

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Maria V. Lawrence,

Complainant

vs.

CASE (C.) 11-04-018

Pacific Gas and Electric Company
(U39E),

Defendant

ISSUES BRIEF

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the C 11-04-018

BRIEF OF MARIA V. LAWRENCE

Pursuant to the Commission's Rules of Practice and Procedure, and the ruling of
ALJ Colbert dated December 7, 2011, Complainant, Maria V. Lawrence hereby submits
issue brief regarding the issues set forth in the Scoping Memo and Ruling of Assigned
Commissioner

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I. INTRODUCTION AND BRIEF FACTUAL BACKGROUND

This issue brief concerns property at 138 Virginia Court, Alamo part of a residential community developed in 1979. Most of the streets are public roads with a few exceptions. In those instances the developer granted and recorded easement for PUE.¹ Said document recorded on October 15, 1979 identified as 9576 page 116 identifies the private drives as Virginia Court, Jay Lane and Jay Court. Document states “II. The strips of land of the uniform widths of 10.0 feet and 15.0 feet ...” The total width of Virginia Court is 20 feet while Jay Lane and Jay Court are both 30 feet in width. The developer granted half of the total width of the respective street for PUE, 10.0 feet of Virginia Court and 15.0 of other streets. The property line of the identified parcels is in the middle of the private drives. P G & E’s normal procedure is to provide gas and electric service lines to each property in a sequential route from the proceeding location as stated in Tariff Rule “from the nearest permanent and available distribution facility to the point from which the service facilities will be connected”.² This was not done at this lot. The service lines should have been taken from the north.³ Instead, at this property, P G & E bypassed the entire lot and then had to backtrack from the south eastern corner going north 147 feet to provide service.⁴

¹ Hearing C10-02-026 Exhibit Recorded Easement 9576 Page 116

² Tariff Rule 15 A 2 b

³ Hearing C10-02-026 Exhibit # 10, #20

⁴ Hearing C10-02-026 Exhibit # 22, #46

On December 21, 1979 the original owner submitted a Request for Service.⁵ As noted in the document the residence was 20% completed.

On February 1, 1980 P G & E produced a construction sketch for the electric and gas service lines and billing for the line placement.⁶ The lines were to be placed in a joint trench with CATV service. P G & E was to trench and backfill the route for the service lines. The original owner and CATV were charged by the foot the distance of 147 feet between the transformer at the south east corner of the property to the meters which were to be placed on the corner of the house closest to the street and PUE. The owner paid \$516.00 ($\6.50×147) for the distance. In addition, the owner also paid material cost in the amount of \$35.00 bringing his total cost to \$551.00, CATV paid \$182.00.

The gas and electric service lines were not placed according to P G & E's sketch and the meters were place on the west side of the 3 car garage, 42 feet deep into the property, not at the east corner, closest to the PUE. The lines were placed from the 75 KVA transformer to an adjacent splice box then traveled west into the property about 20 feet; made a 120 degree bend; then the lines ran diagonally northwest across the property for about 120 feet; then made a 90 degree bend and ran for 30 feet parallel to the PUE, to reach the meters on the residence at the far west corner of the garage away from the PUE and private drive.⁷

⁵ Hearing C10-02-026 Exhibit # 41

⁶ Hearing C10-02-026 Exhibit # 46

⁷ Hearing C10-02-026 Exhibit # 19, # 22

The property was planned and developed for two structures.⁸ The residence was built first at the far north portion of the property. The original owner did not complete the development of the property as planned and the second structure was not built.

When an applicant files a request to relocate the service lines they must submit to P G & E an accurate, drawn to scale drawing of their project. P G & E then produces their construction sketch for the utility lines. Every construction sketch that P G & E produces is not drawn to scale. Some details do not represent actual field conditions⁹ such as meter location which is not accurate. P G & E requires that the applicant proceed with the construction based on their vague, inaccurate drawings for which they bill the customer engineering advance.

In 1985 Ms. Lawrence purchased the property from the original owner.

In 2005 Ms. Lawrence planned to complete the development of the property using the original 1980 plans, by building a free standing structure between the residence and the 75 KVA transformer at the south portion of the property. She requested that P G & E relocate a portion of their electric and gas lines “in a new location that was similar to the alignment depicted on the construction sketch.”¹⁰ P G & E required a \$1,000.00 engineering advance. The total cost for moving a section of the electric and gas lines was \$4,534.86. In 2010 the total cost to move a portion of the gas and electric service lines was \$14,567.39.¹¹

In 2005 no ITCC was charged for electric or gas. They are both listed as \$ 0.

⁸ Hearing C10-02-026 Exhibit 24 X 36 plot plan dated 1980

⁹ Hearing C10-02-026 Exhibit # 19

¹⁰ P G & E answer to complaint Page 5 at 18

¹¹ Hearing C10-02-026 Exhibit # 9, # 10

Ms. Lawrence objected to the cost. She did not sign the P G & E contract and ultimately deferred the project. The \$1,000.00 advance was not refunded. She filed an informal complaint with the CPUC.

In 2009 Ms. Lawrence renewed her request for P G & E to relocate their service lines.

Prior to restarting the construction she contacted P G & E, met with their representatives, and provided some 2005 documents regarding the service lines.

P G & E required another engineering advance of \$3,000.00. P G & E then produced new construction sketches that required the electric service line to originate at the south east corner as in 1980 and 2005 but the gas service line was to originate approximately 90 feet north in the middle of the driveway.¹² The meter location does not reflect actual placement, field conditions. The electric service line required two additional splice boxes for a total of 3 splice boxes. The electric line now has three 90 degree angles. Two of which have splice boxes and one 90 degree angle which does not.

Ms. Lawrence objected to the 2009 construction sketch because the gas service lines were to originate from a different location. She further objected to P G E's demand that she was required to trench and remove a portion of the driveway in order to place the gas line in the middle of the driveway.¹³ The immediate areas on both the north and south of the driveway are dirt areas.¹⁴ PG & E refused.

¹² Hearing C10-02-026 Exhibit # 6, # 9, #17

¹³ Hearing C10-02-026 Exhibit # 6, #17

¹⁴ Hearing C10-02-026 Exhibit #47, #48, #49

Ms. Lawrence proposed that the 3rd splice box be placed at the first 90 degree angle closest to the street and PUE easement instead of 42 feet deep into the property.¹⁵

P G & E refused.

Ms. Lawrence also proposed that the gas and electric service lines originate perpendicular to the house at 90 degree angle with the PUE and then run straight back to the meters. This is the placement shown in every drawing of Electric and Gas Service Requirements (Greenbook).¹⁶ P G & E refused.

Ms. Lawrence was required to trench and remove part of the driveway for a section of the gas line.¹⁷

On February 25, 2010 Ms. Lawrence filed complaint C 10-02-026 alleging that the original 1980 service line placement, the 2005 line placement and the current 2010 service line placement violates Tariff Rules “on private property, along the shortest, most practical and available route...”¹⁸ and P G & E’s own Electric and Gas Service Requirements known as Greenbook. The service lines zigzag across the property.

In 1980 P G & E violated Tariff Rule twice:¹⁹

Tariff Rule No. 16 B 3 b.(1)“the shortest practicable route”

Tariff Rule No. 16 B 3 b.(1) (b)

“Where the distance is over 100 feet, the Utility will furnish, install, own and maintain the service lateral for the entire length, and the applicant shall pay to the Utility the cost of the conductors and conduit for the length exceeding 100 feet”

¹⁵ Hearing C10-02-026 Exhibit #25

¹⁶ Hearing C10-02-026 Exhibit #28

¹⁷ Hearing C10-02-026 Exhibit #6, #17

¹⁸ Electric Tariff Rule 16 C 1 b

¹⁹ Hearing C10-02-026 P G & E Request for Judicial Notice Rules Oct. 1967

Reading this rule using common language understanding, the owner should have paid for 47 feet not 147 feet.

The original owner and other utility were overbilled twice. First, because the service lines were not placed as originally drawn. The costs were calculated by the foot for that specific line placement. P G & E took a diagonal route. Second because tariff rules state that the Utility shall pay first 100 feet and the “Applicant for the length exceeding 100 feet”.

On August 4, 2009, prior to resuming construction, Ms. Lawrence contacted Carl Horikoshi, Lands & Rights Supervisor of P G & E to request that they relocate the service lines. She met with P G & E representatives and provided some 2005 documents.

On August 24, 2009 the contractor started the construction and had an electric dig-in. P G & E placed 130 feet of electric lines diagonally across the property, resting on the new structure foundation and work area the contractor needed to use, in the same configuration as the original buried lines.²⁰

The gas service was also turned off and not restored until October 1, 2010.

Ms. Lawrence suspended construction because of safety hazard created by P G & E. The electric lines remained on the ground until September 27, 2010. In order to park her car and access the garage space Ms. Lawrence drove over these electric lines every day for more than a year.

As a result of the Commission’s ADR, and the Partial Settlement Agreement, P G & E agreed to

²⁰ Hearing C10-02-026 Exhibit #1

remove the safety hazards they had created. On September 27, 2010 P G & E buried the electric lines into the trenches and splice boxes and covered the exposed active gas lines.

They removed a gas line that did not terminate at the meter. They re-excavated a location to install automatic gas shut off valve and backfilled the trenches covering the exposed gas line.²¹

Because more than a year had passed since the construction was suspended Ms. Lawrence needed to negotiate new contracts. The delay resulted in a higher labor and material costs.

In February 2011 the construction resumed at which time the structure was framed and subsequently completed.

In May 2011 Ms. Lawrence again suspended construction. The structure is complete but not operational because it does not have utilities and grading of a driveway for access. To bring the utilities from the meter to the garage structure the service lines will cross over the current line placement by P G & E. The lines will need to be cemented under the middle of the driveway. Further, the driveway will need to be paved around the 24 X 36 splice box that was placed 42 feet deep into the property. This placement violates P G & E safety requirements.

P G & E's Notification letters require that its "gas facilities are in a safe location and are accessible at all times in order to perform inspections, routine maintenance and emergency repairs as required by the CPUC and USDT regulations." Their ready access requirement do not permit the service lines to be under "decks, patios or walls".²²

²¹ Hearing C10-02-026 Exhibit #3 #5

²² Utility Work Procedure WP4100-04 "This is a condition where ready access to P G & E's gas facilities is prevented by objects that enclose, are installed directly over, or are in too close proximity to P G & E gas facilities or when required clearances are not maintained. Such objects typically include, but not limited to, buildings or portions of buildings decks, patios or walls." --

The current line placement in the middle of the paved driveway there is no minimal access for repair of gas line if needed. In addition Ms. Lawrence will not be able to develop this portion of her property without repeating this same process of moving the service lines.

II IMPORTANT FACTS

1. Plot plan is dated 1980 shows the planned development as started by original owner.
2. P G & E did not place the service lines according to what they billed and compensation they received from original owner and other utility
3. In 2005 Ms. Lawrence objected to cost and did not sign P G & E contracts.
4. In 2009 Ms. Lawrence contacted P G & E prior to starting construction. Met with their representatives and provided them with 2005 documents.
5. Service lines in 1980, 2005, and 2010 do not comply with Tariff Rules 15 and 16 "On private property along the shortest, most practical and available route (clear of obstructions) as necessary to reach a Service Delivery Point designated by P G & E."
6. P G & E did not bill ITCC on the 2005 contracts they produced for Ms. Lawrence
7. In 2009 contracts ITCC is billed as a percentage of engineering and administrative costs
8. Billing of ITCC is inconsistent. P G & E adds ITCC on electric contract and not on gas contracts.
9. The structure is not functional, waiting for the Commission's decision on C 10-02-026

CONTRACTS

P G & E contracts that do not differentiate

"applicant" between a home owner and a developer.

working in PUE or working on private property

working on new main extension or on customer service line or meter.

“applicant” as new customer or an existing customer.

Indemnity Clause

In 2009 P G & E prepared two contract for Ms. Lawrence to sign for the relocation of a portion of the gas and electric service lines. The contract required Ms. Lawrence to indemnify and hold P G &E harmless

“against all loss, damage, expense and liability from injury to or death of any person, including but not limited to, employees of P G & E Applicant or any third party, or for the loss, destruction or damage to property, including, but not limited to property of P G & E, Applicant or any third party, arising out of or in any way connected with the performance of this agreement, however caused except to the extent caused by active negligence or willful misconduct of P G & E, its officers, agents and employees.”²³

Ms. Lawrence was alarmed at the unknown, potential risk that she was contractually required to take. It is possible that an accident could cause her to lose her home and be drawn into litigation for something she did not cause or could avoid. She also objected because she had no control of P G & E’s work. She attempted to clarify her objection by attaching page entitled “applicant’s notes” to the contracts. For several months Ms. Lawrence refused to sign the contract with those terms. P G & E stated that this contract was approved by the CPUC and that the terms could not be changed. However, P G & E did modify the Indemnity Clause for other utilities while working on public roads and right of way.

This Indemnity clause has been modified by P G & E for work related to other utilities as follows:²⁴

²³ Hearing Exhibit #9, #10

²⁴ May 27, 2011 Advice 3208-G; February 5, 2008 Advice 2901-G/3206-E; May 22, 2009 Advice 3461-E; July 6, 2009 Advice 3490-E;

May 27, 2011 Advice 3208-G

Subject: Gas Rule 15/16 Exceptional Case Agreement for the Turlock Irrigation District

9. Elimination of Indemnity Provision. The parties agreed to eliminate the indemnity provision in the Agreement to Perform Tariff Schedule Related Work (Form 62-4527), and instead rely upon California comparative indemnity law.

February 5, 2008 Advice 2901-G/3206-E; May 22, 2009 Advice 3461-E

Subject: Limited One Time Agreement to Perform Tariff Scheduled Related Work for the California Department of Water Resources
Pacific Gas and Electric Company (PG&E) hereby submits for filing a limited one time agreement modifying PG&E's standard indemnity clause as it appears on Form 62-4527.

July 6, 2009 Advice 3490-E

Subject: Limited One Time Agreement to Perform Tariff Scheduled Related Work for the City of Piedmont
Pacific Gas and Electric Company (PG&E) hereby submits for filing limited one time agreement modifying PG&E's standard indemnity clause as it appears on Form 62-4527.

Ms. Lawrence questioned the individual line items. Comparing the 2005 and 2010 Contract Line

Items they show:

	<u>2005 Electric</u>	<u>2009 Electric</u>	<u>2005 Gas</u>	<u>2009 Gas</u>
Eng. & Adm.	\$1,563.12	\$4,534.26	\$87.47	\$3,897.03
Tie-in Meters	69.00	1,464.17	0	0
Facilities	1,165.88	0	0	\$1,590.39
Trench Permits	0	132.01	0	0
Inspection fees	206.00	675.36	0	0
ITCC	0	2,313.97	0	0

Non taxable work	853.00	0	0	0
Total	\$3,857.00	\$9,119.75	\$1,677.86	\$5,447.64
Increase	\$5,262.75		\$3,769.78	

P G & E PREPARED CONTRACTS 62-4527 instead of Form 79-1018

Contract prepared by P G & E did not include SACAC form 79-1003. P G & E required Ms. Lawrence to sign Form 62-4527 which is used for Relocation of Distribution Facilities not for customer line extensions. This form is for work in public roads or easements for the expansion or relocation of main distribution service lines. This form is used for extension or expansion of P G & E facilities for the public benefit. Not service lines private property.

The contracts prepared by P G & E violated D.03-03-032

f. The utility-designed form shall include the following language and choice for the applicant: "I choose not to provide to the utility my refundable costs for this project as taken from my contract with my contractor, or as performed by myself, and acknowledge that the utility will use its estimate of the refundable costs for this project in the contract between the utilities and me"

g. The utility-designed form shall also include the following language: "Until the applicant either provides the refundable cost from its contract with its contractor, or returns the form indicating that it will not do so, the utility will not proceed with any work on the applicant's project."

III ITCC FACTS

1. Contracts prepared by P G & E in 2005, which Ms. Lawrence did not sign do not have ITCC. That line item is listed as \$ 0.
2. The intended purpose for P G & E to collect ITCC is to provide for the expansion, improvement or replacement of the utilities facilities.

In D.87-09-026 the Commission determined that the utility should pass along the tax generated by that income to the contributor as a fee.

In Resolution 38151 the Commission set forth method of calculation which is a Net-Present-Value, method, using depreciation, federal and state rates, as well as a rate of return.

In the instance with Ms. Lawrence's contract and with other existing P G & E customers that request their service line moved, there is no capital equipment or asset which is put into P G & E's asset base and depreciated over the life term of the asset.

3. P G & E's calculated basis of the ITCC tax is engineering and administrative costs.
P G & E calculation of ITCC is not based on market or replacement value.
4. Work is done on private property owned and maintained by the customer. The customer is required to provide all of the materials, trenching and backfill at their expense.
5. P G & E Form 79-1018 Advice 2637-G/2668-E state "Income Tax Component Contribution (ITCC) applies to the value of all **facilities deeded** to P G & E" (emphasis added)
There are no facilities deeded to P G & E by the existing customers when moving their service lines. Ms. Lawrence relocated only a portion of the service line.
6. The ITCC is sometimes applied to the electric contract and sometimes to the gas contracts.
7. Percentage billed by P G & E far exceeds any lawful tax rate allowed for sales or use tax paid by a customer which is under 10%. The customers are not able to claim a deduction of the ITCC on their tax returns as they are permitted to do for other sale and use tax they pay.

IV DISCUSSION

Form 79-1018 Advice 2637-G/2668-E clearly states the basis of calculating ITCC which “applies to the value of all facilities deeded to P G & E”, not engineering and administrative costs.

In D.87-09-026, the Commission placed the burden of the tax - called the Income Tax Component of Contribution (ITCC) on the contributor, based on the premise that the person or entity that causes the tax pays the tax. The Commission determined that the utility should pass along the tax generated by that income to the contributor as a fee, calculated with a Net-Present-Value method, using depreciation, federal and state rates, as well as a rate of return.

Background

In 1986, President Reagan signed into law the Tax Reform Act of 1986 that made CIAC taxable under the Internal Revenue Code. Under the Tax Reform Act, utilities must recognize CIAC as income. Prior to 1987, contributions were not taxed. In D.87-09-026, the Commission placed the burden of the tax - called the Income Tax Component of Contribution (ITCC) -- on the contributor, based on the premise that the person or entity that causes the tax pays the tax. The Commission determined that the utility should pass along the tax generated by that income to the contributor as a fee, calculated with a Net-Present-Value method, using depreciation, federal and state rates, as well as a rate of return.

In D 86-11-019 the Commission stated

“This decision places the burden of the tax on the contributor or advancer and is based on the premise that the person who causes the tax pays the tax. No contribution or advance, no tax.

CALIFORNIA CODES REVENUE AND TAXATION CODE SECTION 24320-24329

(3) For purposes of this section:

(A) "Contribution in aid of construction" does not include amounts paid as customer connection fees (including amounts paid to connect the customer's line to an electric line, a gas main, a steam line, or a main water or sewer line) and amounts paid as service charges for starting or stopping services.

(B) "Contribution in aid of construction" includes amounts received by a regulated public utility from a contributor to recover the federal tax imposed upon contributions in aid of construction, provided that the method used to recover the tax is authorized by Public Utilities Commission Decision 87-09-026.

ENERGY DIVISION RESOLUTION G-3364

Advice letters PG&E 2458-G-C/2379-E-B,

- a. Utilities shall show on the APPLICANT-INSTALLATION COST VERIFICATION (or similarly titled) form their estimated installed cost for line and/or service extension subject to refund, prior to the Applicant choosing the installer.
- b. Utilities with more than ten Applicant installations per year, shall provide a filed form to the Applicant with a detailed accounting of the refundable and non-refundable Utility or Applicant installed line and service extension costs using terminology and references consistent with Rules 15 and 16 (20 and 21 for SoCal Gas) and line item formulae.
- c. Utilities shall change their Rules 15 (20 for SoCal Gas), Section G, as agreed upon by CBIA letter of January 30, 2004.
- d. PG&E shall change its General Terms and Conditions form #79-1003 as agreed upon by CBIA letter of January 30, 2004.

In D.97-12-099, the Commission made permanent the option for an applicant to select a non-utility designer for a line extension project.

ITCC Purpose

When a developer requests main service line extension to a new location not currently serviced by the utility he is requesting the utility to provide expansion or improvement of the utility's facilities in order to service the new location and future customers.

The developer pays the utility ITCC based on the estimated installed costs of the new facilities. These costs include "overhead or underground service conductors, poles, service transformers, connection fittings, service pipe, valves, service connections, and other P G &E owned service

equipment as detailed in Gas and Electric Rule 16.

The purpose of the contribution is to provide main extensions for the new service and therefore the utility's cost is justified. The developer includes these costs in the overall sales price and recovers these amounts. The customer has no such recovery of ITCC.

V SCOPPING ISSUES

Does this complaint set forth any open issues as a matter of fact or law that are under the jurisdiction of California Public Utilities Commission?

Yes. The Commission has the oversight on utility's activities, contracts and has a duty to protect the public

1. Did the collection of Income Tax Component of Contribution, by the Defendant from Complainant, in connection with the relocation of the Complainant's electric service line violate any Commission rule, statute, order or applicable tariff?

Yes

D 87-09-026 "contribution in aid of construction are any amounts contributed to a regulated public utility to the extent that the purpose of the contribution is to provide for the expansion, improvement, or replacement of the utility's facilities."

Resolution G-3364. Pacific Gas and Electric (PG&E) by Advice letter 2458-G-B/2379-E-B on January 22, 2004,

D 97-12-099, the Commission made permanent the option for an applicant to select a non-utility designer for a line extension project

form 79-1018 to advise the applicant of its choice to design its single service facility or to select P G & E to do the design.

D 86-11-019 the Commission methods which the utilities may adopt to recover for ITCC and advances for construction.

2. Does Complainant have any standing to bring an action before the Commission on behalf of other P G & E customers who were subject to the Income Tax Component of Contribution?

Yes because P G & E has collected the ITCC money. If each customer brought their own individual complaint before the Commission it would deplete their resources of time to address other issues and unnecessarily duplicate their decision.

VI. CONCLUSION

The CPUC serves the public interest by protecting consumers and ensuring the provision of safe, reliable utility service.

The collection of ITCC violate Tariff Rules, California Tax Law and IRS tax law.

The California Public Utilities Commission has jurisdiction over utilities' collection of ITCC and the percentage which is collected. The commission has a duty to investigate the utilities contracts and costs to the consumer. The Commission can review the utilities charges and issue decisions to protect the customers from unauthorized fees and costs

P G & E has been collecting money that has not been approved by the IRS, State of California or CPUC Tariff Rules. All of the money collected by P G & E under this cost should be refunded to the individual customers. P G & E should implement standard contracts for similar work that is done on customer's property without the indemnity clause or expenses not authorized to collect. Applicant should be identified and differentiated between existing customer, new customer, new construction, utilities, work on private property and work in public roads.

P G & E should pay a substantial fine for the clear violations they have made over the extended period of years.

(DOCUMENT ENDS ON PAGE 16)

There is no document date or
signature of Maria V. Lawrence

There is no Certificate of Service or Service List attached

On March 5, 2012, Assigned Administrative Law Judge

W. Anthony Colbert waived all irregularities

& directed the Docket Office to file this document.

Martin M. Nakahara, Senior Legal Analyst