

Decision 00-06-067 June 22, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Eric Diesel,

Complainant,

vs.

Pacific Gas and Electric Company,

Defendant.

Case 98-01-032
(Filed January 2, 1998)

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and Electric Company, defendant.

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O P I N I O N

Summary of Presiding Officer's Decision

No tariff violations being shown, the proposed decision denies the complaint. The decision determines that PG&E reasonably met its responsibility to construct the electric line extension despite not having been provided in timely fashion the documentation and information required; under the circumstances it reasonably required construction of some access road that would be usable; that being unaware of where complainant would and did construct his roadbed, PG&E could not have and did not determine its location, provide its specifications, or supervise its construction; and while at complainant's request PG&E did identify trees for removal/trimming, it did not require complainant to do the work. PG&E is not required to pay reparations and there was insufficient evidence of PG&E failure to remove slash.

A. Background Statement of Facts

1. The Geiszler Period

In the mid 1980's, Steven Geiszler owned underdeveloped acreage property adjacent to Congress Springs Road near Skyline Boulevard in the unincorporated rugged mountain area above Saratoga in Santa Clara County. The terrain is heavily forested, very rocky, and runs along a roughly north south ridge, with steep slopes and drop offs in elevation.

In mid 1986, Geiszler inquired of Pacific Gas and Electric Company (PG&E) concerning extension of service to this property. PG&E on July 9, 1986, responded that its preliminary estimate was that a 2500-foot extension was required which would cost PG&E \$50,000, but that as Geiszler's proposed load was inadequate to support that investment, under Tariff Rule 15's standard provisions the extension would not be economically feasible.

However, PG&E offered, despite the uneconomic nature, to develop an Exceptional Case proposal, subject to Commission approval, if Geiszler wanted to go ahead. By this approach, Geiszler would have to advance part of the extension cost to PG&E and also a fund to cover part of the continuing ownership costs. PG&E preliminarily estimated the cost of such an arrangement would be about \$85,000. To prepare a detailed estimate, if Geiszler wanted to proceed, Geiszler would be required to pay \$1,800 for PG&E's costs. This offer to proceed was to expire in 90 days, and was subject to Geiszler obtaining rights-of-way.

Discussion proceeded based on possible loads for two houses under the Exceptional Case provisions. Again, PG&E made the offer to proceed with a detailed estimate provided Geiszler advanced the \$1,800 cost. Geiszler did not accept, and discussions continued.

It was then realized that the proposed extension would be within a State Scenic area, and thus had to be undergrounded and not overhead. On May 22, 1997, under an undergrounding scenario, Geiszler asked for details on trenching along Congress Springs Road which PG&E on September 4, 1987 offered to develop, provided Geiszler advanced \$2,000 for PG&E's costs. Under this scenario, Geiszler was to do both the trenching and substructure. Again, PG&E's offer had an 90-day expiration date. Again, Geiszler failed to accept, and Geiszler sold the property (APN 503-38-006) to Steve Clark. The sale and transfer was recorded October 7, 1987. Clark started construction on a house, but ceased after the foundation.

Along with the Geiszler parcel, there were three other parcels, which together formed a roughly triangular, 30-acre plus area bounded on all but the southernmost property line by Congress Springs Road. The parcel adjacent to Clark's parcel (to the south side) was owned by Phil Green who had erected a

residence on his parcel (APN 503-37-008), but Green had never obtained electric service.

In 1988, Clark inquired of the Commission's Energy Branch as to whether or not PG&E had correctly handled the earlier Geiszler inquiry. Clark was told that the anticipated revenue from two homes was not adequate to pay for the proposed extension, and that PG&E had acted pursuant to its tariff. Clark was also told that in exceptional cases (*i.e., uneconomic extensions*) service could be obtained, if the Commission approved, provided the customer paid the cost of excess footage installation, plus PG&E's cost of maintenance charges (for subsequent taxes, maintenance, inspections, etc.) on the excess footage. Nothing further developed with regard to Clark's inquiry.

2. The Eric Diesel Entry

Adjacent to the Clark and Green properties, the two remaining parcels (APN 503-38-001 and APN 503-37-005) in this triangular area were acquired by a partnership of George Colitzin and Dr. Eric Diesel about 1990. Santa Clara County records show that Diesel became sole owner of record in July 1991. The two parcels Diesel acquired have very steep hillsides running parallel to a north south ridge, and are characterized by abrupt changes in elevation. Acquired for \$80,000, Diesel's properties were of limited usefulness as they lacked any level buildable areas. Accordingly, Diesel sought to obtain lot line adjustments from Clark and Green, since these would add large level areas to his properties. This would increase the value of his properties, each of about five acres, to an approximate half million dollars each. Before he acquired these parcels, Diesel had heard from Green and Clark of their earlier unsuccessful efforts to obtain

power.¹ Diesel persuaded Green and Clark to make these lot line changes in exchange for Diesel getting them electric service. By making a joint application to PG&E, Diesel's plan was to pool their load allowances and qualify for reduced or no extension costs applicable to uneconomic line extensions. Diesel stated he wanted power to get the lot line adjustments through, and would also want power himself if he could get it. And of course, with electric power Diesel's parcels would be even more valuable. Diesel never told PG&E that he, Diesel, did not want power to his properties. But as he ultimately stated, he had no intention of building on his properties unless he got a builder who would purchase the property.

3. The First Diesel Application to PG&E

In the summer of 1991, Diesel made application on behalf of all three owners of the four parcels, and PG&E began its standard process for providing service. On September 4, 1991, PG&E informed Diesel that before it could begin engineering, certain information would have to be supplied to PG&E.² Despite the fact that much of this information was not forthcoming (Diesel asserted his plans were not solidified as yet), PG&E proceeded preliminarily to work with Diesel.

¹ It was Diesel's later assertion that he had made his acquisition of the properties in reliance on the 1986-87 PG&E preliminary estimates given to Geiszler as being the probable cost for extension of electric service to the properties.

² This information included copies of site plans, copies of exterior elevation plans, copies of road improvement (on/off site) plans, copy of County development conditions, copies of grading plans, and the construction schedules for the homes as well as electric load breakdown data.

The nearest source of PG&E power to the properties was at the junction of Congress Springs Road and Skyline/Highway 9. The route would be along Congress Springs Road to the properties. Diesel's properties had no direct access from Congress Springs Road. Diesel claimed access was available through two approaches; either across and from the Clark-Green driveway that entered from Congress Springs Road, or across County Parks land former fire trails from Congress Springs Road. Either way, it was Diesel's responsibility to obtain rights-of-way from either Caltrans or the property owners.

At a February 14, 1992 field meeting with Diesel, routes were discussed and the extension along the shortest, most practical route (Congress Springs Road to the Clark driveway entry) was determined to be 0.6 miles (later ascertained as 0.67 miles). Because the economics were not encouraging and Diesel's plans not solid (he still had not furnished the data requested September 4, 1991), and Diesel was pushing to proceed, PG&E agreed to proceed with engineering detail, preliminary surveys, and related matters if Diesel paid the advance fee (\$11,000 for regular time and \$16,000 for expedited work). Diesel paid for the expedited work, but PG&E's product was delayed several weeks until early May 1992. PG&E applied for a Caltrans' Encroachment permit, which Caltrans granted on May 1, 1992, but subject to numerous requirements including traffic control during the proposed undergrounding work.

When Diesel received PG&E's May 13, 1992 letter stating that the detailed study estimated a \$1,418,304 cost for the undergrounded project, amicable

relations ended.³ Diesel was furious. Despite his participation three months earlier in the field meeting detailing the route to Clark's driveway, Diesel now charged "breach of contract," asserting that he had only asked PG&E to engineer the line to his APN 503-38-001 property line (1300 feet), not the 3593 feet to the Clark driveway entry. Diesel then demanded a refund⁴ and at a follow up meeting June 5, 1992 threatened to sue. During this meeting, Diesel produced a hand drawn map of the four parcels and asserted there was a possible southern route to his property. PG&E agreed to another field visit to check the other route.⁵

³ The cost breakdown:

Total construction costs (3,595 ft.)	855,702
CIAC Tax (34%)	232,435
Cost of Ownership	518,237
Less Supported capital costs	-10,000
Less Engineering Advance	-16,000
Less Contribution (Tel. Co.)	<u>-162,070</u>
	\$1,418,304

⁴ On May 18, 1992, PG&E mailed Diesel its check for \$5,000 representing the refunded difference between the routine and overtime cost of its engineering study. Diesel cashed the check June 3, 1992.

⁵ This was the first time PG&E had seen this "map." This route would use Skyline Boulevard, thence across park lands to follow the contour of the ridge up to Diesel's indicated future house site on APN 503-38-001. Assertedly, Diesel's house site was connected by a road northward that led to the Clark-Green driveway. However, on May 20, 1992, five PG&E personnel had visited the area, walking in on the Clark driveway from Congress Springs Road, past Green's house, southward about 100 yards to where the drive petered out. Two PG&E personnel continued on a steep path along the ridge to a possible home site approximately 1000 to 1500 feet from the Clark driveway. They concluded that there was no feasible access drive to the second APN 503-31-005 site.

On June 17, 1992, led by Division Service Planning Supervisor Taylor, PG&E personnel met at the area with Diesel to evaluate Diesel's proposal. Diesel stated he had a right to cross the state park land from Skyline Boulevard.⁶ Following what Taylor described as a hiking path fire trail, not a passable route for a PG&E truck, they passed from Skyline Boulevard northward through the park lands to APN 503-38-001. PG&E was looking for a way to bring vehicles to install and later maintain an underground service line.

The Clark driveway route (entering from Congress Springs Road) was again walked. It led past the Clark building site, and past Green's house, proceeding southwest to where the drive petered out. From there it was necessary to hike uphill toward the area Diesel had indicated would be a house site on APN 503-38-001. Taylor stated this was no road or anything traversable by a PG&E vehicle.

With regard to APN-503-37-005, the second site, the proposed access was to be from the Clark driveway down the steep slope to a proposed house site. PG&E refused to accept any responsibility for a service trench on that slope, and Diesel was told he'd have to arrange for it for PG&E to proceed.

A further visit on the southern route was made July 7, 1992 by PG&E, Diesel and his bulldozer contractor, and the state park representative. The route was walked to determine access for PG&E trucks to install conduit and splice boxes, and for cable polling. PG&E stated it would need a 14-foot wide roadway

⁶ A PG&E check with the County Parks and Recreation Department on June 22, 1992 revealed that the department had no intention of granting Diesel a right of way, and that as he had done grading on park land without permission, they had red tagged and sent a cease and desist letter. It was stated the County intended to recover damages from Diesel.

and a permanent easement to maintain the undergrounded line. The route was very rocky.

The trenching costs for this 1700 foot southern Skyline Boulevard approach were estimated at \$340,000 by PG&E (contrasted with \$718,600 for the 3593 foot Congress Springs Road route). Diesel asserted his contractor could do it for approximately \$20,000. When questioned whether he had a permit to go overhead on APN 503-38-001 or had obtained a building permit, Diesel did not answer. On July 13, 1992, the park district superintendent wrote that the park would not accept a 14-foot wide bulldozed road that required permanent maintenance. This effectively precluded the southern route.

At this point PG&E was at a loss as to how to proceed. Despite Diesel's continued failure to furnish rights-of-way authorizations, building permits, site plans, etc. as requested in PG&E's September 1991 letter, PG&E had proceeded to design and estimate, for the shortest most practical route to Clark's driveway entry on Congress Springs Road, an underground line extension. Diesel rejected that design because of its costs. PG&E concluded that it would not continue to design facilities without appropriate information and based on asserted verbal agreements between Diesel and third parties. After four field and office meetings with nothing certain other than the Congress Springs Road route, PG&E decided to cease any further work on the project until Diesel produced (1) a recorded parcel map for each parcel; (2) a building plan indicating how the county would authorize service; (3) an approved right-of-way from the County Park if Diesel elected the southern Skyline Boulevard approach; (4) signed rights-of-way from other involved parties; and (5) an \$11,000 advanced engineering deposit. Diesel was advised of these requirements in a July 1, 1992 letter from PG&E's Division Manager. On September 11, 1992, PG&E refunded the \$1,424 unexpended balance of Diesel's deposit for the engineering estimate to the Clark

driveway. Diesel was told he could reapply when he had obtained the required information and rights. This closed out Diesel's initial application.

4. Diesel's Attempted Recourse to PG&E Board Chairman Clarke

Meanwhile, threatening to go to the district attorney, on July 1, 1992, Diesel wrote to PG&E Board Chairman Clarke. In a vitriolic five-page typed letter Diesel made various charges and allegations. Diesel stated that for two years he had not been allowed to apply for service, and claimed to have incurred damages of hundreds of thousands of dollars as the result of PG&E's conduct. Diesel stated that PG&E had breached its contract by not completing its detailed estimate on overtime he paid for, that the resulting cost estimate had been unreasonably increased over the PG&E 1986-1987 estimates to Geiszler, and that he could get no explanation why. Diesel asserted he had purchased the properties only on the basis of the 1986-1987 Geiszler estimate.⁷ When the Congress Springs Road route estimate came in unreasonably high he stated that it was PG&E's Taylor who suggested the southern approach through the park from Skyline Boulevard, but then that Taylor had lied and tried to defraud Diesel. Diesel alleged incompetent undergrounding estimates by PG&E. Diesel concluded by demanding Clarke answer 10 questions, and that the reasonable response by PG&E would be to immediately install the line.

⁷ Diesel had obtained copies of PG&E's 1986 and 1987 preliminary Geiszler estimates never proceeded upon. In the latter instance, Geiszler had assumed responsibility for both the trenching and substructure for the undergrounded line, necessitated because of its location along a scenic highway. These 1980's preliminary estimates were specifically provided as subject to change by detailed estimates Geiszler never paid to have made.

5. PG&E's Response

Clarke had Louis E. Vincent, PG&E's Chief Counsel, respond on July 29, 1992. Vincent stated he found no evidence of criminal or civil actionable misbehavior by PG&E, but rather a major effort to accommodate Diesel. Vincent emphasized that PG&E's engineering estimate was based on its rules and regulations, documents Diesel supplied, and site visits; that PG&E is constrained to provide service only on roads that it has a legal right to occupy and on private property where rights-of-way have been provided without cost to PG&E. Vincent stated that Diesel's situation was an exceptional case where costs would far exceed expected revenue. Vincent pointed out that the 1986 \$50,000 estimate was for "overhead," and subject to change upon preparation of a detailed estimate, an estimate never requested, paid for, or performed. Similarly, the 1987 offer to do a detailed estimate was limited to 90 days and was never accepted. There was no misrepresentation. Vincent stated that the route used for the 1992 estimate was the shortest practical route as required by PG&E's tariffs, and using what information Diesel provided. Vincent noted Diesel's characterization of PG&E's September 1991 request for information as "bullshit." And as the detailed estimate was not completed within the overtime period Diesel had been refunded \$5,000. Vincent reviewed the final Congress Springs Road estimate, noting it included not only trenching, but construction costs, state and federal CIAC taxes, and PG&E cost of ownership charges. Vincent observed that it was Diesel who on June 5, 1992 first produced the hand drawn parcel map where he depicted a southern route. Diesel's southern route crossed State Park lands through which Diesel had never produced documentation as to any crossing

rights.⁸ And it was the State Park Department that refused a right-of-way, closing that avenue.

Vincent concluded that Diesel was relying upon former time-limited, preliminary estimates provided to another person for different service proposals and routing, and subject to change when a detailed estimate would be made. Furthermore, cost calculation formulas had changed over the years.

Based upon Diesel's rejection of the May 1992 engineering study cost projection, Vincent stated that the Diesel project should be closed and unspent monies advanced would be refunded to Diesel.⁹ Further, considering the gravity of Diesel's charges, any further requests would have to be handled in writing.

6. Diesel Continues, Adopting Other Approaches

Again Diesel wrote Clarke, asking for maps showing PG&E power sources in his area so he could try other routes. On September 23, 1992, PG&E's Division Manager Thomas responded, supplying maps and the requested information including copies of PG&E's Tariff Rules 15 and 16. Thomas also stated that to initiate a new project Diesel would have to complete PG&E's Standard Installation Option Selection form, furnish complete building plans (including site, grading, elevations and road improvements), and equipment load list, and pay a \$5,000 advance engineering fee.

⁸ Vincent said PG&E required a full time permanent road access to accommodate full size trucks, so that were something to go wrong, it could get in to fix the problem or deenergize the line. Subsequently, on November 9, 1992, PG&E advised Diesel that after review, it had revised this to require an 11-foot wide access roadway.

⁹ By letter on September 11, 1992, the 90-day period of the May 1992 estimate offer having expired, the \$1,424 unspent balance in Diesel's \$16,000 advance was refunded to Diesel. The letter also informed Diesel that he could reapply as a new project pursuant to PG&E's tariffs.

On October 1, 1992, Thomas answered more of Diesel's letters to both Clarke and himself,¹⁰ stating that the original Diesel service request was now a closed matter as far as PG&E was concerned. Thomas further stated that until Diesel provided the initial information for another service request (as requested by Thomas' September 23, 1992 letter), PG&E would no longer respond to Diesel letters. Finally, Thomas told Diesel that if Diesel felt that PG&E had incorrectly or unfairly applied its tariffs, Diesel had a right to go to the Public Utilities Commission with a complaint.¹¹

Diesel next retained BWF Consulting Engineers (BWF), who wrote Thomas, enclosing load calculations and some site plans, and asked that these be reviewed and cost estimated. PG&E on October 20, 1992, responded, treating the request as a preliminary to a new application, and told BWF that for Diesel to reinitiate a service request he had to provide the full information and fee set forth in Thomas' September 23, 1992 letter. BWF then told Diesel that PG&E would provide nothing further until Diesel complied. BWF suggested that Diesel work with PG&E and comply. There is no record of further BWF involvement.

On November 2, 1992, Diesel again wrote Thomas to ask confirmation that PG&E indeed required a 14-foot access road in the state park - the condition that

¹⁰ Diesel had written a number of letters to Thomas, as well as another letter to Clarke. In the latter he complained of Vincent's reply for Clarke, terming Vincent's statements as being false and misrepresentative, and concluding by stating that if PG&E put in the line the next week, he'd take no further action.

¹¹ However, at no time did PG&E tell Diesel that in exceptional cases where undergrounding would not be feasible, it was possible to apply to the Commission, and pursuant to Overhead Electrics and Communications Facilities, etc. (1972) 74 CPUC 454, letter requests from applicants for deviations from undergrounding requirements could be reviewed by the Commission's staff, and where appropriate, could be approved by a commission resolution.

appears to have led the Park Department to refuse access by that route. In Thomas' November 9, 1992 response, he revised the minimum width to 11 feet to allow vehicle access to splice boxes, and assured Diesel of PG&E's willingness to work with Diesel in the latter's effort to obtain Park's approval, but conditioned upon receipt by PG&E of the information required in Thomas' September 23, 1992 letter regarding requirements to reinitiate a service request.

7. Diesel Engages Legal Assistance

Diesel next engaged attorney Nicholas Selby, who on December 1, 1992, wrote Vincent to arrange inspection of the earlier PG&E Congress Springs Road engineering study so that Diesel could obtain information to enable him to obtain outside bids for an extension. Vincent arranged for this inspection, but in essence declined to provide Diesel with the study (it being proprietary). Vincent did offer to reformulate the information to a bid package at Diesel's expense. On December 21, 1992, Diesel and Selby together with PG&E personnel reviewed the study.

8. Diesel's Second Application Approach

On May 13, 1992, Diesel wrote PG&E to say he now had put together a collective agreement, including not only his two parcels and those of Clark and Green, but also two additional parcels owned by William Girdner. Diesel said he also had easements from others and bids to underground on Congress Springs Road to his parcel APN 503-38-001. Diesel asserted that the collective allowances exceeded requirements so that the extension should be free.

On June 7, 1993, the new PG&E division manager Tatum responded, again telling Diesel that to reinitiate a service extension request he had to comply with the conditions in Thomas' September 23, 1992 letter. However, on June 10, 1993, PG&E again met with Diesel, and on June 10, 1993 Diesel in fact complied by

providing a tentative parcel map filed with the county; limited "agency agreements" signed by Clark, Green, and Girdner granting "overhead" easements;¹² a copy of Diesel's County application for overhead variances applicable to the Diesel, Clark and Green parcels, and PG&E service extension applications for Clark, Green and Diesel (but all signed by Diesel). These applications set forth purported load information and construction start and completion dates (in Diesel's handwriting), and an Installation Option Selection form for Option 2-installation by Diesel's contractor.

Because the application forms signed by Diesel for the others could not constitute binding load agreements, they were returned September 10, 1993 for applicants' signatures, corrected load, and other information. In mid-September, Diesel resubmitted them with cross outs and additions but still not signed by the respective parcel owners.

On July 22, 1993, Diesel wrote PG&E to propose still another extension line route, this one approaching Diesel's property APN 503-38-001 from the southeast (supposedly reducing undergrounding to 375 feet and leaving 2640 feet overhead over private property). In mid-September, Diesel proposed another two alternate line routes, one from the northwest using Heather Heights Road, the second using Booker Canyon from the southeast.

9. PG&E's Attempt To Finalize A Route

In an effort to finalize a route and an acceptable alternative to the Congress Springs Road underground routing to Clark's driveway, PG&E engineers

¹² But these limited agency agreements precluded Diesel from any financial commitments other than for his own properties. The agreements provided Diesel with some entitlement to work toward getting power, but did not obligate Clark and Green or Girdner, and there were no actual right-of-way documents.

walked the alternates Diesel was proposing, and then analyzed each from engineering and constructability standpoints, assessing terrain, tree conditions in the forested area, extension costs, reliability, and land rights issues. This material was summarized in a five-page note¹³ by Capital Investment Director Stracke (Exhibit 62-Tab 63) and was given to Diesel, Clark, and Green on January 26, 1994 prior to a proposed meeting.

Stracke explained how PG&E Rules would apply to each route, and set forth a nonengineered "ballpark" rough cost estimate applicable to each.¹⁴ Stracke stated that load estimates under PG&E's tariff applied only to existing homes, homes under construction with an active building permit, or homes planned where the land owner has road access, grading and building plans available for PG&E. Stracke also covered deficiency billing by which, if customers have not connected load six months after the extension is built; they will be billed to pay for a portion of the extension they were not entitled to because they didn't add the load. Point-by-point Stracke also laid out the elements of the job process once an application is completed in all aspects.¹⁵

¹³ The five-page memo discusses access, tree conditions in these heavy, dense madrone, redwood and eucalyptus areas in steep terrain, construction, service reliability, land rights for each option.

¹⁴ Route A:	1.5 miles extend overhead from Booker Canyon	\$202,000
Route B:	5400 ft. from Skyline over Girdner and Park	\$151,000
Route C:	8,452 ft. via Heather Heights-Congress Springs	\$477,000
Route D:	4,800 ft., of which 2100 ft is Congress Springs, thence to Diesel parcel, then 2700 ft up and on ridge to serve both Diesel homes and Clark and Green	\$483,000

¹⁵ The job process Stracke spelled out:

- Submit applications and all necessary information on project.
- Customer decides whether to go Option 1 or Option 2.
- Submit project deposit, which will be reimbursed after project is constructed.

Footnote continued on next page

Stracke laid out the alternatives under Options 1 and 2. Stracke also pointed out that his rough cost estimates for each of Diesel's proposed site approaches did not include CIAC taxes or cost of ownership charges that apply to any customer contribution. At that point PG&E still had no signed right-of-way documents from any of the would-be applicants.

Although Stracke furnished Diesel, Clark and Green with this information on January 26, 1994, it was not until mid-March that they would meet with him to determine what direction to take. But then they avoided providing direction on how they wanted to proceed. Subsequent events disclosed why.

10. Diesel's Application For A Commission Overhead Deviation

By a January 18, 1994 letter, Diesel had applied to the Commission for an overhead deviation on Congress Springs Road pursuant to Section 320 of the Public Utilities Code.¹⁶ Early in March 1993, Diesel had learned from Caltrans'

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- If applicable, applicants pay for their share of the construction along with 35% CIAC tax per Tax Reform Act of 1986 and a 173% cost of ownership charge.
 - Project is engineered...and based on costs, appropriate rule is applied.
 - Applicants sign contracts, which commit applicants to connect load as stated in application and to use the appliances in a bonafide manner within 6 months of completion of electric extension or be subject to deficiency billing.
 - PG&E or applicants build project.
 - Applicants connect load within six months of construction.

¹⁶As relevant here, Section 320 provides that it is the policy of the state to achieve, whenever feasible and not inconsistent with sound environmental planning, the undergrounding of all future electric and communication distribution facilities which are proposed to be erected in proximity to any state scenic highway, and which would be visible from such scenic highways if erected above ground.

In its implementation of Section 320, the Commission in Overhead Electric, etc. (1972) 73 CPUC 454, noted that the Legislature had recognized there would be situations where undergrounding would not be feasible, and to administer these situations, the

Footnote continued on next page

District Permit Engineer that in exceptional cases, deviation from undergrounding could be sought. The Diesel letter was assigned for processing to William Gaffney of the Commission's Energy Branch. Diesel's letter also complained about the May 1992 PG&E underground estimate, the time taken, and of PG&E's engineering charge. This led Gaffney on March 27, 1994 to seek explanations from PG&E. This Gaffney letter was the first notice to PG&E of Diesel's deviation application. PG&E's response to Gaffney dated April 7, 1994, provided information on what Diesel considered to be inordinate costs for undergrounding to Clark's driveway (the only vehicle access to approach Diesel's properties). It also noted PG&E's success in obtaining County variances with respect to other routes on private properties, but which also presented pole access problems as well as buildability issues related to the mountain terrain.

On May 10, 1994, accompanied by a senior Commission engineer, Gaffney met PG&E personnel and Diesel, and walked the distance of an overhead extension on Congress Springs Road to Diesel's APN 503-38-001 parcel (later ascertained to be approximately 2000 ft.), and approximated the crest route on the overhead ridge to link the Diesel, Clark and Green parcels (later ascertained to be 2700 ft.). Initial average costs were estimated per foot for each segment for Commission staff use in evaluating the Diesel variance application. On May 12, 1994, PG&E sent the free footage calculations for each of the four sites (totaling 6980 feet) as well as the Santa Clara County variance form granting a variance (but subject to county's approval of the building sites on Diesel's two properties).

Commission provided that letter requests for deviations would be accepted, reviewed by staff, and where appropriate, be approved by Commission resolution.

A long series of discussions between PG&E and Caltrans followed. First, PG&E determined that if the Congress Springs Road route to APN 503-35-301 were undergrounded, and from thence a Caltrans variance permitted overhead to the four parcels, the cost would still approximate \$538,800, but that if 11 utility poles and overhead were allowed on Congress Springs Road, and overhead on the linkup of the Diesel, Clark and Green properties, the estimated costs could drop to \$69,100, plus \$15,000 for Caltrans extras, for a total of approximately \$84,100. On June 7, 1994, Caltrans and Stracke reviewed the proposed exemption, followed by Caltrans consideration of all aspects. On September 10, 1994, Caltrans, after further discussions, while still preferring undergrounding, realized that the Commission might nonetheless grant an exemption, and advised Gaffney regarding a number of conditions to be included to ensure aesthetically sensitive configuration of the overhead. By October, Gaffney was preparing a draft resolution to place before the Commission. PG&E posed no objections to granting a variation for overheading.

11. Resolution E-3397

On November 22, 1994, the Commission by Resolution E-3397 authorized PG&E to deviate from the undergrounding provision of Section 320 and to extend overhead service to Diesel's APN 503-38-001, and adjacent customers, based on the free footage allowance for four lots. The Resolution specifically noted that Diesel planned to build two houses on his properties, that Clark had a home under construction, and Green had a completed home. The Resolution found the overhead to underground ratio to be about ten to one; that Santa Clara County authorized overhead on the approximately 2700 feet the line would cross private properties; and that while Caltrans preferred undergrounding on the Congress Springs Road segment of 2000 feet, the significant cost differential

overrode that preference. However, PG&E was required to implement specific Caltrans recommendations for which Diesel, Clark and Green were required to reimburse PG&E.¹⁷ One paragraph is of note in view of later developments:

Paragraph 14: "OVERHEAD BENEFITS TO DIESEL. PG&E would install the extension under the standard provisions of its extension rule. Because of the free charge provisions of its extension rule for various appliances, the extension would be made at no cost to Diesel."

12. PG&E Follow Up to Resolution E-3397

Following issuance of the Resolution, early in December 1994, PG&E furnished Caltrans with its proposed tentative design for the Congress Springs Road sector and applied for an encroachment permit. Mark Edwards, Senior PG&E Estimating Engineer, was relieved of most other assignments and given this project as his highest priority. Survey work was started to locate prospective pole and anchor line locations on the very narrow, winding, mountainous state highway portion of the route.¹⁸

On February 13, 1995, PG&E's new Capital Investment Director Maria Veloso wrote Diesel that PG&E needed complete sets of his improvement plans (initially requested on June 5, 1993) including site, grading, building location and elevation plans, and the location of access driveways so that PG&E could locate

¹⁷ Caltrans wanted that poles be stained or painted to its approval; that PG&E use special colored insulators; that poles be height-adjusted to avoid skylighting wires; and that it review construction at stages to assist in the development of design for visual and safety practices.

¹⁸ Nonetheless, on February 8, 1995, Diesel wrote Kevin Coughlan, Chief of the Commission Energy Branch, complaining that PG&E refused to do anything about putting in power; that free-footage did not include access roads; and that PG&E had not applied for the Caltrans permit.

the overhead line route on private property and meter locations. Diesel was told that work would begin on the location of the pole line on the private properties as soon as rights-of-way were provided, access roads were completed, and Diesel furnished copies of County approved building permits. A February 22, 1995 meeting of all the parties was requested to discuss the final route and to stake home site locations and property lines. Diesel was told the free footage was 6960 feet.

13. The February 22, 1995 Site Meeting

PG&E's Veloso, Edwards and a PG&E engineer met Diesel, Clark and Green on their properties. As PG&E' Tariff Rule 15-B provides that an extension line be the shortest practical route where rights-of-way can be obtained over private lands, PG&E planned to run the line along whichever driveway Diesel provided so that its installation and maintenance equipment could have access.

For the first time Diesel provided a to-scale Tentative Parcel Map (Exhibit 77). Produced by Caines & Associates and dated June 1993, it depicted three driveways asserted by Diesel as already existing or planned that purported to lead to "future house" sites on the two Diesel properties.

The first, indicating entry at the southwest corner of APN 503-38-001 from Congress Springs Road, traced northeastward to the northern property line of the parcel, thence across it to the northeast from whence it curved southward to the "future house" site shown on the map. Diesel and Edwards hiked through the woods uphill from the Green house area and came to a place overlooking Congress Springs Road. Obviously no drive was practical from that approach.¹⁹

¹⁹ Why this east-west route from Diesel's proposed house site to Congress Springs Road is even shown is strange. In December of 1990, while Diesel apparently was considering acquisition of the property, he had engaged civil engineers (Nowack &

Footnote continued on next page

The second indicated driveway extended southward up the hill from where the Clark-Green driveway petered out, along what the map depicted as "ex dirt road." The slope was rocky, steep, and heavily wooded. While Diesel claimed that this route was adequate for him and fine for a truck, Edwards found that only a daring driver with a four-wheel vehicle would attempt it. Veloso could see no road at all, and could not see how any one or any vehicle could climb up the hill. After steep climbing on foot they finally arrived at a clearing at the approximate 2720 foot elevation which apparently was the "future house" site.

The third indicated driveway was to Diesel's other parcel, APN 503-17-005. It purported to egress from the Clark driveway down a steep slope to the "future house" site on the tentative parcel map. However, Diesel pointed out a take off point for a previous cut down the slope, a point that had been rendered unusable or inaccessible by the grading for Clark's foundation, and Diesel stated that he would develop that route rather than that on the map.

The basic problem presented was that the power line under the Resolution would leave Congress Springs Road at the southwest corner of Diesel's APN 503-38-001 parcel. It was clear that from there the line would have to ascend the heavily wooded hillside, then go across Diesel's southern boundary area to the "future house" site. But then it had to run from that site area, in dense woods, northeast across Green's 13-acre parcel, to reach the Green, Clark, and Diesel home sites some 1500 feet away down hill. Edwards had to find pole locations.

Associates, Inc.) who advised him that trying to construct a driveway from Congress Springs Road to the site was an impossibility as the existing slope exceeded 69%, and a vertical cut driveway would violate the County's General Plan provisions against creating lasting visible scars on the landscape.

In this very rugged, rocky and heavily forested area, until some driveway would be settled upon between the knoll on APN 503-38-001 and the Clark, Green, and Diesel house sites, it would be imprudent to set out a pole line.²⁰ PG&E was not even certain of the "future house" site on APN 503-38-001. No approval of a building site or permit had been obtained by Diesel from the County thus far. During the visit Diesel told Edwards that he would have a rough cut "punched in" to the home site from below in about two weeks. Edwards found this hard to credit, given the large boulders, the giant Douglas fir trees and the very steep slopes that would clearly require cuts and fills. Nonetheless, Edwards told Diesel to let Edwards know when the drive was "punched in," and then Edwards would return to stake in the pole line.

Later the group adjourned to Green's house. Edwards had tentatively planned the northern position of the pole line to pass Green's house on the northwest side. But an earlier slide had limited space and would force removal or trimming of some large oak trees. On the southeastern side of Green's house, the hillside was very steep, just dropping off. As this was being discussed while the group were on a second floor balcony on the southeastern side of Green's

²⁰ Here, where the proposed driveway routes were not settled, much less surveyed or constructed, in order for PG&E to comply with its tariff requirement that the pole line be constructed along roads or rights of way on private lands, the final driveway location was essential. Completion of driveways before construction of a pole line with its guy lines and anchors is also important to avoid damage to the line during drive construction, relocation conflicts later on between the customer's drive and the line (relocations are at the customer's expense), and later rights-of-way issues. The access provided must be such as to enable installation (poles are 45 feet long, weigh over 900 pounds, and require placement in 5-1/2 foot deep holes) and servicing by mechanical equipment after installation.

house, Edward saw an alternative. By a long span across that side, the oak trees on the northeast side could be spared. Green agreed.

During this visit both Diesel and Green decided they wanted three-phase service rather than the single phase specified on the applications. This would require sizing up transformers and service wire, and redoing calculations already done. (When revised applications were later forthcoming to reflect these changes, again Diesel signed both applications).

Diesel then pushed to have PG&E immediately proceed with engineering detail on all the project without waiting for a final agreement to be drafted and signed, and gave the PG&E personnel his check for the requisite \$4,050 deposit.

In a March 1, 1995, letter to Diesel, Veloso summarized the February 22, 1995 field meeting, and asked for new load data sheets for the three-phase service now requested. She reminded Diesel that the proposed driveway from the Green home area to his APN 503-38-001 "future home" site had to be constructed so that that final leg of the pole line could be ascertained and staked for construction.²¹ She further reminded Diesel of the necessity that load be used within six months once the power extension was completed, and of the deficiency penalty if it were not used.

Meanwhile, PG&E was encountering repeated problems with Caltrans, Mid Peninsula Park District, and the State Park on proposed locations for poles, guy wires and anchors, and rights-of-way on mountainous Congress Springs Road as it meandered from side to side in its narrow 60-foot easement, with terrain straight up on one side and straight down across the road. It was turning

²¹ In addition, Veloso told Diesel that at that time trees that Diesel would need to trim or remove before PG&E could construct the line extension would be tagged.

into a major effort to get an overhead line okay on the highway. As many as a dozen Caltrans specialists had to check out each pole adjustment in location.

14. Diesel's New Driveway

At the end of the February 22, 1995 site meeting, PG&E understood that Diesel intended to construct a driveway extension from the area where the Clark-Green drive petered out uphill to the area depicted on his Tentative Parcel Map as "future house" site in parcel APN 503-38-001.

On February 27, 1995, Diesel left a voicemail message for Edwards that he had relocated his planned driveway to a new location. The following day Edwards talked to Diesel and was told Diesel had moved the driveway to the southeast of Green's house; that the road was "punched in" and that the contractor would complete it when the rains stopped. Edwards said to call him when the road was completed. On March 8, 1995, Diesel called Edwards stating that three more weeks would probably be needed before the drive was completely cut through.

On March 30, 1995, for the first time Edwards saw Diesel's partially constructed road crossing Green's property southeast of Green's house, a route completely different from all previous routes. Green told Edwards that it was 60% completed and that Green would call Edwards when it was completed. Edwards was surprised that Diesel had been able to cut what was basically a shelf along the drop off hillside. Further on up the hill, a big section of the hillside had been bisected, forming a large switchback "S" before the bulldozed

base continued up to the area designated as Diesel's "future house" site on APN 503-38-001.²² (See Attachments A and B.)

On April 14, 1999, Green called Edwards to report that the road was complete, and a meeting onsite was scheduled. However, on April 17, 1995, Diesel told Edwards the road was not complete, but to check with Green. The next day Green left Edwards word that the road was complete. Edwards, Green and Clark met onsite on April 18, 1995 (Diesel not able to attend) and discussed pole locations, tree trimming,²³ and balance of the roadwork.²⁴ Clark was asked for his revised application for service and furnished it on April 21, 1995.

On April 25, 1995, after marking pole locations on Congress Springs Road, Edwards and a PG&E surveyor went to Clark's driveway entry where they were questioned by a County employee asking about illegal grading (they responded they were not aware of any and were in the area on service applications), and proceeded on foot up the drive. They met Diesel's contractor with his grader who told them that the County had shut him down from further work on the roadway.

On May 5, 1995, James Sier of the County Building and Engineering Department told Veloso that construction of the driveway to Diesel's property

²² According to Edwards, this relocation (to the southeast of Green's house from the opposite site) required reengineering about 800 feet of the pole line location.

²³ In installing the driveway southeast of green's house, Diesel had removed most trees on the new route without consultation with PG&E, except for some tan oaks that were still in the way.

²⁴ Green briefed Edwards to the effect that an eight to ten foot boulder buried in the driveway Diesel had cut still presented problems, and that the switchback cut was not as yet finalized although they were working on it.

had been shut down because Diesel had no grading permit. Sier asked if PG&E were supervising the road construction and Veloso responded that PG&E was not.

15. Diesel Blames PG&E

Three days later Diesel telephoned Veloso to tell her of the road problems he was having with the County. Stating that as the roadway was 99% completed, he proposed that PG&E take over supervision of the balance of construction. Veloso told Diesel it was not PG&E's road and PG&E had no intention of taking it over. She said, however, that with the road locations finally delineated, most likely PG&E could now proceed with the overhead line even if the road was incomplete.²⁵

The next day, May 9, 1995, Diesel told Veloso he had contacted a Commission staff member regarding PG&E's refusal to admit that PG&E had instructed him to build the road, and had supervised its construction. Diesel said the County had informed him that he would be arrested if any construction was resumed. Because of this, Diesel forbade any PG&E representative to set foot on his property.

On May 12, 1995, Veloso called Sier to insure that the County was aware that PG&E had a project to design and install electricity, but that the roadway construction was strictly Diesel's project. Sier's response was that the County shut down the roadway construction, not the PG&E project, and that he hoped PG&E could be able to complete service to Green.

²⁵ Veloso's notes also reflect that Diesel insisted that PG&E take over supervision of his new road construction (assertedly 99% complete). Told that PG&E would not, Diesel then accused PG&E of having him destroy his existing road, which he said he initially intended to use for personal access in order to build his new road.

16. Diesel Invokes Aid of President Fessler

Assertedly at the suggestion of an unnamed Commission staff member, on May 9, 1995, Diesel wrote a three- and- a-half-page letter to Commission President Fessler (copies to PG&E Chief Executive Officer (CEO) Skinner and to Gaffney of the Energy Division). In the letter he asserted that almost ten years (sic) after the initial application his property still had no power. He accused PG&E of having stated that if PG&E could delay until July 1, 1995 when the Code changed on extensions, PG&E could avoid serving him. He stated that PG&E insisted upon a 14-foot wide access drive to his house site and that Diesel do all the tree removal, this despite the fact that he had three existing access roads (assertedly two through the State Park rejected by the Park because of PG&E's road width requirements, and the third rejected as too steep). He accused PG&E of making him build a new road which destroyed his three existing access roads. He claimed that this new road, 99% completed, was red-tagged by the County because PG&E refused to admit to the County that it was built under PG&E's responsibility and supervision. He stated that a simple PG&E admission to the County that it had supervised the roadway construction and tree removal would satisfy the County, allow completion of the road, and avoid adverse environmental consequences.

17. Commission Reaction To Diesel's Letter To President Fessler

Diesel's letter was received the next day, May 10, 1995. The same day President Fessler's Advisor Camden Collins gave the letter to Coughlan (then Energy Branch Chief of the Advisory and Compliance Division). On that same day Coughlan wrote Steven Kline, PG&E's Regulatory Affairs Manager, directing that an answer be provided to Diesel by May 17, 1995, and that PG&E respond to Coughlan on four questions:

- 1) Why did PG&E refuse installation until Diesel constructed a road and completed tree removal? What was the authority?
- 2) Why did PG&E refuse to certify that the Diesel road grading was under PG&E supervision or control?
- 3) Who is responsible for tree removal?
- 4) Why does PG&E refuse to certify that Diesel's tree removal was under PG&E supervision or control?

Coughlan also set a meeting with Diesel and PG&E for the week of May 22, 1995. Instead, the meeting was advanced to May 15, 1995 at the site, and attended by Coughlan and Gaffney for the PUC, Diesel, and Veloso, Parker (Lead Tariff Analyst), Montizambert (Regulatory Relations Representative) and Edwards for PG&E. Coughlan's stated purpose was to explore options to clear the red tag situation on Diesel's new roadway. Coughlan expressed the Commission's concern over delay.

18. PG&E's Response

On May 30, 1995, PG&E's Kline, Manager of Regulatory Relations, responded to Coughlan's letter.²⁶ Kline said PG&E had adhered to its tariffs and that PG&E had attempted to work cooperatively with Diesel, Clark and Green, despite the fact that Diesel has never given PG&E a copy of any County approved building permits. Kline pointed out that until recently Diesel had incomplete site plans, had no access road, and had been changing even the type

²⁶ It is noteworthy that Camden Collins was furnished copies of both Coughlan's May 10, 1995 letter to Kline and Kline's May 30, 1995 response.

of service, and had initiated construction of a driveway which appeared on no plans shown PG&E. Klein reviewed PG&E's recent actions on the project, including the encroachment permit from Caltrans, resolution of a pole line, and survey work based on Diesel's new roadway. He stated that preparation of an Overhead and Service Agreement would be completed before June 1, 1995, and after Diesel and Green sign it, construction could begin in two weeks (Clark had already signed an Agreement).

Responding to Coughlan's questions Kline stated:

- 1) PG&E had not refused service until Diesel constructed a road, but had not known where to put a pole line until Diesel designated a final route. Construction in this area being complex and very expensive, PG&E tried unsuccessfully to get Diesel's site plan showing an access road that could be used to install and maintain a line. Before overhead was authorized, routes changed frequently, including over Park lands where PG&E had indeed specified road dimensions it would need in the Park. PG&E had never specified any dimensions for driveways on the applicant's parcels. PG&E had never given Diesel design requirements for his private road nor had it in any way supervised it. Indeed, PG&E did not even know of Diesel's new road until it was largely cut in. While PG&E may recommend trees to be cut or trimmed by applicants during applicants' construction in order to facilitate PG&E's line construction, if applicant chooses not to do it, PG&E will during its line construction.
- 2) Kline stated that Diesel had never discussed with PG&E his proposed new road nor was it on any site plans provided by Diesel, and that PG&E had not directed, supervised, or controlled the grading and work.
- 3) Kline stated that PG&E had responsibility for tree trimming or cutting, and that PG&E had not told Diesel or the other applicants that it was their responsibility. PG&E had

identified trees that most likely would have to be cut or trimmed in order to coordinate applicants' work with PG&E's need.

- 4) Kline stated that applicants proceeded in cutting trees, although PG&E had recommended to Green that this not be done before the survey after which PG&E would obtain the requisite permits.

Finally, Kline rejected Coughlan's suggestions that PG&E accept temporary liability for Diesel's road, stating that given PG&E's judgment that the incomplete road was unsafe and presented present and future liability risks, PG&E would become a prime candidate in any lawsuit concerning the road. Kline stated that PG&E had not directed, supervised, or controlled Diesel's construction, nor was it ever discussed with PG&E or shown on any site plans submitted to PG&E. As an alternate to vehicle access, if necessary, PG&E can take the extraordinary method of walking in the poles and setting them, while using helicopters to set in the poles adjacent to Diesel's road cut.

Kline assured Coughlan that it was PG&E's intent to expeditiously complete the project while holding Diesel, Green and Clark to their load obligations upon completion.

19. Veloso's June 1, 1995 Letter To Diesel

With Diesel finally committed to a driveway access from the Clark-Green driveway to Diesel's APN 503-38-001 future house site, albeit it was a roadway that PG&E would not use because of its incomplete and unsafe nature, PG&E was able to locate and survey for the line extension and did so.

Accordingly, on June 1, 1995, Veloso wrote Diesel to inform him that the final calculation of the free footage for the four home project was 8439 feet, and that as the line extension was 3848 feet, there would be no charge to Diesel or Clark and Green provided they installed and used their projected loads (based

on their last revised applications) within 6 months of completion of the extension pursuant to the Overhead Electric Extension and Service Agreements. Copies of these final agreements were enclosed for signature, and Veloso stated that the line construction would begin after PG&E had received the signed agreements. Diesel, Clark, and Green signed the agreements on June 5, 1995, and Veloso signed for PG&E on June 21, 1995.

20. Completion Of Line Extension Project

Meanwhile, the County stop work order on Diesel's incomplete road did not stop PG&E continuing work on the line extension, both on Congress Springs Road and on the Diesel, Clark and Green parcels. The special dark poles and green insulators were obtained, and arrangements were made for helicopter service. Adjustments to the pole locations had to be made to accommodate the still undetermined location of Diesel's proposed two homes. Once the last of the Overhead Line Extension and Service Agreements were finally signed, construction was scheduled and begun. As anticipated, construction was difficult. Unable to use the rudimentary, unsafe, and only partially constructed Diesel driveway to APN 503-38-001, hand labor was necessary to carry some poles in, while other poles had to be brought in by helicopter together with equipment and materials. Helicopters were also necessary to carry out tree trimmings. Those poles placed within the Diesel, Clark and Green parcels were located and installed adjacent to the Clark driveway and the incomplete Diesel road, as specified in the rights-of-way documents signed by each applicant.

The costs were high. The PG&E system average (used in estimating the project and for the Commission Resolution) at that time was \$10.52 per foot.²⁷ The line extension was completed and energized on August 7, 1995.²⁸

On September 15, 1995, PG&E refunded Diesel's \$4,030 deposit advanced February 22, 1995. As of that time there was no sign of any start of house construction on either of Diesel's two parcels. In Veloso's letter with the refund, she reminded Diesel that the contracted for electric load had to commence by February 7, 1996 if the deficiency charge was to be avoided. She also reminded him to contact her when home construction began and the County release was obtained on the homes so that PG&E could install the drop line to his meters.

On September 15, 1995, PG&E's Montizambert wrote Gaffney of completion of the line extension. Remaining was the completion of removal by hand labor and helicopter of wood and tree trimming debris scheduled for completion by September 22, 1995.

²⁷ This \$10.52 per foot is the basis upon which any deficiency charge to applicants would be calculated if applicants fail to install and use the loads applicable to the appliances listed on their applications.

²⁸ On Diesel's APN 503-38-001, as there was no house yet constructed, a transformer was hung on the pole at location 15 ready to add the service wire drop whenever Diesel has final approval from the county and has installed a panel on the house to receive power. On Diesel's APN 503-37-005, a transformer was hung on the pole at location 23 on Clark's driveway above Diesel's parcel and a service clearance pole was located inside Diesel's parcel adjacent to the area's indicated future house site. A service drop will be put in when Diesel installs a panel to receive power. All that is needed in either instance is a one-hour job for PG&E to install a triplexed wire for service. Green has power to his house, and Clark has used some power for construction.

21. Subsequent Diesel Actions

On November 3, 1995, almost three months after the line was energized, Diesel again wrote PG&E's CEO Skinner. He stated he could not understand why PG&E was causing him so many losses; that their contract called for construction of a home within a time frame, and that PG&E had made this impossible by placing its poles in the roadbed for the road he built (which he described as being "a stable and very safe full twelve-foot minimum bench cut"), a road PG&E demanded be built to replace his existing road through the park. He asserted PG&E had needlessly run up the cost of the line extension by using helicopters when PG&E could have used his new road. He asked if PG&E would compensate him for the very valuable timber it had cut down and removed. He also accused PG&E of placing poles in the area designated for a home site and had cut trees in the area designated as a yard. He accused PG&E employees of refusing to meet with him or to process his applications in order to avoid the July 1995 Code changes. And finally, he also accused PG&E of having placed poles in the middle of an access easement to some parcels he owned on Crystal Peak Road, enclosing photos.

On November 16, 1995, Diesel wrote the County Surveyor, forwarding an erosion control plan apparently required by the County. He stated that PG&E had been asked to supply power in 1987, but that it was not until a complaint was filed in 1993 that the Commission had ordered PG&E to install lines at no charge and that "this included all grading costs." He stated that PG&E had required an access road since the existing access went through a State park which denied PG&E access, or through a road on private property with a 20% slope in places; that when he complained to the Commission, Gaffney recommended he build a road to PG&E specifications and then complain to the Commission for reimbursement. He stated he was told PG&E was exempt from the County's

grading ordinance, so he proceeded with his road. When 90% complete, PG&E had told the County it did not require the road. He asserted PG&E's position was self-contradictory.

On November 22, 1995, PG&E Division Manager Tatum responded for Skinner to Diesel's November 3 letter. Tatum stated that PG&E would make every reasonable effort to relocate any poles at Crystal Peak, but that as these were in easements granted by the previous owner, any relocation had to be at Diesel's expense. He also observed that Diesel had failed to keep a site appointment on April 6, 1995 to identify the poles at issue. As to the poles on private land at the Congress Springs Road sites, those poles were installed adjacent to Diesel's existing roadbed as specified in the right-of-way documents and in accord with the Commission's General Order 95. And as Veloso had told Diesel on September 19, 1995, PG&E would move the poles but at Diesel's expense; that to avoid this situation was precisely why PG&E asks for County approved site plans. Tatum said PG&E had to use hand labor and helicopters because Diesel's new road was unsafe, and that PG&E had removed the trimming wood and debris because Diesel told Edwards on June 14, 1995 that he wanted none of it left on his property. Finally, Tatum said the poles on APN 503-38-001 were located clear of the house site area Diesel had had flagged, and the trees cut were cut by Green and Clark, before PG&E had begun any tree trimming.

22. Diesel's Informal Complaint

Stating that it was at Gaffney's recommendation, Diesel next filed an informal complaint with the Consumer Affairs Branch of the Commission. His chronology of events and 67 specific individual requests for Commission findings and actions required 25 typed pages with approximately 261

paragraphs. This was accompanied by copies of 52 letters (one of twenty-two pages) and 18 attachments and five maps. Many of the letters were liberally annotated with comment. After review of the filing, the extent and complexity led Consumer Affairs to recommend to Diesel that he go formal with his complaint.

B. Case 98-01-032

1. Diesel's Formal Complaint

On January 2, 1998, Diesel filed Case 98-01-032 with the Commission. His filing duplicated the Informal Complaint filing and was accompanied by 61 separate letters and other submissions, essentially reflecting materials filed with the informal complaint.

On March 19, 1998, PG&E filed a timely answer, responding item by item to the 261 paragraphs of the complaint chronology, and contending that many of the allegations were not appropriate for a hearing.

2. Prehearing Conference – Resulting Scoping Memo and Ruling

On May 12, 1998, a Prehearing conference (PHC) was held by Assigned Commissioner Henry M. Duque and Administrative Law Judge (ALJ) John B. Weiss in San Francisco. Both parties were represented by counsel and each made a verbal presentation of its position. PG&E asked for discovery and sought a meet and confer session with complainant for a possible stipulation to narrow the issues.

On May 18, 1998, the Assigned Commissioner issued his Scoping Memo and Ruling setting a schedule for the proceeding and designating ALJ Weiss as Presiding Officer for the proceeding. The Memo and Ruling included as issues PG&E's tree trimming responsibility; PG&E's extension responsibilities under Tariff Rule 15; responsibilities relating to access roads, PG&E's responsibilities

under Resolution E-3397; and whether Diesel fails to qualify for free footage by reason of insufficient timely use of power. A July 10, 1998 deadline for filing of trial motions was included in the Timetable Schedule.

3. PG&E's Motion to Strike

When Complainant failed to respond to PG&E's June 2, 1998 and July 1, 1998 proposals to discuss stipulations to narrow the issues, PG&E on July 6, 1998 sent its proposed list of trial issues to Complainant. On July 7, 1998, Complainant responded with his list. As the parties were unable to agree, on July 10, 1998, PG&E filed a Motion to Strike 39 claims for monetary damages, all time-barred claims for reimbursement, and items regarding criminal prosecution by Santa Clara County.²⁹

On July 20, 1998, Complainant responded, seeking denial of the motion. Complainant disagreed that he sought damages, but rather that he sought reparations for costs imposed on Complainant, but properly PG&E's costs; that he did not seek Commission intrusion into criminal jurisdiction of Santa Clara County, but rather to establish relevant facts as to whether PG&E's conduct complied with its extension rules; and stated his view of the applicable statute of limitations on certain claims.

On July 22, 1998 (the first day of hearing), ALJ Weiss, with the concurrence of the Commissioner, after hearing brief final arguments on the motion to strike,

²⁹ PG&E sought to have paragraphs 20, 21, 33, 38, 59, 108, 164, 169, 171, 176, 177, 178, 198, 199, 200 through 222, 235 and 236 stricken.

issued an oral ruling which granted the motion as to 34 of the paragraphs at issue, and denied the motion as to the remaining five paragraphs.³⁰

4. The Discovery Issue

During discovery prior to the hearing, PG&E had been asked and refused to produce the preliminary 1992 Engineering costing materials that had produced the million plus estimate given Diesel, although earlier (in 1992) it had offered to reformulate the information to bid package form at Diesel's expense. Complainant sought to force production with possible sanctions. PG&E contended the method and materials were proprietary. The parties at the first day of hearing agreed to have the Commissioner and the ALJ review the materials in camera. Upon inspection, the Commissioner and the ALJ concluded that the materials dealt solely with the underground costs for the Congress Springs Road to Clark's driveway entry, and were an in-house pro forma comparative overhead cost estimate used in internal PG&E costing procedures. The Complainant was satisfied, and discovery was denied by ALJ oral ruling.

5. The Hearing on Case 98-01-032

A duly noticed public hearing was held before ALJ Weiss, and Assigned Commissioner Duque as his schedule permitted, in San Francisco on July 22, 23, 24, 27, 28, 29 and 31, 1998, with a three-hour site visit on July 30, 1998. A total of 182 exhibits were received into evidence. Of these, 101 were included as "Tab 1, 2," etc. to PG&E's Exhibit 62.³¹ A total of 1017 pages of testimony was received.

³⁰ Paragraphs: 20, 21, 33, 38, 59 and 171 stricken under two-year Statute of Limitations (Pub. Util. Code § 735), and lack of standing (see Tr. pp. 13, 14, 15 and 16).

³¹ While some exhibits are duplicate copies of letters, maps, etc., some also include marginal annotations and other information.

Diesel testified on his own behalf. For PG&E, the witnesses were (with their job titles at the time of their respective involvement) Gregory M. Taylor, Director of Information Technology and Records Management; Edward A. Stracke, Capital Investment Director; Mark R. Edwards, Sr. Engineering Estimator-Electric; Maria C. Veloso, Capital Investment Director; Steven C. Parker, Lead Tariff Analyst; and Dale W. Stephens, New Business Director.

a. Diesel's Testimony

The thrust of Diesel's testimony and its supporting 17 exhibits was to attempt to establish that for an eight-year period he had had problems with PG&E in getting power extended to his two properties and to the properties of his neighbors Green and Clark. He testified of needing lot line adjustments from Green and Clark to greatly enhance the value of his parcel, and of his agreement with them to use their combined free footage allowances to get all power without cost. Diesel testified he never intended to build himself, as the Green and Clark allowances sufficed for the extension; he said he had told this to PG&E and Gaffney of the PUC.

Diesel testified that PG&E did not want to do the extension; that PG&E's initial cost estimate for a 3593 foot underground extension was over a million compared to what he asserted was a \$50,000 estimate six years earlier; and that PG&E frustrated his efforts to seek a less expensive alternative route, leading to his complaint letter to President Fessler which brought Commission staff intervention leading ultimately to Resolution E-3397.

Diesel recited that pursuant to the Resolution there was to be no cost to Diesel, Green and Clark for the line extension, as the cost was within their combined free allowances under PG&E's tariff, and that Diesel had existing access roads to his parcel APN 503-38-001 passable by any passenger vehicle or

fire truck, Diesel claimed that PG&E refused to accept these roads and required Diesel to construct a new access road, pursuant to PG&E specified location, design, specification, and supervision. Further, Diesel contended that PG&E required Diesel, Green and Clark to remove and trim trees, all as a precondition to construction of the extension line.

Diesel testified that as he needed to get power because of his contract with Green and Clark, and because of Veloso's letter telling him that "all property owners must also provide access roads adequate for PG&E to install, own, and maintain its facilities," he built the new road on the southeast side of Green's house, and removed and trimmed the trees tagged by PG&E. He stated that after the County shut the road project down, unfinished, for lack of a grading permit, PG&E denied it had supervised, designed, or specified any location, and accepted no responsibility for the road or tree removal and trimming.

Diesel conceded that he never developed site plans with the County for proposed homes. He testified that the indicated "future house" sites and roads to these sites were inaccurate, and were shown on the Tentative Parcel Map given to PG&E only because the County required them. Diesel claims that they had been put on the map without his request or concurrence by either his surveyor, Caines, or the County.

Diesel also accuses PG&E of leaving the slash from PG&E's tree trimming activities during construction of the line extension, and refusing to remove it.

Accordingly, Diesel seeks from the Commission a finding that PG&E violated its line extension rules by requiring that Diesel construct an access road and remove/trim trees as its condition of extending service; that PG&E supervised this road's construction through its specification of location, width,

and turning radii; and also supervised tree removal and trimming done by Diesel through its tagging of affected trees. Diesel asks that PG&E reimburse Diesel for all costs he incurred on behalf of PG&E, and that PG&E be ordered to remove "slash" from Diesel's property.

b. PG&E's Testimony

PG&E's various witnesses and 106 exhibits traced the period since late 1991 of PG&E's involvement with Diesel. Witness after witness denied or rebutted Diesel's accusations, clarified events, and explained PG&E's practices, actions, and positions. Along with the heavy commitment of PG&E personnel at all levels to respond to Diesel's problems and the incessant telephone and correspondence demands, the witnesses stressed Diesel's persistent delay or failure in furnishing appropriate documentation, permits or information, the problems from Diesel's constantly shifting positions, and his obfuscation of facts and events as well as downright misrepresentations.

Witnesses told of futile efforts to explain why the 1992 underground extension cost estimate for the initially planned state scenic highway route had exceeded \$1 million. They explained the error in Diesel's persistent efforts to compare the 1992 (estimate which included engineering analysis and assumed extensive undergrounding) to the rough nonengineered preliminary estimate given to another individual six year earlier (the latter extension initially assumed to be overhead and based on PG&E's then-current system average cost, later adjusted to underground with the applicant to do trenching and substructure, and before the CIAC tax gross-up was in effect). They told of working on one alternate route after another, including Diesel's proposal to cross State parkland, a proposal rejected by the Park because of PG&E's access road requirements to underground and maintain an extension.

The testimony and exhibits substantiated Diesel's continued failure to cooperate and to provide repeatedly requested documentation and how this led PG&E to refuse to proceed, and of Diesel's subsequent reapplication. Witnesses stated that from the beginning Diesel represented that he'd build houses on his two parcels,³² and that there were existing adequate access driveways on each of his parcels. But all PG&E witnesses agreed, from onsite inspections, there were no roadways for vehicle access, only some rocky and steep trail paths impassable for PG&E equipment. Witnesses noted PG&E's Tariff rule 15A requires that extensions be placed on rights-of-way satisfactory to PG&E. Edwards said that Diesel was informed of the lack of suitable access, and that Diesel responded by stating he'd "punch in" a road so that PG&E could place its line route. Edwards also said he asked Diesel to advise PG&E when the road was completed so that PG&E could design its line route alongside so as to avoid future conflicts. The PG&E logs support Edward's testimony that he did not know where Diesel would place his road. PG&E witnesses denied that PG&E participated in the design, location, specifications, or construction of the rough and unsafe roadway

³² Stracke testified that in June of 1993 Diesel delivered service applications which set forth starting and completion dates for Diesel's two homes, and the completion date for Clark's house. Edwards testified that if PG&E had known that Diesel had no intention of building, and assuming Clark and Green qualified for a free allowance, the design of the line would have been substantially different. Edwards also testified that the only reason to depart from Congress Springs Road at Diesel's APN 503-38-001 parcel, and to go up through that extremely difficult terrain, was to bring service to Diesel's APN 503-38-001 parcel. Had power been sought solely for Green and Clark, the overhead line would have extended up Congress Springs Road to below Green and hence up the hillside to serve both Green and Clark. Stracke said that the deficiency facing Diesel for not using the power he contracted for is only a quarter of the estimated cost with the ratepayers of PG&E having to pay the rest.

Diesel "punched in," and denied that PG&E in any way supervised that project.³³ Edwards and other PG&E witnesses testified of persistent Commission staff pressures to do something about the County red-tagging Diesel's road work when it developed Diesel had proceeded without a County grading permit and had been stopped short of completion. Assertedly there was also staff pressure for PG&E to finish up the road. Witness Parker characterized Diesel's rough-cut as what looked like the beginning of a logging road. Edwards testified that PG&E construction expert Anthony refused to have PG&E have anything to do with what he latter described as an absolutely not usable or safe route.

Edwards testified of persistent offers by Diesel and Green to remove or trim trees as needed in order to move the project along, and of his telling them the trees were theirs; that until PG&E had signed rights-of-way it would not cut or trim, but would cooperate with Diesel and Green if they wished to do so themselves; and that Green did so. Veloso testified she wrote Diesel that "PG&E would meet with Diesel to tag trees that you will need to trim or remove before we can begin the line extension," but that this was based upon Diesel's desire to trim or remove his own trees to expedite the project. Veloso testified that this was not uncommon, that many property owners preferred to cut or trim their own trees. Edwards testified that PG&E cut no trees, it only trimmed, and that

³³ All witnesses from PG&E present at the February 22, 1995 site meeting testified that there was no discussion whatsoever of Diesel building a road in the southeast side of Green's house; that subsequently Diesel and Green left messages for Edwards that Diesel had "punched in" a new road on the southeast with completion delayed by rain. Edwards testified that it was not until March 30, 1995 that he first saw Diesel's "narrow shelf" cut with a "straight drop off," a location not depicted on either of Diesel's two maps given to PG&E.

PG&E removed any tree debris from its own trimming, but did not remove any Diesel or Green debris.

Edwards testified that as only Green's home uses the electricity furnished by the new line extension, Clark not having proceeded with further construction beyond the foundation, and Diesel having misrepresented any intention to build at all, the extension results in PG&E and its ratepayers suffering losses from construction and maintenance costs for the stranded line extension. Edwards stated that the "deficiency penalty" covers only a quarter of the total actual cost, leaving the rest to the ratepayers. Had PG&E known of Diesel's intention not to build homes, the design of a line extension to serve only loads from Green and Clark would have been substantially different, according to Edwards, and the ratepayers would have saved many thousands of dollars. The only reason for the difficult route followed was to bring service to Diesel's parcel APN 503-38-001.

c. Submission

Following final briefing submitted September 18, 1998, the proceeding was submitted for decision.

As a decision in this adjudicatory proceeding could not be resolved within the statutory period provided by Pub. Util Code § 1701.2, the time was extended until further order by D.98-12-063 issued December 17, 1998.

6. Discussion

Diesel alleges dozens of wrongs by PG&E during the five years of his pursuit of electric power to his several parcels in the Congress Springs Road area. The majority of these allegations are minor or are quibbles. Most involve determinations or results not to his liking. The adverse determinations or bad

results are generally due to Diesel's own failure to supply specific or complete information, or Diesel's wilful misrepresentation of facts or of the truth.

But the complaint does serve to raise some questions requiring factual or legal interpretation. What were PG&E's responsibilities to provide a line extension to Diesel's properties under the circumstances present here, and did PG&E reasonably meet those responsibilities? Was Diesel required by PG&E to construct, as a prerequisite to extension of service, an access road? Was Diesel required to remove or trim trees? Did PG&E determine the location, provide the specifications, or supervise construction of the access roadbed that Diesel attempted to construct? If PG&E did any of these actions, did its actions violate its tariff? If PG&E violated its tariff by these actions, should PG&E reimburse Diesel for expenses incurred by Diesel in conforming, by providing reparations to Diesel? Finally, should PG&E be required to remove all "slash" remaining on Diesel's property resulting from Diesel's road construction and tree removal or trimming?

First, we look to see what were PG&E's responsibilities in provision of line extensions requested by applicants for service. Within its service territory it is well settled that an electric public utility is required to extend service to those who seek service (Cal. Electric Power Co. (1948) 48 CPUC 183). Historically, PG&E has provided line extensions under three categories:

1. Economic Extensions: Those where anticipated revenues would equal or exceed the costs for the installation. These were made at no cost to the applicant.
2. Uneconomic Extensions: Those where anticipated revenues would not be sufficient to cover the costs for the installation. These were made provided the applicant advanced to PG&E its system average cost per foot for each foot of the extension beyond a free footage allowance based on anticipated usage of the customer.

3. Exceptional Cases: Those where anticipated costs to construct the required extension were substantially excessive or speculative, and the parties referred the matter to the Commission for a special ruling.

In the present case the shortest, most practical route for a line extension to applicants' parcels under the service request made by Diesel (representing the three applicants) was along Congress Springs Road, a State scenic highway, before entering upon the applicants' private lands (lying within the prescribed scenic area). Thus, this entire route was required to be undergrounded. Undergrounding costs for the narrow and tortuous mountain highway portion of the route alone (even without inclusion of the CIAC tax gross up and cost of ownership charges) made an undergrounded extension an uneconomic prospect. Additional undergrounding costs for the portion over the private lands made the total costs even more excessive.

After consideration of proposed alternate routes failed, Diesel requested exceptional case consideration by the Commission, resulting in Commission Resolution E-3397 granting an overhead deviation authorization to PG&E. Santa Clara County went along with overheading on the private lands. Thus, the entire route proposed by Diesel could be overhead at a fraction of the costs to underground. Based specifically upon the three applicants' representations to PG&E and the Commission that four homes with specified appliances, etc., would be ready upon completion of an extension, with their associated revenues to be available to partially offset extension costs, the associated free allowances brought the project within the Economic Extension category, and PG&E was authorized to construct the extension line at no cost of the applicants as provided by PG&E's Rule 15.

PG&E's Rule 15 in effect at the time provided that PG&E would construct, own, operate and maintain lines only along public streets, roads and highways

which it had a legal right to occupy, and public lands and private property across which rights-of-way satisfactory to PG&E could be obtained without cost or condemnation by PG&E. Further, the length of line required for an extension would be considered as the distance along the shortest practical route, as determined by PG&E, from the utility's nearest permanent distribution line pole to the pole from which the customer's service connection would be installed.

In Decision (D.) 82-09-110 (1982) 9 CPUC2d 713, 719 (the order modifying Free Footage Allowances (1982) 8 CPUC2d 588), the Commission in the former provided Finding of Fact 6:

- 6) "Because costs incurred by utilities to implement existing free footage allowances are reflected in rates paid by all customers, existing customers pay most of the cost of free footage allowances and new customers therefore do not pay the full cost of these extensions."

In tightening the Free Footage Allowances, the Commission required utilities to get from each applicant for a line extension involving free footage an executed line and service contract. PG&E's contract inter alia requires an applicant to install, and commence using in a bona fide manner within six months after completion of the extension, and continue to use for a period of three years, those appliances, etc., on which the free footage allowances were based. Failure to do so under the contract would result in the customer becoming liable for a deficiency billing from the utility. Where more than one applicant was to be served from the same extension, the total free length allowance was the sum of each applicant's allowances. But the benefit of the tariff provision for free allowances runs to the applicant who builds and complies with the power use provisions of the contract. The free footage allowance of an applicant who builds could not be credited to an applicant who did not build. There were no free

footage allowances for speculators, or for those who failed to build and thereafter use power.

In the present situation, each applicant (Green, Clark, and Diesel for two homes) signed the service agreements with PG&E before PG&E started construction. In reliance upon their applications and signed service agreements PG&E allocated each applicant his respective free footage allowance, which when totalled exceeded the length of the extension. Thus, PG&E built the line extension with no advances from the applicants.

As the project turned out, only Green (with his home already completed) complied with his contract. Clark never completed his home although he has consumed some power from his connection to the line extension. Diesel built no home on either of his parcels, and consumes no power. Diesel now asserts that he did not even intend to build, unless if possibly he had found a buyer for a parcel.

It was Diesel's position at the hearing that his objective all along was only to get power for Green and Clark at no cost to them, and in return they were to make property line adjustments which would vastly enhance the value of his unimproved parcels. Of course, if he could incidentally also obtain power to his parcels though an extension to Green and Clark, he wanted it. He conceded, in cross-examination, that to his recall he had never told PG&E that he himself did not want power. His actions also belie his position. Diesel signed applications submitted to PG&E. In response to PG&E's May 1992 estimate for undergrounding the 3593 foot Congress Springs Road route to Clark's driveway, Diesel said that he had never asked for that route estimate; that all he asked for was an estimate for the 2,000 foot portion that would extend only as far as to reach his parcel APN 503-38-001. Further, in Diesel's July 1992 letter to Clarke,

Diesel stated that he had to have power to his parcels in order to extend his loans.

Diesel argues that he should not have been required to agree to build; that the free allowances for Green (1885 feet) and Clark (3025 feet) totalled 4910 feet, more than enough to cover the 3849 feet of the constructed line extension. But the Green and Clark allowances were not transferable to benefit a speculator. As Diesel discovered, PG&E would not design and construct the extension over the route Diesel wanted (from Congress Springs Road over his APN 503-38-001 parcel to serve that indicated home site) unless Diesel was in the package, applying as an applicant and signing a service agreement. In March 1995, he wrote Veloso, stating:

"Since PG&E refuses to respond, I will go ahead and agree to build, based on the assertion by you that otherwise PG&E would not put in the power for free if only Clark and Green agreed to use their own homes."

The only reason for the APN 503-38-001 routing was to provide power to Diesel. The record is clear that had PG&E known that Diesel had no intention to build, there would have been no routing away from Congress Springs Road at APN 503-38-001 and up the steep wooded hillside to Diesel's indicated home site before proceeding northward over extremely difficult terrain with all the substantial extra costs involved to serve Green and Clark. PG&E witnesses testified that without the need to serve Diesel the route to serve Green and Clark alone would have been to continue up Congress Springs Road to a point below Green's home, from there running a short line uphill to Green and then extending on an existing roadway to serve Clark. This latter route of approximately 3900 feet of overhead at an approximate \$12.95 per foot cost

contrasts with the estimated \$38 per foot cost for the 3849 feet Diesel overland route.

Diesel stated he discussed consequences if he failed to build with both PG&E's Stracke and the Commission's Gaffney. Records show that he did discuss consequences with Stracke in September of 1993. While Stracke recalls nothing of Diesel stating he did not intend to build or that his plans were only tentative as Diesel asserts, Stracke does remember Diesel supplying maps which represented Diesel home site and access roads, and that Diesel provided construction dates on his applications, all indicating an intention to build. In response to a question Stracke testified that had he known Diesel had no building intentions, the project could have gone ahead for Green and Clark alone.³⁴

It is not credible that Gaffney would have proceeded to prepare a resolution for Commission consideration had he, or any staff member, been aware that Diesel had no intention of constructing homes; that Diesel's only interest was to enhance the value of his two parcels from the approximate \$80,000 he paid for them to over \$1 million . We note that the total free allowances for all four projected homes covered only a portion of the

³⁴ Interestingly, had Green and Clark alone applied to the Commission for an overhead deviation, there is no reason to doubt that PG&E would have been similarly authorized to do the extension as with Resolution E-3397. Following the shortest, practical route up Congress Springs Road to below Green and thence up to Green and Clark, the approximate 3900 foot route would have been less than the total free allowances combined of Green and Clark (4910 feet), so that an extension to serve them alone, without Diesel's involvement, would have been at no cost to them, assuming Clark had completed his home, and both had used the appliances listed in their applications. Apparently, Green and Clark were not aware of their joint ability to obtain an extension without Diesel.

construction cost, with PG&E's ratepayers bearing the balance. The Commission's mission principally is to protect ratepayers, not speculators, and the Commission staff works to that purpose. Had Gaffney or any of the Energy staff been aware that Diesel's purpose was not to build, but rather to try to use other's allowances to his benefit, with ratepayers bearing the cost, no resolution would have been issued adopting Diesel's route. It is significant that Diesel did not bring in Gaffney, or Green and Clark, as witnesses to corroborate any of his assertions.

What Diesel has done was to perpetrate by his misrepresentations a Rule 15 fraud upon PG&E at substantial cost to its ratepayers. In addition, by his misrepresentations to Commission staff in order to obtain Resolution E-3397, he has violated Rule 1 of the Commission's Rules of Practice and Procedure (which in part provides that persons transacting business with the Commission are never to mislead the Commission or its staff by an artifice or false statement of fact or law).

In spite of the continued misrepresentations and failures on the part of Diesel to provide required recorded parcel maps, approved county building permits, final lot improvement plans identifying roads, grading plans, definite house site locations and service locations, and delays in finalizing applications and provision of rights-of-way, the line extension was built by PG&E. And it did this despite the barrage of harassing telephone calls, badgering, threats, wilful misrepresentations, and allegations indulged in by Diesel. That PG&E personnel accepted this Diesel conduct in part reflects a perhaps too pervasive concern at all levels of PG&E operational personnel to avoid intervention by Commission staff. Had PG&E early on refused to proceed unless Diesel complied with its procedures, met its requirements, and supplied in timely fashion the permits and information required, the project could have been completed much earlier and

without the heavy expenditure of PG&E staff time taken up with Diesel. Diesel was an extremely difficult applicant, one apparently used to getting his way through bluster, threats, by-passing procedure, misrepresentations, and sheer persistence. As this voluminous record indicates, once PG&E finally was able to obtain the documentation and information it needed, the utility reasonably met its responsibility to construct the extension, albeit, as it develops, needlessly.

We next turn to the question whether, as a prerequisite to PG&E providing electric service, Diesel was required by PG&E to construct an access road.

First of all, the only roads on any of the four parcels involved here were on Clark's and Green's parcels. There were no discernable or usable roadways on either of Diesel's parcels before he attempted to construct an access road to his APN 503-38-001 parcel. Diesel's maps and assertions to the contrary, the weight of the evidence from all of the PG&E witnesses who walked and climbed the area was that there were no roads beyond the point on Green's parcel just south of Green's house. Access to either of Diesel's designated house sites from the Clark-Green driveway was essentially cross country; there were no roads or discernable paths that were reasonably usable by any vehicle other than probably a multi wheel drive cross country vehicle. To drive cross country up to the steep rock strewn hillsides between the trees would require a very skillful driver.

Whether or not the undefined cross country approaches to his parcels and thence to his designated house sites were suitable for Diesel's use, or whether or not he wanted to construct an access road to each is not the point. For service, there has to be access. Meters must be placed on the property where a meter reader has access. Meter readers are not required to hike cross country in this type of terrain to read meters. They need access by vehicle in this area over a road satisfactory to PG&E.

To construct, maintain, and repair an overhead line, PG&E requires the grant of a right-of-way where the line is on private property. These rights-of-way must be satisfactory to PG&E as they are more than mere permission to pass overhead. As complainant states, these rights-of-way are easements. But while a right-of-way is an easement, it is well settled in law that the grant of a thing shall carry all things included, without which the thing granted cannot be had. Thus, the grant of the easement conveys all such incidental rights as are necessary to the enjoyment of the thing granted. The use to which an easement is devoted or for which it was created determines its character, and the extent that the use is necessary to carry out the purpose of the grant.

While the rule of reason must apply to what is "satisfactory to PG&E," construction costs in this mountain terrain were very high, and under the free footage allowance then in effect, the utility's ratepayers would pay for most of the line extension cost. Thus, PG&E was constrained to keep costs down. To do this it would to the fullest extent possible place its pole line right-of-way adjacent to, or as close as possible to the customer's access road so as to allow it to utilize equipment vehicles to set its poles, thereby avoiding the high cost of hand labor. Furthermore, to obtain a County building permit, a proposed home must provide an access road suitable for emergency vehicles. As Diesel had contracted to build homes he would have to provide access roads on his parcels to those home sites. Thus, it was reasonable for PG&E to wait for Diesel to begin his access road. In addition, before the pole line could be staked out before setting poles, PG&E must know where the customer's access road will be. Otherwise, if the pole line is built, it could conflict with the customer's access road if the latter is constructed later. A pole line in this terrain includes guy lines and anchors. A customer must pay for any relocation of the pole line once constructed. When the access road is built first there are no conflicts and

additional costs are avoided. With no site plans approved by the County, the only way PG&E could really know the routes for the access roads would be if Diesel actually built them. Diesel had told Edwards that he would "punch in" a road and was told to notify Edwards when it was ready so Edwards could stake out the pole line. As Diesel had to construct an access road to access his building site, it was reasonable for Veloso to tell Diesel that "all property owners must also provide access roads adequate for PG&E to install, own and maintain its facilities," and that construction of the overhead line would be scheduled when "construction of the required access roads is completed by the applicants."

The answer to the question then is "yes," PG&E did require Diesel to provide an access road as a prerequisite for service, and the requirement in these circumstances was entirely reasonable. Service necessarily must be conditioned upon satisfactory access.

The next question we address is, did PG&E determine the route, provide the specifications, and supervise construction of the access roadbed that Diesel proceeded with late in February 1995? Here, the answer is "no" on all counts. The evidence on the record clearly establishes that Diesel proceeded entirely on his own, both to establish the route he used and to proceed with the construction of the partially completed roadbed. It was only after the route was defined by his construction that PG&E personnel first saw the route and work, and thereafter proceeded, now that it had a route, to stake out the pole line, later completing the line itself. And as the roadbed amply demonstrates, no specifications are in any way evident, much less indicated.

The testimony of PG&E's Edwards, the utility's most percipient witness, is fully supported by the day-by-day, contemporaneously entered entries in the call log for the period in issue.

During the February 22, 1995, PG&E field meeting with the applicants, Diesel and Edwards hiked up to Diesel's APN 503-38-001 house site to determine where Diesel's access road would lie. Edwards testified that during that hike he told Diesel he didn't care how the proposed driveway was placed; his main concern was where it would be so that the pole line of the extension could be built around it. While coming back down to rejoin the other PG&E personnel and Green and Clark, they followed contour lines over the steep terrain. Diesel told Edwards it would take Diesel about two weeks to "punch in" a roadbed. In view of the rough, wooded terrain, Edwards assumed that this meant a rough cut - a basic roadbed in place. As Edwards still had problems on the Congress Springs Road portion of the line, no delay in the project would result, although Edwards had doubts on the time estimate. As the line in that terrain would require each pole to have guy wires and anchors, and Edwards did not want to have to re-route the line because of changes, he was agreeable and told Diesel to let him know once the drive was punched in. The route they were looking at was from the APN 503-38-001 house site northward to the place the trail south from Green's house petered out. From there Edwards proposed to run the line north to the northwest side of Green's house, and thence to Clark's driveway at a terminal location from which Diesel's APN 503-37-005 house site could also be served. There was no discussion whatsoever with Diesel concerning any alternative route on the southeastern side of Green's house with its drop-off.³⁵

³⁵ Later, when all the party convened in Green's home, a decision was reached with Green to try to run a span on the northeast side of Green's house from the Clark driveway, over the sheer drop off, the result of a rock and mud slide on the southeast side of Green's house. This decision was reached to save some mature trees in the northwest side of Green's house.

Edwards testified, and the call log substantiates, that on February 27, 1995, Diesel left a voice mail message that he had moved the road location to a new location. The next day Diesel told Edwards that the road now was on the other side of Clark's home, and that his contractor would be back to complete the work when the rains stopped. The call log reflects these messages. Diesel was to call when the road was completed. The log reflects delays. It was not until March 30, 1995, after a field trip on the Congress Springs Road portion, that Edwards and Hulick of PG&E's Land Department visited the private lands portion, and were told by Green that the work was 60% complete. This was the first time that PG&E personnel saw the new roadbed on the southeast side of Green's house. The roadbed left Clark's driveway, dipping down on a narrow shelf cut above the drop-off area before proceeding upward and thence through a big chasm cut through the hillside and up to APN 503-38-001's house site. Edwards was surprised that Diesel had been able to make the shelf-like cut at all. On April 14, 1995, Green called to report the roadbed completed, and on April 18, 1995, Edwards returned to walk the private route to spot pole locations. On April 25, 1995, Edwards and Hulick learned that the County had stopped Diesel's contractor from doing more grading. On May 8, 1995, Diesel called Veloso, told her of his problem with the County, and tried to persuade her to have PG&E take over completion of the work. Veloso refused. The next day Diesel informed Veloso that he had told the Commission that PG&E had instructed him to build the road and had supervised its construction. Obviously, this was Diesel's desperate effort to shift to PG&E the difficulties he now suddenly found himself

in for having created on his own an environmental disaster on the hillside, and for proceeding with no engineered plans or grading permit.³⁶

As to Diesel's assertions that PG&E had provided specifications for Diesel's roadbed, there is not an iota of evidence in the record pertaining to PG&E providing specifications for driveways on the applicants' parcels. On February 22, 1995, at the site meeting, Edwards testified that Clark provided Diesel with information on requirements Clark had had to satisfy when he constructed his driveway; things like minimum bending radius, width of the road, maximum grade, and approval of the fire department through the County process. During the discussion with the Park regarding a road through the park for an underground line, some specifications for that road-width and turning radius to support an underground line were discussed, but never were there discussions concerning private driveway specifications, and PG&E supplied none. If Diesel extrapolated these to his road construction, that was his decision, but no requirement of PG&E.

Was Diesel required to trim or cut trees? Here the issue is closer. At all times during the period of these applications, the applicants, but particularly Diesel, were constantly anxious to get going, and prodded PG&E not to wait, to cut corners, or to proceed before rights-of-way were provided. To them, time

³⁶ By his own admissions in his letter of May 9, 1995 to President Fessler, Diesel conceded that he faced criminal prosecution by the County of Santa Clara for unlawfully grading a road without a permit and causing substantial environmental damage. Diesel wrote: "If the new road is left in its current state with no further improvements such as no erosion control whatsoever, there will be enormous environmental damage. The entire house of Phil Green could wash away... The County is currently holding me entirely responsible for a massive grading violation since PG&E has declined to acknowledge any connection with the road."

was always of the essence. And when the route of the line extension from APN 503-38-001 to the Green driveway via the trail southwest of Green's house, was firmed up on February 22, 1995, Diesel told Edwards that Diesel would just "tear that oak tree out of there" when one oak tree seemed to be in the way. PG&E wanted to wait until a line of poles was staked out and rights-of-way were obtained; but if a customer removes trees to put in his driveway, it's easier for PG&E to come in afterward and run its line with a little bit of side trimming.

Later, in mid-April when tree trimming was also discussed with Green, Green told Edwards that he and a friend could take some trees out. In response, Edwards stated that as the route was now settled, they could do whatever Green and Diesel agreed to as it was their property, but that PG&E could not until it had rights-of-way. Edwards testified that he was happy to work with them and to identify trees if they wished to go ahead of the appropriate time when PG&E could do the job. Edwards told Green that if he cut trees it would be at Green's risk, because if rights-of-way were not signed, and the line ended elsewhere, a number of trees could be lost that need not have been removed. Green told Edwards he was willing to take the risk. But while PG&E people identified trees, that would need removal, PG&E did not have rights-of-way as yet, could not have performed or supervised tree work. Edwards denied ever instructing or directing property owners to remove trees, as it is not the owner's responsibility to do so. While PG&E was possibly less than forcefully clear in telling Diesel and Green that PG&E would handle any tree removal or trimming necessary for its pole line once the route of that line was established and PG&E secured rights-of-way, it is also clear that both Diesel and Green persistently sought to have affected trees tagged, and then did some work themselves as volunteers. But in no way could PG&E have designated, much less removed or trimmed trees along Diesel's new roadbed. PG&E didn't know where it was to be. Many trees were

imbedded in the roadbed cut and fill done by Diesel.³⁷ When PG&E laid out its pole line after Diesel's road work, PG&E did its own removal and side trimming and removed its own debris, much by helicopter. PG&E did not remove debris left from Green's cutting or that produced by Diesel's contractor as a by-product of his road construction. In proper context, Veloso's letter of March 1, 1995, had as its objective the coordination of Green's and Diesel's voluntary efforts to remove their own trees to expedite the project. This tree removal was not supervised by PG&E, but in PG&E personnel's attempt to cooperate it opened itself to accusation when affairs turned sour.

In conclusion, it has not been shown, as Diesel asserts, that PG&E by its actions has violated its tariff. Accordingly, there is no basis to require PG&E to pay the expenses Diesel incurred in constructing his access roadbed, or in removing/trimming any of his trees, either adjacent to the roadbed or elsewhere, as reparations to Diesel. There was insufficient evidence of any failure on the part of PG&E to remove from Diesel's parcels any slash it caused in the utility's later side trimming preparatory to, during, or after its construction of the pole line extension. There is abundance visual evidence of felled and fallen trees and old slash in areas on Diesel's parcels away from his access road, presumably the result of his or his contractor's work. These are Diesel's responsibility.

C. Diesel's Appeal of the POD

On March 1, 2000, the presiding officer's decision (POD) was served on the parties in accordance with Pub. Util. Code § 1701.2 and Rule 8.2 of the

³⁷ On April 6, 1995, Diesel had called PG&E to get leads to renting a chipper for the tree removal/trimming he was doing on his property. Edwards checked with PG&E's construction people and gave Diesel some numbers to try.

Commission's Rules of Practice and Procedure (Rules). On March 30, 2000, Diesel first filed an Appeal of the POD, followed on March 31, 2000 by a Supplement to the Appeal of the POD. Both filings were timely.

By his Appeal, Diesel states that the POD commits legal error when the POD finds: 1) that PG&E did not violate its tariff when PG&E required Diesel to provide an access road as a condition before it would proceed with the line extension, and 2) that PG&E did not require Diesel to trim or cut trees.

In addition, the Appeal asserts that the POD goes beyond the scope of Diesel's complaint when the POD finds that 1) Diesel's misrepresentation to PG&E, Staff, and the Commission to induce Resolution E-3397 constituted a violation of Rule 1 of the Rules; 2) Diesel should be required to pay a deficiency fee because he failed to fulfill his PG&E line extension service agreement; and 3) Diesel should reimburse PG&E for the Caltrans costs as required by Resolution E-3397. It is Diesel's assertion that in going beyond the scope of his complaint, the POD violates Diesel's due process rights to notice and opportunity to prepare a defense.

By the Supplement to his Appeal, Diesel challenges: 1) Finding of Fact (FF) 31, that the line extension is now substantially a stranded line; 2) Conclusion of Law (CL) 6, that any deficiency charge is due PG&E; 3) FF 16, that the sole reason to have run the line extension over Diesel's parcel was to bring power to his designated future home site; 4) CL 5, that Diesel misrepresented his building intentions to induce Resolution E-3397; and 5) CL 4, that Diesel voluntarily removed or trimmed trees to accommodate the planned line extension.

D. PG&E's Response

On April 14, 2000, PG&E filed a timely Response to Diesel's Appeal. PG&E asserted that contrary to Diesel's contention, the FF and CL of the POD are

amply supported by substantial evidence and well within the scope of the proceeding. PG&E supported its assertions with extensive citations to the transcript and exhibits. For the reasons specified in those responses, PG&E contends that Diesel fails to demonstrate legal error, and asks that the POD be affirmed and Diesel's appeal be rejected.

E. Discussion of the Appeal

The Commission's Rules of Practice and Procedure require that an appeal set forth specifically the grounds on which the appellant believes the Presiding Officer's decision to be unlawful or erroneous. We analyze the merits of the appeal using that standard.

First, the requirement of an access road. As set forth in the POD the PG&E tariff rule requiring "rights of way satisfactory to PG&E" contemplates more than a mere permission to pass on an Applicant's property. The grant of any easement conveys all things needed to enjoy the grant. In the context of providing service in the difficult mountain terrain present here, there had to be a reasonable access to an ultimate defined point of service before a line could be designed. Neither was present here – no road, no defined point of service – until PG&E forced the issue. These mountain line extensions are costly, and ratepayers bear most of the cost. Thus, it was reasonable in the context of a tariff rule providing for "rights-of-way satisfactory to PG&E," to require Diesel to settle upon and build a road to lead to the future point of service. To hold down construction, maintenance, and meter reading costs, some way in must be provided. It is within the purview of the Commission to interpret a tariff rule it has sanctioned, and given the circumstances present here, a "right of way satisfactory to PG&E" included providing an access road to the point of service the applicant determined upon.

Second, there was conflicting evidence on the tree cutting-trimming issue. Given the fact of Diesel's repeated resort to obfuscation and willful misrepresentations to advance his objectives – to PG&E and to the Commission, his testimony was often difficult to credit. It is also of special note that Diesel did not at any time call either Clark or Green to corroborate anything. As PG&E notes, Diesel's assertions rest heavily upon one sentence in the March 1, 1995 Veloso letter. But Veloso's February 13, 1995 letter to Diesel (requesting the February 22, 1995 site meeting with the applicants) in detail specified all the information and actions PG&E required of the applicants. Nowhere did it require any tree cutting or trimming. But the detailed and specific testimony of Edwards, Veloso and Parker tells of the repeated volunteering of Diesel and Green to cut to expedite the project, and our determination was that these testimonies put that one sentence in the Veloso March 1, 1995 letter in the proper context – that of PG&E's people trying to coordinate the incessant volunteering and impatience of Diesel and Green to cut to expedite matters. We construed PG&E's intent to restrain rather than to require cutting. The trees belonged to the applicants who were bent on participation.

Turning to Diesel's Appeal assertions that the POD goes beyond the scope of the complaint, thus depriving Diesel of due process; we disagree. Diesel filed complaint with its 61 submissions embraced all the issues on which he now alleges no notice and lack of opportunity to have prepared a defense. As the 261 paragraphs of his complaint ranged across these issues, and as they were addressed point-by-point in PG&E's filed answer and over 100 exhibits, we find his present allegations utterly lacking in merit. That Diesel, in his testimony and on briefing, chose to concentrate only on some of these issues was his choice.

First, the violation of Rule 1 issue. Every participant in a Commission proceeding is obligated not to mislead the Commission by statement or artifice.

Diesel made representations of intention to build to induce Resolution E-3397. Without these representatives there would have been no Resolution allowing the overhead deviation – and no extension. During the hearing he denied making these representations and asserted he told PG&E and Gaffney the contrary. It was not unreasonable to expect Diesel to be truthful, or that he had to be specifically warned that failure to tell the truth carried consequences. His testimony was under oath. The plain fact is that he willfully misrepresented.

Second, the Scoping Memo/Ruling of the assigned Commissioner listed as a specific issue whether or not Diesel qualified for free footage by reason of insufficient timely use of power after completion of the project. Diesel was certainly put on notice additionally by Paragraphs 83, 90, and 118 in PG&E's answer.

Third, Ordering Paragraph 3 of Resolution E-3397 specifically provided that Diesel be responsible to reimburse PG&E for certain Caltrans costs. CL 7 merely reaffirms what the Commission required for the underground deviation. When Diesel elects to rely upon the Resolution to obtain the benefits of the Resolution, he cannot pick and choose amongst its provisions.

F. Discussion on the Appeal Supplement

With respect to the First and Second issues, FF 31 and CL 6 are not in error. The main extension is a stranded line. Four homes were to be constructed. Only one is built. The contracts for electric loads have not materialized, leaving ratepayers to bear the double burden of both the construction costs and the maintenance costs – all to increase the value of Diesel's land from the \$80,000 cost to over \$1 million. The contracts call for deficiency fees if the respective electric loads do not, in timely fashion, materialize. The free footage allowance of one who builds cannot be transferred to one who fails to build. The purpose

of Rule 15 is not to benefit speculators or freeloaders. Diesel failed to comply with his agreement so the deficiency charge is due PG&E.

For the Third issue, FF 16 is also correct. Had Diesel not been an applicant, and had Clark and Green qualified for free footage with a Commission Resolution granting an overhead deviation, the route, at about 1/3 of the Diesel route, would have been on Congress Spring Road, not inland. The only reason to deviate into Diesel's parcel was to serve Diesel's projected home site.

Fourth, the record contains abundant evidence concerning Diesel's misrepresentation of building intentions to induce Resolution E-3397, and CL 5 is fully supported.

Lastly, the detailed and exhaustive testimony of Parker, Veloso, and Edwards as to the circumstances, outweigh Diesel's reliance upon one sentence in the Veloso March 1, 1995 letter, a sentence taken out of context of the events at the time. We see no reason to alter or delete CL 4. The referred testimony explicitly states the impatient volunteering of Diesel and Clark, and CL 4 determines that the detailed corroborative testimony of Parker, Veloso, and Edwards suffices to outweigh Diesel's testimony and the one sentence of Veloso's letter particularly when Diesel failed to corroborate his assertions, if indeed they could have been, by bringing either Green or Clark to testify in support.

G. Summary of the Appeal, Supplement and Reply

As noted above, the outcome of the POD was well supported by record evidence. Accordingly, the appeal fails to demonstrate that the POD is unlawful or erroneous, and must be denied.

We have modified the POD in response to the Appeal, Supplement, and Reply by adding Conclusion of Law 11 to the POD.

Findings of Fact

1. PG&E is a public utility providing electric service under the jurisdiction and regulation of this Commission in its service territory covering substantial portions of Northern California, including Santa Clara County.

2. As an electric public utility, PG&E is required within reason to extend electric service within its service territory to those applicants who seek service; such provision of service being done pursuant to PG&E's tariff rules.

3. In low density and rural areas where line extensions would be required for service, in order to assist unserved applicants with homes and those ready to build homes, PG&E provided free footage allowances based on its system average cost, and calculated using each applicant's anticipated power usage during a three-year period after completion of a line extension.

4. System average costs in most low density and rural areas being less than the actual cost for a line extension in such areas, resulted in new customers in these low density and rural areas not paying the full cost to provide them service, leaving PG&E's existing utility customers paying most of the cost of free footage allowances.

5. For equitable reasons, applicants for service where a line extension was required and the free footage allowance would apply were required to sign a PG&E line and service agreement which specified that the applicant agreed to install and commence using in a bona fide manner within six months after the extension was completed, and would continue using for a three-year period, those specified appliances, etc., upon which the free footage allowance was based. Failure to comply with the agreement would result in liability for a deficiency billing.

6. Where more than one applicant would be served from the same extension, the total free footage allowance was the sum of each applicant's allowance, but

the benefit of the tariff provision for free footage allowances ran only to the applicant who builds or has built, and who complies with the usage provisions of the line and service agreement.

7. There were no free footage allowances for speculators, or for those failing to build and thereafter use power.

8. At the times relevant here, PG&E provided line extensions to applicants under three categories:

Economic Extensions: anticipated revenues would equal or exceed installation costs. These were provided at no cost to the applicant.

Uneconomic Extensions: anticipated revenues would not cover installation costs. These were made provided applicant advanced the system average cost per foot for each foot beyond a free footage allowance based upon the customer's anticipated usage.

Exceptional Cases: where anticipated extension costs were substantially excessive or speculative, and the parties referred the matter to the Commission for a special ruling.

9. In 1991, Diesel as sole owner, acquired two undeveloped parcels of five acres each in a heavily wooded and rocky mountainous rural part of Santa Clara County within PG&E's service territory. To realize substantial value for these parcels, each would require parcel line adjustments from the adjacent larger parcel owners, Green and Clark.

10. While Green's parcel had a home on it, Clark's parcel had only the foundation of a house, and neither parcel had electric service.

11. Green and Clark made an agreement by which Diesel would undertake to get them electric power at no cost to either in exchange for their making parcel lot adjustments that would substantially enhance the value of Diesel's two parcels.

12. Delegated to represent all three owners, and representing that each parcel would include a home to use electric service, Diesel initiated negotiations with PG&E for construction of a line extension with free footage allowances to serve all four parcels.

13. Pursuant to PG&E's Tariff Rule 15, the shortest, most practical route for a line extension was initially along Congress Springs Road to Clark's driveway, and thereafter across the four parcel private lands, as far as practical using the existing Clark-Green driveway, but as Congress Springs Road was a State scenic highway, all the proposed extension was required to be undergrounded.

14. At all times during his relationship with PG&E, Diesel was consistently uncooperative, failed to provide necessary information, demanded expedited service and short cuts, and resorted to obfuscations and wilful misrepresentations to advance his objectives.

15. After cost estimates on Congress Springs Road and other undergrounded routes proved to be substantially excessive, in January 1994 Diesel applied to the Commission, seeking a deviation from Pub. Util Code § 320 to permit PG&E to overhead a line extension on Congress Springs Road as far as Diesel's APN 503-38-001, and thence over that parcel inland from the scenic highway and across the other parcels to serve all four homes.

16. The sole reason to run the line extension inland on Diesel's APN 503-38-001, with the substantial additional costs involved for this steeply sloped inaccessible wooded and rock terrain, was to bring service to Diesel's designated home site on his APN 503-38-001 parcel.

17. Resolution E-3397 was issued by the Commission on November 22, 1994 to authorize PG&E to deviate from provisions of Pub. Util Code § 320 and extend overhead service to the property of Diesel and adjacent customers via APN 503-38-001, with the PG&E extension to be at no cost to Diesel based upon his

representations that he planned to build two homes, Green had a home, and Clark had started one (their indicated free footage allowances exceeding the estimated cost).

18. After the line extension was completed, Diesel revealed that at no time did he intend to build houses on his parcels, and in essence had sought to piggy back on the Green and Clark line and service agreements, thereby getting the parcel line adjustments that would vastly increase the value of his parcels, and also get power to his parcels, all at no or little cost to Diesel.

19. During the time period of Diesel's applications for service from PG&E, there were no roadways to the designated home sites on Diesel's parcels. The only vehicular access to the APN 503-38-001 site was cross country by four-wheel drive vehicles from the point the Clark-Green driveway petered out, or possibly up fire trails across State park lands south of APN 503-38-001. The site on APN 503-37-005 was not accessible by any vehicle.

20. Without reasonable standard vehicular access to either Diesel parcel's designated home site, and with Diesel unready, unwilling, or unable to provide PG&E with any County approved building permits, site or grading plans other than the Tentative Parcel Map supplied June 10, 1993 (with dotted line road routes later substantially disavowed by Diesel), PG&E lacked information as to any pole line route it could lay out that in this rugged terrain would be satisfactory to PG&E for construction and maintenance purposes and also be reasonably clear of conflicts whenever Diesel put in his access road accordingly, PG&E pressed Diesel to start construction of an access road on APN 503-38-001, a road which in any case would be necessary to provide access for meter reading later.

21. During a field trip on February 22, 1995, knowing the utility would not proceed until he settled upon a route, Diesel agreed with Edwards on an

approximate access road route from the area of his APN 503-38-001 house site down the intervening slopes to the approximate terminal point below Green's house where the trail end of the Clark-Green driveway petered out. Diesel told Edwards that he'd "punch in" a roadway and advise PG&E when it was completed so that Edwards could lay out his pole line.

22. Days later Diesel left voicemail for Edwards that he had begun construction of a road, but at an entirely new location.

23. As rains intervened it was not until a month later that Edwards first saw the partially constructed roadbed, and saw that Diesel had proceeded on his own, with no information to PG&E, to cut a shelf to cross the steep drop off area southeast of Green's house, before going on to bulldoze a pathway through an intervening hillside to provide a switchback through contours to lead to an uphill run to the area of the APN 503-38-001 house site.

24. Before Edwards first saw the new Diesel road, the County had intervened with a stop work order to Diesel on the road project, and later threatened Diesel with criminal prosecution for his actions and work without a grading permit.

25. Diesel next sought to persuade PG&E through Veloso to assume responsibility for completion of his stalled project only to learn that PG&E flatly refused to have anything to do with the project.

26. Failing to get PG&E intercession, Diesel sought through Commission President Fessler and the Commission Energy staff to get Commission intervention, falsely asserting that PG&E had not only specified the location, but had designed and supervised construction of the new roadbed.

27. In response to staff urging that PG&E take over completion of Diesel's road, PG&E's engineer declared the road to be unengineered, unsafe, and useless, and the issue was dropped.

28. Finally with at least an access route to APN 503-38-001 delineated by Diesel's construction, PG&E was able to lay out its pole line, seeking to beat the July 31, 1995 deadline before extension rules less favorable to applicants would take effect.

29. While unable to use Diesel's incomplete and unsafe road, PG&E nonetheless completed the line extension using hand labor and helicopter assistance on the portion of the line extension south of Green's house.

30. Only Green, with his already constructed house, took service under his line and service agreement; Clark had done little beyond his house foundation and Diesel, with no house started, asserts he never intended to build.

31. The line extension project built for Diesel to serve four homes is now substantially a stranded line because of Diesel's failure to comply with his representations and build houses. This leaves PG&E's ratepayers with the double burden of both the line construction costs and the cost of having to maintain the facilities as they deteriorate.

32. PG&E was less than forceful in making clear to Diesel and Green its tree removal and trimming responsibilities, although PG&E witnesses testified of their cautions, and it is also clear that Green and Diesel were insistent in wanting to go ahead if PG&E would tag affected trees. PG&E was too cooperative, opening the way to misconceptions.

33. Much tree removal was performed on Diesel's parcel APN 503-38-001 at various times, and the landscape in areas is littered with tree debris, but it was not shown to be related in any degree to preliminary pole line determinations, whereas the cut and fill of Diesel's roadbed and adjacent areas contains most of the debris which resulted from the bulldozing efforts of Diesel's contractor.

34. After completion of the pole line, PG&E removed debris by hand and helicopter that its minor side trimming had created. There was no evidence other than Diesel's assertions that PG&E had failed to remove its debris.

Conclusions of Law

1. PG&E reasonably met its Tariff Rule 15 obligations and responsibilities with regard to provision of overhead service as authorized by Commission Resolution E-3397.

2. PG&E was not responsible for locating engineering, construction or supervision of the roadbed that Diesel "punched in" without prior notice or consultation with PG&E.

3. Considering the terrain conditions, Diesel's failure to provide county approved site plans, grading permits, and the lack of any access roads to parcel APN 503-38-001's indicated home site, PG&E was within the scope of its Tariff Rule 15 to require rights-of-way satisfactory to the utility and to require Diesel to provide an access road suitable to conventional vehicle access.

4. In view of Diesel's persistence and volunteering to remove trees that might be in the way of proposed PG&E pole line locations, and the land owner's rights to do removal on his property, PG&E's failure to insist that it would do all removal and trimming required for its line, did not rise to the level of being a General Order violation.

5. By misrepresenting his intention to build houses to induce the Commission to issue Resolution E-3397 for an overhead deviation in order to serve his two parcels, Diesel violated Rule 1 of the Commission's Rules of Practice and Procedure.

6. By not meeting the terms of his line and service agreement with PG&E, Diesel is in default and should be required to pay the appropriate deficiency charges pursuant to the agreement.

7. As provided by Ordering Paragraph 3 of Resolution E-3397, Diesel should be required to reimburse PG&E for the latter's costs to implement the Commission accepted recommendations of Caltrans as set forth in Paragraph 12 of Resolution E-3397.

8. PG&E should not reimburse Diesel for expenses incurred by Diesel relative to road construction or tree removal/trimming.

9. PG&E should not be required to remove all "slash" remaining on Diesel's property resulting from Diesel's road construction and tree removal/trimming.

10. The complaint should be denied, effective immediately, in order to resolve this long-standing dispute.

11. The Complainant's appeal of the POD lacks merit.

O R D E R

IT IS ORDERED that:

1. Case 98-01-032 is denied.
2. This proceeding is closed.

This order is effective today.

Dated June 22, 2000, at San Francisco, California.

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

President Loretta M. Lynch, being necessarily
absent, did not participate.

ATTACHMENT A

**TENTATIVE
PARCEL MAP**

LOT LINE ADJUSTMENT
IN THE SW 1/4 OF SECTION 6 AND THE SE 1/4 OF SECTION 6
T. 8 S., R. 2 W., N.D.M.

SANTA CLARA COUNTY, CALIFORNIA

JAN 1993

SCALE: 1" = 100'

CARNES & ASSOCIATES

9508 SUGAR BASK DRIVE

CILROY, CALIFORNIA

LINE DATA

LINE	MARKING	REFERENCE	NOTES
1	W 10/12/25	148.79	AMC AS R44 1 1
2	W 10/12/25	75.11	AMC AS R44 1 1
3	W 10/12/25	134.09	AMC AS R44 1 1
4	W 10/12/25	120.19	AMC AS R44 1 1
5	W 10/12/25	120.41	AMC AS R44 1 1
6	W 10/12/25	128.11	AMC AS R44 1 1
7	W 10/12/25	146.10	AMC AS R44 1 1
8	W 10/12/25	32.06	AMC AS R44 1 1
9	W 10/12/25	144.09	AMC AS R44 1 1
10	W 10/12/25	122.49	AMC AS R44 1 1
11	W 10/12/25	125.37	AMC AS R44 1 1
12	W 10/12/25	124.14	AMC AS R44 1 1
13	W 10/12/25	127.28	AMC AS R44 1 1
14	W 10/12/25	127.79	AMC AS R44 1 1

CURVE DATA

NAME	AGE	SEX	HEIGHT	WEIGHT	HAIR	EYES	SKIN	TEETH	TOES
C1	19.54	55.77%	150.60	55.00	BRN	BLU	BLN	BLU	BLU
C2	19.54	44.23%	150.60	55.00	BRN	BLU	BLN	BLU	BLU
C3	17.75	44.44%	153.00	53.00	BRN	BLU	BLN	BLU	BLU
C4	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C5	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C6	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C7	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C8	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C9	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C10	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C11	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C12	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C13	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C14	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C15	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C16	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C17	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C18	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C19	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C20	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C21	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C22	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C23	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C24	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C25	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C26	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C27	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C28	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C29	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C30	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C31	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C32	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C33	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C34	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C35	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C36	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C37	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C38	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C39	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C40	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C41	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C42	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C43	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C44	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C45	17.61	50.00%	151.50	51.50	BRN	BLU	BLN	BLU	BLU
C46	1								

PARCEL SIZES

PANEL NO.	EXISTING	PROPOSED	REMARKS
1	2.0 ACRES	2.000 AC.	LESS THAN 10
2	11.81 AC.	11.803 AC.	100%
3	2.0 AC.	2.000 AC.	LESS THAN 10
4	12.0 AC.	11.801 AC.	100%

REASON FOR CHANGE:
SEE ATTACHED LETTER

MAP SHOWING THE
APPROXIMATE LOCATIONS
OF CHAINED AND ACTUAL
ROADS & FINAL PG&E
EXTENSION LINE
ATTACHMENT "A"

LEGEND:



Appro.

Approx. Diesel Road

Approx PG+E Extension

Sketched Roads on Maps

METROPOLIS

e: Pavilion loses Louisiana Territory; SJ Unified gives Schimmel boot; voters may fill Honda's seat



ATTACHMENT 'S'