On November 9, 1998, complainants filed this complaint against SDG&E² alleging that SDG&E terminated service without notice and requesting restoration of service to the Bercovitch property at SDG&E's expense.

A prehearing conference was held in this matter on February 25, 1999. On March 15, 1999, Assigned Commissioner Josiah L. Neeper issued a scoping memo. The scoping memo determined that the central controversy in this proceeding was the removal of electrical facilities (poles and overhead electric lines) that SDG&E used in the past to provide electric service to the Bercovitch property. Further, the scoping memo determined that at evidentiary hearing, testimony should address the notice given to complainants and whether the electrical facilities were permanently abandoned. Additionally, the scoping

¹ Rule 21.9 of General Order (GO) 95 defines lines: "Lines mean those conductors together with their supporting poles or structures and appurtenances which are located outside of buildings."

² The complaint originally named "Sempra Energy formerly San Diego Gas and Electric" as defendant. At the February 25, 1999 prehearing conference, it was agreed that SDG&E was the real party in interest. The March 15, 1999, scoping memo issued in this proceeding directed our Docket Office to correct the caption in this proceeding to show SDG&E as the defendant.

memo stated that any matters raised by the complaint, or which may be reasonably inferred from the complaint, are within the scope of this proceeding. The scoping memo also named Administrative Law Judge (ALJ) Joseph DeUlloa as the presiding officer.

Under the schedule adopted for this proceeding, an evidentiary hearing was set for June 7 and 8, 1999, and it was anticipated that this matter would be submitted on July 23, 1999. At the request of complainants, the evidentiary hearing was postponed to June 30 and July 1, 1999. Concurrent opening and reply briefs were filed on September 2 and September 16, respectively. This matter was submitted with the filing of concurrent reply briefs on September 16, 1999. On November 4, 1999, the Commission issued decision (D.) 99-11-019 extending the statutory deadline for issuing a decision in this proceeding. On December 29, 1999, the presiding officer's decision (POD) was mailed to the parties. On January 28, 2000, SDG&E timely filed an appeal. On February 11, 2000, Complainants timely filed a response.

4. Position of Complainants

Complainants believe that due process required defendant to provide complainants with notice and an opportunity to be heard prior to severing the overhead utility poles used for providing service to the Bercovitch property. In support of their position, complainants cite the due process clauses of the California Constitution for the proposition that the government is required to provide notice and an opportunity to be heard before it deprives a person of his or her property. Complainants rely upon Memphis Light, Gas and Water Div. v. Craft (1977) 436 U.S 1, for the contention that "a utility consumer's right to continued electrical service" is a "property right."

Complainants also assert that defendant's actions were arbitrary, capricious and unreasonable under the facts and circumstances of this case. Complainants believe that SDG&E may not unilaterally elect to eliminate lines. Complainants believe that SDG&E must first demonstrate to the Commission that the public convenience and necessity no longer require the line sought to be discontinued. Complainants believe that defendant erroneously concluded that complainants had "permanently abandoned" their right to future electrical power. Complainants' opening brief makes extensive factual and legal argument that no abandonment of electrical facilities or right and interest in the receipt of future electrical service occurred.

5. Position of Defendant

In making its decision to deem as permanently abandoned the lines to the Bercovitch property, SDG&E articulates several standards. SDG&E believes that GO 95 mandates the removal of permanently abandoned electrical facilities. SDG&E states that the electrical facilities removed posed a potential safety hazard and thus were properly removed pursuant to GO 95.

The second standard that SDG&E articulates is that no near future use for SDG&E's lines existed at the time of removal. In determining that no near future use exists, SDG&E looked to the condition of the Bercovitch property.

SDG&E offers as a third theory, an economic rationale for permanently abandoning the lines to the Bercovitch property. SDG&E asserts that the cost of maintaining the "...electrical overhead facilities given their lack of use for many years and due to repeated vandalism was an unwarranted burden on SDG&E's ratepayers."

SDG&E also suggests that SDG&E Tariff Rule 15.I.1³ confers upon SDG&E the unfettered discretion to permanently abandon lines.

In response to complainants' theory for liability based on termination of service, SDG&E responds that its actions did not terminate service to the Bercovitch property since SDG&E has not provided service to the Bercovitch property since 1989. In response to complainants' theory based on SDG&E's duty to provide notice, SDG&E avers that it did not have to provide notice to the complainants because SDG&E did not terminate electrical service to complainants' property or remove any service facilities. Moreover, SDG&E believes that it made a good faith effort to provide notice to complainants.

6. Discussion

Pursuant to the scoping memo issued in this proceeding, we must determine whether the lines serving the Bercovitch property were permanently abandoned. If so, then Rule 31.6 of GO 95 authorizes SDG&E's removal of the lines to the Bercovitch property.

A. Potential Safety Hazard

SDG&E believes that lines that pose a potential safety hazard must be removed. In support of this view, SDG&E asserts that "removal of its facilities was mandated by GO 95 in order to forestall a potential safety hazard." (SDG&E Opening Brief at p. 4.)

³ SDG&E's opening brief at p. 9, cites SDG&E Tariff Rule 15.H.1. The SDG&E tariff rule has been updated and the rule referred to in SDG&E's opening brief is now found at Rule 15.I.1.

GO 95 governs the construction, operation and maintenance of overhead electric lines of all types. (Unless specified otherwise, all Rule references are to rules contained in GO 95.) Rule 21.9 states that:

“Lines mean those conductors together with their supporting poles or structures and appurtenances which are located outside of buildings.”

Rule 31.6 states that:

“Lines or portions of lines permanently abandoned shall be removed by their owners so that such lines shall not become a public nuisance or a hazard to life or property.”

SDG&E erroneously interprets Rule 31.6 to mean that lines that may pose a potential safety hazard must be removed. SDG&E’s approach automatically deems as permanently abandoned those lines that may pose a potential safety hazard. This interpretation is inconsistent with GO 95. SDG&E does not cite any statute or Commission rule or decision supporting its interpretation of GO 95.

Naturally, we are concerned about safety hazards and this decision does not diminish SDG&E’s responsibility. Our concern is with SDG&E’s proposed remedy. Instances of potential safety hazards may arise that call for maintenance, repair, or replacement of lines as opposed to permanent abandonment. Further, SDG&E’s interpretation of Rule 31.6 is inconsistent with other portions of GO 95 that require SDG&E to maintain and repair lines. For instance, Rule 31.1 imposes a duty to maintain electrical systems in a “condition which will enable the furnishing of safe, proper and adequate service.” Further, Rule 31.2 imposes a duty to inspect lines “frequently and thoroughly for the purpose of insuring that they [lines] are in good condition so as to conform with these Rules. Lines temporarily out of service shall be inspected and maintained

in such condition as not to create a hazard." We conclude that GO 95 does not require or even permit SDG&E to automatically deem as permanently abandoned those lines that may pose a potential safety hazard.

B. Near Future Use

In its opening brief, SDG&E's proposes that "no near future use" establishes a basis for determining that the lines to the Bercovitch property are permanently abandoned. SDG&E's position raises the issue of the proper standard for deeming lines abandoned.

SDG&E's "no near future use" rule for deeming overhead facilities permanently abandoned is memorialized in an internal guideline (non-Commission approved) identified as "DRAFT" Service Planning Manual (SPM) 200. (Exhibit 25.)

The draft SPM 200 differs from SDG&E's internally approved SPM 200. In pertinent part, SDG&E's internally approved SPM 200 (Exhibit 11) states:

"3.1.2 Overhead facilities will be considered 'permanently abandoned' if they are de-energized and no longer connected to SDG&E's distribution system with no future foreseeable use."

The significant difference between SDG&E's internally approved SPM 200 and SDG&E's draft SPM 200 is that the approved SPM 200 refers to "no future foreseeable use" whereas the draft SPM 200 refers to "no near future use."

SDG&E cites no law or Commission decision to support either the "no future foreseeable use" or "no near future use" standard. However, SDG&E developed SPM as a guideline to implement GO 95, Rule 31.6. Thus, we must determine if SDG&E has reasonably applied GO 95.

We believe that SDG&E's approved internal policy, SPM 200, provides a reasonable framework for determining if lines are permanently abandoned. As

a preliminary matter, Section 3.1.2 of SPM 200 asks if a line is no longer connected to SDG&E's distribution system and de-energized. This question should be an easily answered factual one. Additionally, SPM 200, Section 3.1.2 also asks if "no future foreseeable use" exists. Until further order of the Commission, we believe this is a reasonable internal standard for SDG&E to adopt, but the question of future foreseeable use will require a case-by-case determination.

However, based on SDG&E's application in this case, we find that the "no near future use" standard contained in SDG&E's draft SPM 200 is unreasonable.

In reviewing the record, we find that Patty Kelly with input from Lloyd Clark made the decision to remove the lines to the Bercovitch property. Both Kelly and Clark are employees of SDG&E. We find that Kelly deemed the lines to the Bercovitch property permanently abandoned because she believed that "no near future use" existed.

Kelly testified that in order to establish a "near future use," SDG&E would require a property owner to show use within 30 days:

"Q. ...It's my understanding that if you came into my street and removed the electrical distribution line in front of my house and you called me I would have to give you some kind of assurance that I was going to use electrical service; is that correct?"

* * *

"A. ...if you want power, you got 30 days to show me that you...either get a permit or do something that shows that you're really going to use service. Because...there are

people who have houses that have no power. They live in houses with no power. It's not a requirement of the health department to have power."⁴

No basis exists in law or Commission rule or decision that permits SDG&E to remove its infrastructure simply because a person cannot demonstrate a use to SDG&E within 30 days. In weighing the potential significant loss to infrastructure, we find SDG&E's 30-day requirement is unreasonable. Thus, we reject SDG&E's no near future use test as unreasonable and inconsistent with GO 95.

Additionally, we find that SDG&E has not demonstrated that the lines to the Bercovitch property should have been deemed abandoned under a "no future foreseeable use" test. Kelly testified that her primary consideration in determining whether lines should be deemed permanently abandoned is whether the lines are de-energized. The witness testified that "de-energized facilities are abandoned as far as I know."⁵ Kelly's analysis satisfies the first part of the internally-approved SPM 200 test, i.e., the lines are de-energized. However, the record shows that minimal effort was made to determine if a future foreseeable use existed for the lines. Rather, a disproportionate amount of reliance was placed on lack of recent past use.

In this instance, given that structures as well as for sale signs stand on the Bercovitch property, SDG&E should have made a more determined effort to contact the complainants to determine their need for future load on the lines that SDG&E was contemplating removing. The complainants are in the best position

⁴ Transcript 1/232-233, SDG&E/Kelly.

⁵ Transcript 1/228, SDG&E/Kelly.

to evaluate future use on their property, and thus provide SDG&E with relevant information to evaluate future use of the lines. However, we do not impose a requirement that a utility must always contact the property owner prior to abandoning line(s) that serve a particular property. We recognize that in some instances it may be difficult or impossible to contact the property owner. Here, SDG&E at a minimum should have contacted the assessor's office, title company or a real estate agent (or possibly SDG&E's own internal real estate group, if any) to determine the owner's identity as listed on the assessor's record. Given the availability and ease of access to such information, we find that such research would impose a minimal burden on SDG&E. Additionally, based on Kelly's testimony, we find that safety concerns appeared to be an afterthought.

Lastly, SDG&E's reliance upon the condition of the Bercovitch property lacks merit. Real estate is generally viewed as a long-term investment that has up and down cycles. Many properties (including properties in urban areas) are sometimes left vacant. We find unreasonable any internal SDG&E policy that would remove lines to properties simply because a house is vacant or a lot sits empty.

In deciding whether a future foreseeable use exists, we have weighed evidence presented by complainants regarding the nature of their property (prior use as farm and residence, and usable water supply), nearby development and testimony by Reuben Bercovitch that he would have turned on power to the Bercovitch property if given the choice. We also weigh defendant's reliance upon the condition of its lines and the condition of the Bercovitch property. We find that SDG&E improperly deemed as permanently abandoned the lines to the Bercovitch property.

As an aside, and not a factor in this decision, the no near future use approach also appears to hinder rather than promote economic development. In this instance, the record reflects that it would cost approximately \$64,003⁶ to install new lines to the Bercovitch property. Such an expense may pose a significant barrier to future use and development of the Bercovitch property. As a general policy matter, we find it contrary to the public interest to remove utility infrastructure simply because there is no "near" future use as unilaterally determined by the utility. However, we consider no future foreseeable use a reasonable standard to apply in determining whether to abandon line(s).

C. Economic Analysis

Lastly, SDG&E's answer offers an economic rationale for permanently abandoning the lines to the Bercovitch property. SDG&E asserts that the cost of maintaining the "...electrical overhead facilities given their lack of use for many years and due to repeated vandalism was an unwarranted burden on SDG&E's ratepayers." As a general matter, we are concerned about following an economic analysis that promotes removal of lines because it may be uneconomical to serve customers located in remote geographic areas. In the long run, we believe that such a policy runs counter to universal service goals and would serve to diminish the value of properties and inhibit economic development.

Although it may be in the economic interest of shareholders to cut costs, especially to areas generating little revenue, we note that past general rate

⁶ It would be \$64,003 if complainants take a 50% discount and forfeit the option of receiving a future refund for added loads, or \$128,006 subject to a refund over 10 years if additional qualifying load is alter served from the extension. (SDG&E's answer to complaint at p. 3.)

cases have provided funds for the maintenance of all lines. We are concerned about pursuing a policy that may create the incentive for utilities to limit rather than promote service.

SDG&E's analysis omits a discussion of SDG&E's duty to serve. However, in this instance, we need not consider SDG&E's economic argument given SDG&E's erroneous reliance on its no near future use standard. In the future, should SDG&E raise a similar argument, we direct SDG&E to address its duty to serve.

D. SDG&E Discretion

We do not believe that SDG&E has unfettered discretion to make a determination that lines or portions of lines are permanently abandoned. SDG&E suggests that SDG&E Tariff Rule 15.I.1 confers upon SDG&E the unfettered discretion to permanently abandon lines. We disagree. A utility does not have unfettered discretion to deem lines permanently abandoned. Electric distribution utilities have an obligation to serve and any permanent abandonment must take that into consideration.

SDG&E's reliance on SDG&E Tariff Rule 15.I.I is misplaced. SDG&E Tariff Rule 15 deals with the extension of lines or construction of new lines. SDG&E Tariff Rule 15 addresses such issues as installation responsibilities, line extension allowances, contributions or advances by applicant, refunds, design options and installation options. The section relied upon by SDG&E deals with "relocation or rearrangement" of SDG&E's existing facilities. SDG&E Tariff Rule 15.I.1. states that: "[w]here new facilities can be constructed in a separate location, before abandonment or removal of existing facilities, and Applicant requests to perform the new construction work, it can be performed under the applicable provisions of Section G,..." (Emphasis added.) SDG&E Tariff

Rule 15.I.1. continues that the "...Utility shall, at its option, abandon or remove its existing facilities." This last portion of SDG&E Tariff Rule 15.I.1. must be read in context of prior language that refers to facilities that should be abandoned or removed because of new construction. We conclude that the language in SDG&E Tariff Rule 15.I.1. relied upon by SDG&E does not confer upon SDG&E unfettered discretion to permanently abandon lines.

E. Restoration of Lines

Based on the record before us, we will direct SDG&E at its own expense to restore lines to the Bercovitch property upon a written request from complainants for electric service to the Bercovitch property. Complainants must make such request within 90 days of this order and satisfy all of SDG&E's requirements for taking electric service (e.g., safe and functioning electric panel). SDG&E shall restore the lines to the Bercovitch property within 180 days after complainants make their request. Restoration of lines shall be at SDG&E's expense by the least expensive method that defendant reasonably can arrange.

F. Appeal

Rule 8.2(e) requires that an appeal set forth specifically the grounds on which the POD is wrong in law or fact. The purpose of an appeal is to alert the Commission to a potential error, so that the error may be corrected expeditiously.

SDG&E contends that the ALJ made legally erroneous evidentiary rulings that resulted in the exclusion of evidence that SDG&E claims is "relevant and highly probative" to the interpretation of Rule 31.6 of GO 95. As a result SDG&E argues that the ALJ denied SDG&E's due process rights.

The specific evidence that SDG&E argues the ALJ improperly excluded is as follows:

1. An opinion letter to SDG&E from Mahendra M. Jhala, Chief of the Utilities Safety Branch (USB);
2. Testimony of Raffy Stepanian of the USB; and
3. Photographs of the Bercovitch property.

SDG&E states that the first two pieces of evidence excluded would have been used to "interpret the application of Rule 31 [actually Rule 31.6] of GO 95." Thus, SDG&E implies that the POD misinterprets Rule 31.6 of GO 95.

However, the POD accepted SDG&E's interpretation of GO 95 as contained in SDG&E's internally approved guidelines. Conclusion of Law 9 states that SDG&E's internal policy provides a reasonable framework for determining if lines are permanently abandoned. The POD found in favor of complainants because, among other things, the facts in this case showed that SDG&E failed to follow its own guidelines. Regardless of whether SDG&E now disavows its own guidelines, GO 95 does not authorize the indiscriminate removal of lines. Thus, we next consider whether the excluded opinion letter and testimony would be useful in determining whether SDG&E's actions in violation of its own guidelines nonetheless satisfy GO 95.

In its appeal, SDG&E cites California Evidence Code Section 210 for the proposition that relevant evidence means evidence having any tendency in reason to prove or disprove any "disputed fact." However, the question of how GO 95 should be interpreted is primarily a legal and not a factual question. SDG&E had ample opportunity in its briefs to argue its legal interpretation of GO 95. To the extent the issue is a mixed question of fact and law, SDG&E's witnesses with personal knowledge of the lines to the Bercovitch property provided testimony on the interpretation of GO 95. On the other hand, the

testimony of Jhala and Stepanian would shed no light on any arguably factual aspect of interpreting GO 95 since the record in this proceeding shows that neither Jhala nor Stepanian had any personal knowledge of the condition of the lines to the Bercovitch property. Thus, the exclusion of the testimony of Jhala and Stepanian did not cause harm to SDG&E or result in the POD being unlawful or erroneous.

SDG&E also argues that the exclusion of photographs of the Bercovitch property constituted legal error. In response, complainants contend that SDG&E took the photographs during an unauthorized visit to the Bercovitch property. Although SDG&E may hold an easement on the Bercovitch property for the purpose of maintaining utility service, from the facts recited by complainants it appears that SDG&E may have trespassed on the Bercovitch property. We do not condone such action. However, in concluding that no harm occurred from the exclusion of the photographs of the Bercovitch property, it is not necessary for us to determine whether SDG&E trespassed on the Bercovitch property.

SDG&E's appeal is not clear, but it appears that SDG&E is contending that the pictures would have shown that the Bercovitch property had been vandalized. SDG&E's appeal states that "complainants' property had been unoccupied since 1991, and it had since been repeatedly vandalized ... as depicted in photographs." (Emphasis added.) In this proceeding, no factual dispute exists as to the condition of the Bercovitch property or the times during which it was occupied. In fact, Reuben Bercovitch testified that his property was unoccupied since 1991 and that vandalism had occurred. Complainants also provided ample evidence of continued efforts to lease or sell their property. Reuben Bercovitch also testified that the vandalized facilities were not replaced for fear that similar acts of vandalism would occur while the property was unoccupied, and that upon leasing or selling the property he intended to repair

the facilities. Complainants' conduct reflects common sense. More importantly, though, the record already shows the facts for which SDG&E purportedly intended to produce the photographs. Thus, the exclusion of the photographs has not caused SDG&E any harm or resulted in the POD being unlawful or erroneous.

SDG&E also contends that the POD "reflects an incorrect understanding of GO 95." In support of this proposition, SDG&E quotes a sentence from the POD's summary paragraph that states that "[p]ursuant to GO 95, SDG&E may remove lines that are abandoned and may pose a safety threat." SDG&E also complains about the POD's Conclusion of Law 2 which states that "Rule 31.6 of GO 95 authorizes SDG&E to remove permanently abandoned lines." SDG&E erroneously reads the sentence in the POD' summary paragraph and Conclusion of Law 2 as saying that Rule 31.6 makes it optional for an owner (i.e., the utility) to remove permanently abandoned lines.

SDG&E's interpretation of the summary paragraph and Conclusion of Law 2 is inconsistent with the text of the POD (at p. 7). It also misses the main issue in this proceeding, that is, whether the lines to the Bercovitch property were permanently abandoned not whether permanently abandoned lines should be removed. Rule 31.6 clearly mandates the removal of permanently abandoned lines. However, in the interest of clarity, we modify the summary paragraph and Conclusion of Law 2 to reiterate that permanently abandoned lines must be removed by their owner. We also modify Section 6.A of the POD to emphasize our concern for safety and that this decision does not diminish SDG&E's responsibilities to ensure that its lines are maintained in a safe condition. We also delete an unnecessary hypothetical analysis contained in the first full paragraph at page 8 of the POD as well as the accompanying finding of fact.

Lastly, SDG&E makes several arguments for reversal of the POD that can be best characterized as policy arguments. Rule 8.2(e) requires that appeals set forth specifically the grounds on which the POD is unlawful or erroneous. Thus, although SDG&E should not have included such arguments in its appeal, and though we are not obligated to respond to such policy arguments, we do so for clarity.

In its appeal, SDG&E contends that the USB opinion letter was the "linchpin" of SDG&E's interpretation of Rule 31.6. SDG&E makes the policy argument that the "precedence established by this ruling [excluding the USB letter]" acts as a "disincentive" for utilities to consult with Commission staff.

The facts refute SDG&E's claim that the USB letter was the "linchpin" of SDG&E's interpretation of Rule 31.6. SDG&E requested the letter from USB only after SDG&E removed the lines to the Bercovitch property, and after complainants filed this complaint. The record in this proceeding also shows that the Commission staff had no personal knowledge about the lines to the Bercovitch property, and that SDG&E provided no information to Commission staff on the future foreseeable use. Further, as SDG&E acknowledges in its own appeal, the USB letter would "not bind" the Commission. Thus, we conclude that SDG&E's policy argument also lacks merit.

Findings of Fact

1. SDG&E formerly provided utility electric service to complainants' property located at 2909 Borrego Valley Road, Borrego Springs, California.
2. SDG&E last provided electric service to the Bercovitch property in December 1989.
3. SDG&E completed removal of lines to the Bercovitch property in October 1997.

4. The Bercovitch property sits on an aquifer and contains improvements including a home.
5. The Bercovitch property has been used for growing crops.
6. SDG&E gave no notice to complainants that it intended to remove the lines to the Bercovitch property.
7. SDG&E's maintenance records show that in March 1993, the poles to the Bercovitch property were visually inspected and that no problems existed.
8. SDG&E's maintenance records show that in March 1997, the poles to the Bercovitch property were visually inspected and the only problem noted was damaged or missing high voltage signs.
9. In deciding to remove the lines to the Bercovitch property, SDG&E believed that "no near future use" established a basis for deeming as permanently abandoned the lines to the Bercovitch property.
10. SDG&E's SPM 200 deems as permanently abandoned overhead facilities if they are de-energized and no longer connected to SDG&E's distribution system with no future foreseeable use.
11. In deeming the lines to the Bercovitch property permanently abandoned, SDG&E relied upon a "no near future use" rather than a "no future foreseeable use" standard.
12. The cost to install new lines to the Bercovitch property is at least \$64,003.
13. Complainants are in the best position to evaluate future use on their property, and thus provide SDG&E with relevant information to evaluate future use of the lines to the Bercovitch property.
14. Under the particular facts and circumstances of this case, SDG&E at a minimum should have contacted the assessor's office, title company or a real estate agent (or possibly SDG&E's own internal real estate group, if any) to determine the owner's identity as listed on the assessor's record.

15. SDG&E's primary consideration in deeming as permanently abandoned the lines to the Bercovitch property was whether the lines were de-energized.

16. The SDG&E employee who deemed the lines to the Bercovitch property permanently abandoned did so on the mistaken belief that de-energized facilities are permanently abandoned.

17. The SDG&E employee who deemed the lines to the Bercovitch property permanently abandoned did not consider safety concerns a primary criterion.

18. The SDG&E employee who deemed the lines to the Bercovitch property permanently abandoned believed that near future use imposed a duty on the property owner to show a use within 30 days or risk having lines removed.

19. The Bercovitch property has been previously used as a farm and residence.

20. Development is occurring near the Bercovitch property.

21. Ruben Bercovitch would have arranged to turn power on to the Bercovitch property if given the choice.

22. SDG&E believed that no near future use existed for the Bercovitch property.

Conclusions of Law

1. GO 95 governs the construction, operation and maintenance of overhead electric lines of all types.

2. Rule 31.6 of GO 95 requires lines or portions of lines permanently abandoned to be removed by their owners.

3. SDG&E erroneously interprets Rule 31.6 to mean that lines that may pose a potential safety hazard must be removed.

4. GO 95 does not require or permit SDG&E to automatically deem as permanently abandoned those lines that may pose a potential safety hazard.

5. Instances of potential safety hazards may arise that call for maintenance, repair, or replacement of lines as opposed to abandonment.

6. SDG&E's interpretation of Rule 31.6 is inconsistent with other portions of GO 95 that require SDG&E to maintain and repair lines.

7. Rule 31.1 imposes a duty to maintain electrical systems in a condition which will enable the furnishing of safe, proper and adequate service.

8. Rule 31.2 imposes a duty to inspect lines frequently and thoroughly for the purpose of insuring that lines are in good condition so as to conform with GO 95. Lines temporarily out of service are to be inspected and maintained in such condition as not to create a hazard.

9. SDG&E's internal policy, SPM 200, provides a reasonable framework for determining if lines are permanently abandoned.

10. It is contrary to the public interest to remove utility infrastructure simply because there is no near future use as defined by SDG&E in this instance.

11. No future foreseeable use is a reasonable standard to apply in determining whether lines are abandoned.

12. Under the facts and circumstances of this case, SDG&E should have made a more determined effort to contact the complainants to determine their need for future load on the lines that SDG&E was contemplating removing.

13. No authority exists for SDG&E to remove lines if a property owner cannot show a use within 30 days.

14. In determining whether the lines to the Bercovitch property should be deemed permanently abandoned, SDG&E applied an erroneous near future use standard.

15. SDG&E Tariff Rule 15.I.1. does not confer upon SDG&E unfettered discretion to permanently abandon lines.

16. SDG&E should restore the lines to the Bercovitch property at its own expense and by the least expensive method that it reasonably can arrange.

17. Today's order should be made effective immediately, so that the question of restoration of electric service to the Bercovitch property can be resolved as soon as possible.

O R D E R

IT IS ORDERED that:

1. If complainants, Reuben Bercovitch and Blanche Bercovitch, make a written request within 90 days of the effective date of this order to San Diego Gas & Electric Company (SDG&E) for electric service to their property located at 2909 Borrego Valley Road, Borrego Springs, California (Bercovitch property), and provided that complainants have satisfied SDG&E's tariff requirements for taking electric service, SDG&E shall restore at its expense the lines to the Bercovitch property within 180 days after complainants make their request. Restoration of lines shall be by the least expensive method that SDG&E reasonably can arrange.

2. Case 98-11-027 is closed.

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