

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Maria V. Lawrence,

Complainant,

vs.

Pacific Gas and Electric Company (U39E),

Defendant.

Case 10-02-026
(Filed February 25, 2010)

Maria V. Lawrence, Complainant, in pro per.
Grant Guerra, Attorney at Law, for defendant,
Pacific Gas and Electric Company.

MODIFIED PRESIDING OFFICER’S DECISION DISMISSING COMPLAINT

1. Summary

This decision denies and dismisses the complaint filed by Maria V. Lawrence against Pacific Gas and Electric Company (U39E).

Case 10-02-026 is closed.

1.1. The Parties

Maria V. Lawrence (Ms. Lawrence or Complainant) owns and resides at 138 Virginia Court, Alamo California (the Property). Complainant is a customer of Pacific Gas and Electric Company (U39E) (PG&E or Defendant).

PG&E is a provider of electricity and natural gas service and is an investor-owned public utility under the jurisdiction of the California Public Utilities Commission (Commission).

2. Procedural History

Ms. Lawrence filed the instant complaint on February 25, 2010, alleging a number of wrongful actions by the defendant in relation to the initial placement and subsequent relocation of gas and electric lines on her property. Defendant answered the complaint on April 5, 2010. The matter was initially calendared under the Commission's Expedited Complaint Procedure, but on May 25, 2010, the assigned Administrative Law Judge (ALJ) terminated and recalendared the matter for hearing under the Commission's regular procedure, pursuant to Rules of Practice and Procedure 4.5, subdivision (g).

By agreement of the parties, the case was assigned to mediation under the Commission's Alternative Dispute Resolution program on August 6, 2010. Although these efforts resulted in a partial settlement, the parties were unable to resolve their dispute, and with the exception of two issues that were excluded by the ALJ on preliminary motion by PG&E, the remaining matters were heard.¹

The ALJ held a prehearing conference on October 25, 2010, and set a procedural schedule. Three days of hearings were held between November 29 and December 2, 2010. On January 18, 2011, the Commission issued an order extending the statutory deadline for completion of the proceeding until February 24, 2012. On May 18, 2011, the proceeding was reassigned from ALJ Victor D. Ryerson to ALJ W. Anthony Colbert. On February 1, 2012, the Commission issued

¹ Complainant has brought the excluded issues before the Commission in two separately filed complaints.

an order extending the statutory deadline for completion of the proceeding until August 24, 2012. On August 23, the Commission issued an order extending the statutory deadline for completion of the proceeding until October 31, 2012. Final submission was made on September 28, 2012. On October 11, 2012, the Commission issued an order extending the statutory deadline for completion of the proceeding until January 31, 2013.

3. Background

Ms. Lawrence alleges that PG&E violated tariffs governing the initial placement and relocation of gas and electric lines on her residential property. She contends that PG&E's tariffs required it to utilize shorter routes to provide service to her house than were selected, and that its failure to do so resulted in greater cost for the work and interference with the use and enjoyment of her property. She seeks reparations and an order requiring PG&E to relocate the lines at its expense to a route that conforms to her desires.

PG&E asserts that the Complainant's claim that it installed the service facilities on her residential property in a location that violates its tariff rules and service requirements is without merit.² PG&E contends that electric and gas service lines were placed in their original locations with the knowledge and acquiescence of the property's developer³ and are consistent with the easement located on the property.

Ms. Lawrence's lot is situated on the southwest side of the circular end of a *cul-de-sac*, Virginia Court, in a residential subdivision located in Alamo,

² PG&E Answer to Complaint.

³ PG&E Pre-Hearing Brief, § A.

California. It is a large parcel, nearly 276 feet long on the longest (east) side, with 77.85 feet of semicircular frontage on the southeast end of Virginia Court. Her house is situated close to this curved frontage, which comprises about 45 degrees, from approximately the six o'clock to the nine o'clock positions, of the end of Virginia Court. This frontage is generally defined by a curb.

At the south end of this portion of the frontage is a curb cut. A private drive continues straight south along the east margin of Lawrence's parcel, serving both her parcel and the neighboring parcel to the south. The property line between Ms. Lawrence's parcel and that to the east runs down the middle of the drive. At the curb cut on Ms. Lawrence's side of this drive, a paved concrete driveway extends to her house, terminating at garage doors on the south end of the building.

Her parcel, designated Lot 34, was developed as part of a new subdivision in the latter part of the 1970s. As part of the development process, the developer, Harold Smith, granted an easement adjacent to Lot 34 for a public utility right of way, and for the private drive beyond the south edge of Virginia Court. In addition, the developer granted strips of land 10 and 15 feet wide (the Public Utility Easement or P.U.E.) along the east edge of Lot 34, as well as on nine other lots, for the purpose of undergrounding gas and electric facilities. The P.U.E. runs alongside Virginia Court, and also extends south along and beyond the east side of Lot 34, so as to provide a continuous right of way for public utility use. At the intersection of the private drive and the east-west property line separating Lots 34 and Lot 35, the developer granted a 10-by-15-foot easement in gross, on which PG&E placed a 75-KVA transformer to furnish electric service to those two lots. It is from this point at the far southeast end of Lot 34 that electric service was extended north to Lawrence's residence.

Underground gas and electric service were requested by the developer for Lot 34 in 1978. The gas line was “stubbed out” from the gas main to a stub near the southern boundary of the property in July 1979. Contemporaneous PG&E service request records indicate that the structure to be built on Lot 34 was a custom home, and that the driveway location could not be determined at the time the work was requested. As of March 21, 1980, the request for service indicates that the house was 20 percent complete. The request from the developer to PG&E on that date was to extend the stub service 147 feet to the meter location “per Rule 16.” PG&E was instructed to trench and backfill for the service, and gas, electric, cable television and telephone facilities were to occupy the common trench.

The meter location was to be on the south side of the house, near the east corner, the closest corner to the private drive. The 147-foot trench containing the utility lines was planned to extend from the 75-KVA transformer at the southwest end of Lot 34 northward along the private drive to a point even with the south edge of the house, and then turn to the east and run approximately 20 feet to the meter location. However, although no documentation of the change exists, by the time the service connections were installed, the planned meter location had been moved to the opposite (west) corner of the south side of the house, some distance deeper into the property from the curb and street than the original site. The builder constructed a meter enclosure at this location, with louvered doors to accommodate both the gas and electric connection facilities, as required by PG&E.

In apparent response to the change in the meter location, PG&E constructed the trench from the 75-KVA transformer to the meters on a more direct alignment than first sketched. Specifically, the actual trench extended

westward six feet from the main to the property line, and then turned north for 120 feet directly to the meter location. No driveway or structure stood on the lot at the time. However, the garage doors on the house are between the meter enclosure and the southeast corner of the structure where the meters were originally to be located. The southeast corner of the house could not accommodate the meter enclosure because of the proximity of the garage doors to the west wall of the house.

The alignment of the trench, as built, was parallel to, and just to the east of, the east edge of the driveway. Gas service was taken from the stub to the new meter location on April 3, 1980, and electric service line was installed and completed on April 8, 1980. Lot 34 was purchased from the developer by Ms. Nancy Johnson, who occupied the residence until it was sold to Ms. Lawrence in 1985.⁴

In early 2005, Ms. Lawrence planned to build a free-standing garage and workshop structure approximately 60 feet south of the house. The workshop/garage would be between the house and the transformer. The driveway would be extended to reach the north side of the new structure. PG&E asserts that Ms. Lawrence's contractor failed to locate the underground gas and electric lines before excavating in preparation to install the new structure.⁵ The contractor dug into and damaged the gas line. PG&E states that it advised the Complainant of her obligation to apply for service relocation prior to construction. In March 2005, Ms. Lawrence submitted an application to PG&E to

⁴ Evidentiary Hearing (EH) Transcript Volume 2, 141:16-28.

⁵ PG&E Answer to Complaint at 2.

relocate her utility lines and paid PG&E an advance of \$1,000 required for engineering the job. However, she ultimately cancelled the contract with PG&E for relocation of its utility lines and deferred the project for reasons that are not material to this complaint.

In 2009, Ms. Lawrence renewed her plans to build the garage. In August 2009, her contractor dug into and damaged PG&E's electric underground service facilities. PG&E (again) advised Complainant of her obligation to apply for service relocation prior to construction and requested a \$3,000 engineering advance payment. The payment was received on October 7, 2009. Ms. Lawrence resubmitted her 2005 design for the work. It was her desire to abandon all but the most northerly 30-foot segment of the existing lines, and relocate the remaining lines by running them adjacent to the street within the P.U.E., north to a point even with the south margin of the driveway, and then west, rejoining the existing lines at a 90-degree angle about 30 feet south of the house. This new alignment would require two 90-degree bends to reach the house.

Ms. Lawrence paid a total of \$14,567.39, under protest, to have her gas and electric service lines relocated. She seeks to recover this sum as reparations for PG&E's alleged tariff violations, and to have PG&E relocate her lines at its expense in accordance with her desires.

PG&E contends that it has worked diligently to find solutions that are acceptable to the Complainant. However, PG&E asserts that it is in compliance with applicable tariffs and has not violated any law or rule of the Commission. PG&E further asserts that the complaint fails to state a claim upon which relief can be granted. PG&E requests that the Commission deny the relief sought by Ms. Lawrence and dismiss the Complaint.

4. Discussion

Ms. Lawrence was not the builder/developer of her home nor was she the original owner. As previously noted, the original owner, Ms. Johnson, purchased the home in 1980. Ms. Lawrence purchased the home in 1985 from Ms. Johnson. Ms. Lawrence stepped into the shoes of the previous owner. She has the burden of proof to demonstrate, by a preponderance of the evidence, a violation, by PG&E, of a specific standard contained in a statute, rule, or order of the Commission, or a tariff which has been approved by the Commission. Absent a finding or evidence that the developer or the original owner disagreed with or disputed the original placement of the utility lines, a finding or evidence that the utility lines were not placed in a valid easement, or a finding or evidence of a violation of the applicable tariff, the Complainant cannot prevail in this proceeding.

Ms. Lawrence has provided no direct evidence that the developer or the original owner disagreed or disputed the placement of the utility lines. On the contrary, testimony provided at the EH demonstrated that it was the developer not PG&E who dug and filled the trench for the original location of the gas stub lines.⁶ Testimony at the hearing⁷ and documents provided by the Defendant⁸ demonstrate that the utility lines were properly placed in the valid easements and P.U.E.

Ms. Lawrence asserts that PG&E has violated applicable tariffs because the utility service lines do not follow the shortest practical route. The utility lines

⁶ EH Tr. V.2, 222:7-28, 223:1-17.

⁷ Testimony of Al Soller, EH Tr. V.2, 194-206.

⁸ PG&E Request for Official Notice.

were originally installed in 1980. The applicable tariffs at the time were PG&E's Commission-approved tariffs, Gas and Electric Rule 16. The gas and electric lines were placed in a joint trench. PG&E argues that the joint trench was constructed along a route that extended across the property using the shortest distance between the transformer and the meter location.⁹ Complainant has not presented compelling evidence that the location of the utility lines is at variance with the applicable tariffs.

Rule 16.F.2b of PG&E's Commission-approved tariff requires customers to pay for the relocation or rearrangement of existing utility lines and facilities when done for building additions, remodeling or aesthetics. As PG&E has noted, the Commission has recognized the underlying policy of Rule 16 is to require the primary beneficiary of an improvement project absorb the utility relocation costs as the most equitable way to distribute all of the costs associated with the development of the property.¹⁰ A utility is under a duty to strictly adhere to its lawfully published tariffs. *Temescal Water Co. v. West Riverside Canal Co.* (1935) 39 Cal RRC 398. Tariffed provisions and rates must be inflexibly enforced to maintain equity and equality for all customers with no preferential treatment afforded to some. *Empire W. v. Southern Cal. Gas Co.* (1974) 38 Cal App 3d 38, 112 Cal Rptr. 925.

It was Ms. Lawrence's choice to build a garage/workshop on her property. The decision was made 25 years after her home was constructed. This was

⁹ PG&E Pre-Hearing Brief at 6.

¹⁰ *Id.* at 9 citing D.10-07-010.

clearly an elective choice on her part and she must comply with the applicable tariff, Rule 16.F.2b.

5. Conclusion

It is clear that the Defendant's utility lines were not placed where the Complainant would have wanted them to be given her desire to build a workshop/garage on her property. The fact that the utility lines are not where they could be does not mean they are not where they should be or that a Commission rule, tariff or statute has been violated. There is no compelling evidence that the developer or original owner objected to the location of the line placement at the time the home was constructed. The evidence presented supports PG&E's contention that the utility lines were placed in manner consistent with the location of the P.U.E. The decision to build a workshop/garage was made 25 years after Complainant's home was built and was elective. Complainant is obligated, pursuant to the Commission-approved tariff, to bear the costs associated with the relocation of the utility lines necessitated by her decision.

In order to meet her burden of proof and prevail in the instant proceeding, the Complainant must prove a violation of a specific standard contained in a statute, rule, or order of the Commission, or a tariff which has been approved by the Commission. She has not done so. The instant complaint should be dismissed.

6. Categorization and Need for Hearing

This decision confirms the categorization of C.10-02-026 as adjudicatory, and the need for hearing, as determined by ruling issued by the Chief Administrative Law Judge on August 2, 2010.

7. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and W. Anthony Colbert is the assigned ALJ and Presiding Officer in this proceeding.

8. Appeal of the Presiding Officer's Decision

On December 7, 2012, Ms. Lawrence filed an appeal of the Presiding Officer's Decision (POD) alleging numerous errors in the decision. On December 20, 2012, PG&E filed its response to Ms. Lawrence's appeal of the POD.¹¹ Ms. Lawrence has listed over thirty alleged errors in the POD. These alleged errors fall into three general categories: 1) errors as to the compass location of property lines and structures, i.e., the POD states that the meter was on southwest corner of the house. In her appeal, Ms. Lawrence claims that the meter is on the southeast corner of the house; 2) errors as to interpretation of the facts in the proceeding i.e., the POD states that Ms. Lawrence planned to build a free-standing garage and workshop on her property. Ms. Lawrence's appeal claims that she was completing the development of the property; and 3) the POD does not address the 2010 service line extension. Ms. Lawrence's contentions of error that fall under category 1 are numerous but non-substantive in nature. It is not material to the outcome of the decision if the Property is located on the southeast side of a cul de sac or the southwest side of the cul de sac. Most of the claimed errors involve transposing east for west or vice versa.

Ms. Lawrence contends that the POD wrongly concluded that it was her elective decision to build a workshop/garage on her property 25 years after it was constructed. In her appeal Ms. Lawrence asserts that she was simply

¹¹ On November 28, 2012 Defendant filed Comments to the POD.

completing the development of the property planned by the original owner. In addition she contends that that the POD wrongly concluded that there is no compelling evidence that the developer or original owner objected to the location of the line placement at the time the home was constructed. Ms. Lawrence argues that there was no easement for the service line extensions. She also asserts that there is evidence that the original owner planned to build additional structures and/or further develop the Property in a manner that was inconsistent with the Defendant's placement of the utility lines. Finally she states that the original owner could not have acquiesced to PG&E's placement of the utility lines because said placement was in violation of the applicable tariff.

PG&E argues that there is no compelling evidence to support Ms. Lawrence's claim that the original owner objected to the location of the utility lines. PG&E argues that Ms. Lawrence relies on a single drawing that was dated six months after the service lines had been installed on the Property. PG&E points out that Ms. Lawrence admitted that she never discussed the drawing with the original owner. PG&E argues that it is a well-recognized principal of easement law that a property's owner long acquiescence to a third party's use of the property in a manner that varies from the locations described in an easement demonstrates that the location was changed by mutual consent.¹² PG&E asserts that that its Service Requirements in effect at the time the Property was developed expressly acknowledged that the typical service configurations may

¹² PG&E Response to Appeal at 12-13.

be modified by mutual consent.¹³ PG&E contends that has land rights to operate and maintain the service facilities installed and maintained on the Property.

Ms. Lawrence contends that the current service line extensions in 2010 was not addressed in the POD in that the extensions do not comply with PG&E's tariff rules or electric service requirements. PG&E asserts that relocated lines were placed in a manner that would utilize the trench that Ms. Lawrence's contractor had dug for the line relocation on her property. PG&E contends that the line placement is in conformance with its tariffs and electric service requirements. In testimony in a related case (Case (C.) 11-04-019), Ms. Lawrence acknowledged that PG&E informed her that in order to place the workshop/garage where she wanted it that the utility lines needed to be moved and service boxes placed on her property.¹⁴

After reviewing the appeal and response to the appeal, the presiding officer has determined that Ms. Lawrence has failed to demonstrate any material procedural or legal error in the POD. As a result, we decline to make any substantive changes to the POD originally mailed on November 8, 2012. There is no compelling evidence that the developer or original owner objected to the location of the line placement at the time the home was constructed. There is no compelling evidence that Ms. Lawrence was completing the development of the Property pursuant to the plans of the original owner. The evidence presented supports PG&E's contention that the original placement of the utility lines was in conformance with its tariffs and electric service requirements as was the

¹³ *Id.* at 9.

¹⁴ PHC TR. C.11-04-019 12:2-28, 13:1-14

relocation of the utility lines in 2010. The location of the workshop/garage and the placement of the trench for the utility line relocation were decisions made by Ms. Lawrence. These decisions were elective and made 25 years after Ms. Lawrence's home was built. She is obligated, pursuant to the Commission-approved tariff, to bear the costs associated with the relocation of the utility lines necessitated by her decision.

In her appeal, Ms. Lawrence has indicated that in several instances compass locations concerning the Property have been transposed, east instead of west or vice versa. To the extent that has occurred, relevant corrections have been made to the POD. In its Comments to the POD, PG&E points out a typographical error in footnote 6 and a factual error on page 8. We agree with PG&E's correction and the POD has been modified accordingly. There are no other changes to the POD.

Findings of Fact

1. Complainant owns and resides at 138 Virginia Court, Alamo, California, and is a customer of Pacific Gas and Electric Company.
2. Defendant is a provider of electricity and natural gas service and is an investor-owned public utility under the jurisdiction of the Commission.
3. Complainant's home was developed as part of a new subdivision in the latter part of the 1970s.
4. The parcel, on which the Complainant's home is located, was designated Lot 34 by the developer.
5. The developer, Harold Smith, granted an easement adjacent to Lot 34 for a public utility right of way, and for the private drive beyond the south edge of Virginia Court.

6. The developer granted a P.U.E. along the east edge of Lot 34, as well as on nine other lots, for the purpose of undergrounding gas and electric facilities.

7. Underground gas and electric service were requested by the developer for Lot 34 in 1978.

8. The meter location was to be on the south side of the house, built on Lot 34, near the east corner.

9. The 147-foot trench containing the utility lines was planned to extend from a 75-KVA transformer at the southeast end of Lot 34 northward along the private drive to a point even with the south edge of the house, and then turn to the west and run approximately 20 feet to the meter location.

10. The planned meter location was moved to the opposite (east) corner of the south side of the house.

11. PG&E constructed the trench from the 75-KVA transformer, the trench extended westward six feet from the main to the property line, and then turned north for 120 feet directly to the meter location.

12. Gas service was taken to the new meter location on April 3, 1980, and electric service line was installed and completed on April 8, 1980.

13. The developer dug and filled the trench for the gas stub.

14. The home on Lot 34 was purchased, from the developer, by Ms. Nancy Johnson, who occupied the residence until it was sold to Ms. Lawrence in 1985.

15. In early 2005 Ms. Lawrence planned to build a free-standing garage and workshop structure approximately 60 feet south of her home.

16. The workshop/garage would be located between the Complainant's home and the transformer and her driveway would be extended to reach the north side of the new structure.

17. PG&E advised the Complainant of her obligation to apply for service relocation prior to construction of the workshop/garage.

18. In March 2005 Ms. Lawrence submitted an application to PG&E to relocate her utility lines and paid PG&E an advance of \$1,000 required for engineering the job.

19. Ms. Lawrence cancelled the contract with PG&E for relocation of its utility lines and deferred the project.

20. In 2009 Ms. Lawrence renewed her plans to build the workshop/garage.

21. In August 2009 Ms. Lawrence's contractor dug into and damaged PG&E's electric underground service facilities located next to her house.

22. PG&E (again) advised Complainant of her obligation to apply for service relocation prior to construction and requested a \$3,000 engineering advance payment.

23. Ms. Lawrence resubmitted her 2005 design for the workshop/garage.

24. Ms. Lawrence paid a total of \$14,567.39, under protest, to have her gas and electric service lines relocated.

25. Ms. Lawrence seeks to recover \$14,567.39 as reparations for PG&E's alleged tariff violations, in relation to the initial placement and subsequent relocation of gas and electric lines on her property and to have PG&E relocate her lines at its expense.

26. PG&E asserts that it has not violated any law or rule of the Commission and that the complaint fails to state a claim upon which relief can be granted.

27. PG&E requests that the Commission deny the relief sought by Ms. Lawrence and dismiss the Complaint.

Conclusions of Law

1. The applicable tariffs at the time the utility lines were installed were PG&E's Commission-approved tariffs, Gas and Electric Rule 16.
2. Rule 16.F.2b of PG&E's Commission-approved tariff requires customers to pay for the relocation or rearrangement of existing utility lines and facilities.
3. PG&E must strictly adhere to its lawfully published tariffs.
4. Complainant must prove a violation of a specific standard contained in a statute, rule, or order of the Commission, or a tariff which has been approved by the Commission.
5. Complainant has not demonstrated by a preponderance of the evidence that the original location of the utility lines was at variance with the applicable tariffs.
6. Complainant has not demonstrated by a preponderance of the evidence that the developer or original owner objected to the location of the line placement at the time the home was constructed.
7. Complainant should be responsible for the total cost of \$14,567.39 to have her gas and electric service lines relocated.
8. The complaint should be denied and dismissed.

O R D E R

IT IS ORDERED that:

1. The complaint of Maria V. Lawrence against Pacific Gas and Electric Company is denied and dismissed.
2. Case 10-02-026 is closed.

This order is effective today.

Dated _____, at San Francisco, California.