

Decision 99-09-051 September 16, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

St. Paul Associates, Ltd.,

Complainant,

vs.

Pacific Gas and Electric Company,

Defendant.

Case 99-04-038
(Filed April 28, 1999)

OPINION DENYING COMPLAINT

1. Summary

We conclude that the development proposed by St. Paul Associates, Ltd. (St. Paul) does not qualify for the undergrounding of existing overhead electric facilities under Pacific Gas and Electric Company (PG&E) tariff Rule 20.B. Accordingly, we deny the complaint.

2. Procedural Background

St. Paul filed this complaint against PG&E on April 28, 1999. The instructions to answer, dated May 7, categorized the complaint as an adjudicatory proceeding and indicated that hearings might be scheduled. On June 7, PG&E timely filed an answer. The categorization has not been appealed and neither party has requested an evidentiary hearing.

3. The Dispute

3.1 The Factual Setting

St. Paul challenges PG&E's assessment that the undergrounding of the existing 21 kV electric overhead power lines on St. Paul's property is subject to PG&E's tariff Rule 20.C rather than 20.B. The costs to St. Paul under Rule 20.B would be substantially less because the allowed offset is larger.

The parties do not dispute the material facts. By Resolution No. 22-98 (Resolution) issued on September 1, 1998, the Planning Commission of the City of San Ramon authorized St. Paul to develop "Montair Square," which includes a new 34,549 square foot building and the remodel of an existing building, both at 12885 Alcosta Boulevard, a commercial site St. Paul owns. Exhibit A to the Resolution is entitled "Conditions of Approval of Montair Square" and consists of 15 pages of itemized development requirements imposed by the city. Part C of Exhibit A, subtitled "Engineering Services Department," includes as a "Special Condition," item 14 which states:

"Applicant shall cause the following overhead utilities to be undergrounded *at their sole cost* prior to occupancy permits:

"a) Those located at north property line between Iron Horse Trail and most easterly pole along Alcosta Boulevard; and

"b) Those facilities crossing property at westerly end serving RMC Lonestar. PG&E alternatives to undergrounding may be considered so long as the existing overhead lines are removed.

"At Applicant's request, Applicant may enter into a reimbursement agreement executed prior to occupancy permits reflecting a prorata cost reimbursement by all abutting property owners utilizing the existing overhead lines who seek entitlements from City within 20 years of the date of the agreement execution." (Resolution, Exhibit A at pp. 9-10, emphasis added [Exhibit B to PG&E's Answer].)

Though neither the complaint nor answer includes a map of the property, the parties' pleadings clearly describe its orientation and the location of the 21 kV electric lines the city wants undergrounded.

The eastern property line of 12885 Alcosta Boulevard is the frontage on Alcosta Boulevard, the northern property line separates the property from another lot, and the western border, at the rear of the property, abuts the Iron Horse Trail. The overhead 21 kV electric lines cross Alcosta Boulevard and onto the property at its northeast corner. The city wants St. Paul to underground the lines from this point on. The lines run 620 feet along the property's northern border from east to west and then turn south and run another 210 feet from north to south along the rear of the property, its western border.

The city's undergrounding requirement does not include the electric lines which cross Alcosta Boulevard. Those will remain overhead as will other lines that run along the opposite side of the Iron Horse Trail.

3.2 PG&E's Tariff Rule 20

PG&E's tariff Rule 20 governs the conversion of existing overhead electric facilities to underground facilities in PG&E's service territory. The current tariff follows undergrounding conversion policy established by the Commission in 1967 in Decision (D.) 73078. That policy, little changed in subsequent years, encourages conversion statewide but recognizes that the costs involved require prioritization and in some cases, require an applicant to contribute toward or to bear the costs. Commission policy (reflected in Rule 20) recognizes three undergrounding conversion categories:

- Projects designated by cities, counties, etc. as being in the general public interest. PG&E finances these projects 100 per cent through revenues collected from its ratepayers at large. The total sum available each year and the percentage allocated to each local authority is established by formula. (Rule 20.A)

- Projects requested by applicants which meet certain specifications and where the applicant pays the amount by which the conversion exceeds the cost of a new overhead system. Costs are estimated and the payment is nonrefundable. (Rule 20.B)
- Projects requested by applicants which do not meet tariff Rule 20.A or 20.B requirements. The applicant must pay the cost of the conversion less the net salvage value and depreciation of the replaced overhead facilities. Costs are estimated and payment is due in advance and nonrefundable. (Rule 20.C)

As stated previously, the legal question in this proceeding is whether tariff Rule 20.B is applicable to St. Paul's project. We therefore examine the specific requirements more closely. Rule 20.B applies to conversions "along public streets and roads and other locations mutually agreed upon," subject to three conditions. One, either all property owners served by the overhead facilities agree in writing to the conversion or "suitable legislation is in effect" requiring the conversion. Two, the applicant must furnish and install "pads and vaults for transformers and associated equipment," etc. and do all work associated with the underground trench preparation and finishing (or have PG&E do it), transfer ownership of the new facilities to PG&E, and pay the conversion sum referenced above. Three, Rule 20.B requires: "The area to be undergrounded includes both sides of a street for at least one block or 600 feet, whichever is the lesser, and all existing overhead communication and electric distribution facilities within the area will be removed."

4. Discussion

St. Paul claims to meet the Rule 20.B conditions. PG&E does not dispute St. Paul's contention that the Resolution satisfies the first condition (i.e., that the undergrounding be imposed by "suitable legislation"). The pleadings reveal no dispute between the parties about the second condition; moreover, St. Paul

appears ready and willing to pay the costs which application of Rule 20.B would require.

The parties disagree whether St. Paul meets the third condition, however. St. Paul focuses on the length of the electric line it must underground – 830 feet in all – and on the fact that part of the line runs along the Iron Horse Trail, which provides public access for recreational walking, bicycling, and horseback riding. PG&E points out that all the overhead facilities at issue are on private property, and that other overhead lines on the Iron Horse Trail and on Alcosta Boulevard will remain.

Even if we were to conclude that the Iron Horse Trail is the functional equivalent of a public street or road, only 210 feet of the required undergrounding runs along it, and only along one side. A Rule 20.B conversion applies to the undergrounding of both sides of a street for a distance of at least one block or 600 feet (whichever is less). Here, 620 feet (approximately three-quarters) of the required undergrounding runs along the common border between two adjacent parcels of land. We note that while the city, if it chose, could designate the entire area for the preferential undergrounding treatment available under the Rule 20.A, it has not done so. The city Resolution explicitly requires St. Paul to perform the required undergrounding at its “sole cost”.

Though estimates of the costs St. Paul will incur under Rule 20.B versus under Rule 20.C are not alleged in the pleadings, we are mindful that undergrounding 830 feet of overhead electric facilities poses a sizeable expense for the development. However, a great deal of conversion remains to be accomplished throughout PG&E’s service territory. As noted previously, the subsidies available under Rule 20.A are limited in any given year, and the subsidies authorized under Rule 20.B must meet the requirements of that rule to ensure fairness and avoid discrimination. These fundamental concepts, codified

at Pub. Util Code §§ 451 and 453, underlie public utility ratemaking generally, as well as our interpretations of utility tariffs.

For all the reasons discussed above, we conclude that St. Paul's undergrounding project is ineligible for Rule 20.B funding.

5. No Hearing is Necessary

After review of the pleadings, we conclude that the material facts are not in dispute. Accordingly, we change the determination in the instructions to answer that this proceeding required a hearing. We conclude that no hearing is necessary, in compliance with Rule 6.6 of the Commission's Rules of Practice and Procedure. We deem this proceeding to stand submitted as of August 17, 1999, the date the draft decision was mailed.

6. Comments on Draft Decision

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

Findings of Fact

1. As a condition of its permit to develop commercial property at 12885 Alcosta Boulevard in the City of San Ramon, St. Paul must underground 830 feet of existing overhead electric facilities.
2. The required undergrounding is all on St. Paul's property; 620 feet run along a common border with another parcel to the north and 210 feet run along the western border with the Iron Horse Trail, which provides public access for recreational hiking, bicycling, and horse riding.
3. Other existing, overhead electric facilities will remain on Alcosta Boulevard and on the opposite side of the Iron Horse Trail after St. Paul performs the undergrounding the city has required.

4. The city has required St. Paul to perform the required undergrounding at its sole cost.

5. The sole issue between the parties is whether or not St. Paul's project meets the requirements for undergrounding under PG&E's tariff Rule 20.B, which allows a greater offset than Rule 20.C and would be less costly to St. Paul.

6. The parties agree that St. Paul's project meets the first and second conditions necessary for Rule 20.B to apply, but they dispute compliance with the third.

Conclusions of Law

1. St. Paul's project does not meet the third condition necessary for Rule 20.B to apply because the area to be undergrounded does not include both sides of a street for a distance of the lesser of one block or 600 feet, even if we consider the Iron Horse Trail to be the functional equivalent of a public street or road.

2. St. Paul's project does not meet the third condition necessary for Rule 20.B to apply because the required undergrounding will not remove all existing overhead facilities in the area.

3. The complaint should be denied.

4. In denying the complaint, we make a final determination that no hearing is necessary in accordance with Rule 6.6(f) of the Rules of Practice and Procedure.

5. In order to resolve this dispute expeditiously and provide certainty to the parties in their business dealings, this decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The complaint of St. Paul Associates, Ltd. is denied.
2. This proceeding is closed.

This order is effective today.

Dated September 16, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners