STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

December 13, 2010

TO PARTIES OF RECORD IN CASE 09-11-001, DECISION 10-12-022

On November 9, 2010, a Presiding Officer's Decision in this proceeding was mailed to all parties. Public Utilities Code Section 1701.2 and Rule 15.5(a) of the Commission's Rules of Practice and Procedure provide that the Presiding Officer's Decision becomes the decision of the Commission 30 days after its mailing unless an appeal to the Commission or a request for review has been filed.

No timely appeals to the Commission or requests for review have been filed. Therefore, the Presiding Officer's Decision is now the decision of the Commission.

The decision number is shown above.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:jt2

Attachment

Decision 10-12-022 December 10, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Nash Dweik, Complainant, vs. Pacific Gas and Electric Company (U39E), Defendant.	Case 09-11-001 (Filed November 3, 2009)

Nash Dweik, for Self.
Michael Klotz, Attorney at Law, for Pacific Gas and Electric Company.

DECISION DENYING COMPLAINT

1 Summary

Nash Dweik (Complainant) filed a complaint against Pacific Gas and Electric Company (PG&E) on November 3, 2009, seeking an order directing PG&E to install a transformer on a pole in front of his property; to reconvert certain distribution lines to provide power to an agricultural well; and to reconnect the agricultural well as it was prior to disconnection by PG&E.

We find that PG&E's design and installation of a new residential electric service extension to Complainant's residence satisfies the requirements of Electric Rule 16 – Service Extensions. Complainant failed to prove that he has ever been a customer of record for the agricultural well or that he applied for

electric service to the well. PG&E is, therefore, not obligated to provide electric service to the well unless and until Complainant applies for service.

The complaint is denied and the proceeding is closed.

2 Procedural Background

On November 3, 2009, Nash Dweik (Complainant) filed a complaint against Pacific Gas and Electric Company (PG&E). PG&E filed the *Verified Answer to Complaint of Defendant Pacific Gas and Electric Company* on December 16, 2009. On January 8, 2010, the assigned Administrative Law Judge (ALJ) issued the *Administrative Law Judge's Ruling Setting Prehearing Conference*, which among other things set a prehearing conference (PHC) for January 13, 2010.

During the January 13, 2010 PHC, the parties agreed to mediation of the dispute. A second PHC was held on February 22, 2010 after parties were unable to resolve the matter. During the February 22, 2010 PHC, the parties discussed issues that each believed should be included within the scope of the proceeding, and a proposed schedule for the proceeding.

On March 2, 2010, Commissioner Dian M. Greuneich issued the *Scoping Memo and Ruling of Assigned Commissioner* setting forth the anticipated schedule and the scope of issues to be considered by the Commission. As a result of the discussions at the PHC, the scoping memo came to the preliminary conclusion that hearings would be necessary.

On June 25, 2010, PG&E filed *Pacific Gas and Electric Company's Motion for Summary Judgment, Statement of Undisputed Facts in Support of Pacific Gas and Electric Company's Motion for Summary Judgment,* and *Declaration of Ronald S. David in Support of Pacific Gas and Electric Company's Motion for Summary Judgment*. Complainant filed *Response to Pacific Gas and Electric Company's Motion for Summary Judgment* on July 7, 2010. PG&E requested and received permission

from the assigned ALJ to file a reply. On July 23, 2010, PG&E filed *Pacific Gas and Electric Company's Reply in Support of Motion for Summary Judgment and Supplemental Declaration of Ronald S. David*.

On July, 27, 2010, the assigned ALJ issued *Administrative Law Judge's Ruling Rescheduling Evidentiary Hearings and Regarding Procedural Arrangements for Evidentiary Hearings,* which moved evidentiary hearings from July 30, 2010 and August 1, 2010 to August 23, 2010 and August 24, 2010. The ruling also provided information regarding the procedural arrangements for the conduct of the evidentiary hearings. Among other things, the ruling required parties to file a joint statement setting forth a proposed schedule of witnesses, cross-examination time estimates, an exhibit list and a statement of issues remaining in dispute. Parties were unable to finish a joint statement and each separately submitted the information requested on August 11, 2010.

Evidentiary hearings were held on August 23, 2010. On August 27, 2010, the *Motion of Pacific Gas and Electric Company to File Under Seal: Confidential Materials Attached and Filed Under Seal* was filed by PG&E. The case was submitted on September 14, 2010, with the filing of reply briefs. Decision (D.) 10-10-002) extended the 12-month statutory deadline for this proceeding to November 3, 2011.

3 Residential Service Extensions - Background

When a new home is constructed, new gas and electrical service needs to be established. This proceeding only concerns a dispute regarding electric service. Where there is no existing service, as in the present case, new service extensions must be constructed to bring electricity from the utility's distribution line into the new residence. An application for service would be submitted to the

utility requesting service and providing information about the service needed. The utility provides residential service extensions pursuant to the Rule 16.

Under Electric Rule (Rule) 16 – Service Extensions, PG&E is responsible for planning, designing, and engineering residential service extensions to meet specified service adequacy requirements. A residential allowance is determined by PG&E and is applied to the total service extension cost subject to allowance, reducing the applicant's cost. The applicant is responsible to pay for the cost of the service extension that exceeds the amount of the allowance and for other costs such as inspection fees and taxes.

Under Rule 16, PG&E is only permitted to provide service installations that meet specified service adequacy requirements. Installations that exceed the service adequacy requirements are considered special facilities under Rule 2. An applicant may request a special facilities installation, but the applicant will be required to pay the cost of that installation. PG&E is prohibited from paying for special facilities installations.

4 The Complaint

Complainant applied for a new residential service extension to his newly constructed home in September 2008.[1] On May 14, 2009, PG&E sent Complainant a Customer Construction Payment Coupon which included a letter informing Complainant that new service would be provided under Rule 16, an itemized estimate of the total cost for the service extension and a Statement of

[1] Exhibit 100, Attachment D.

Applicant's Contract Anticipated Costs which required the applicant to sign and date the contract.[2] Complainant was billed for $2,098.49 of the total cost.[3]

PG&E completed installation of gas service on July 9, 2009, and this is not at issue here. Electric service installation was scheduled for connection to Complainant's residence on July 13, 2009. Complainant did not allow PG&E to complete the electric service installation.[4]

Complainant believes that PG&E was obligated to install a dedicated transformer to serve his residence. Complainant also believes that PG&E improperly disconnected his agricultural well. PG&E contends that it properly engineered a new service extension to Complainant's home under Rule 16 and that it did not install a dedicated transformer because Complainant never requested or paid for a Rule 2 special facilities installation. Finally, PG&E explains that Complainant has never been a customer of record for the agricultural well and has never applied for service to the well.

4.1 Complainant's Arguments

Complainant contends PG&E failed to install the electric service extension as agreed, in part because of the type of transformer PG&E used and the placement of that transformer. Complainant contends PG&E should have installed an electrical transformer on the electrical pole near the Southwest corner of his property (hereinafter referred to as Pole 2)[5] in order to drop power

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[2] *Id.*

[3] *Id.*

[4] *Verified Answer to Complaint of Defendant Pacific Gas and Electric Company* at 1.

[5] This electrical pole is referred to as Pole A by Complainant and Location 2 by PG&E in their respective pleadings. For simplicity's sake we will refer to this pole as Pole 2 in this decision.

down to underground conduits installed by Complainant. Complainant contends that PG&E employees came to the site and confirmed to him, both verbally and through physical gesture, that a transformer would be placed on Pole 2.[6]

Complainant did not allow PG&E to complete installation on July 13, 2009, because he understood that a transformer would be installed on Pole 2 to serve his residence. Complainant argues that PG&E should have provided construction drawings to him for his approval on the design for the new service extension but PG&E failed to give him any drawings.

Complainant also contends that he paid for a dedicated transformer to serve his residence and, as a result, PG&E should have installed a dedicated transformer for his residence on Pole 2.[7] Complainant is concerned that the service extension as installed is not sufficient to adequately serve his residence because of the distance the wires must span between the transformer and his home.

Complainant next contends that PG&E improperly disconnected electric service for his agricultural well when it came to make the electric service installation on July 13, 2009.[8] Later, Complainant modified his contention slightly by explaining that he called PG&E in 2006 to ask why PG&E cut the drop wires to the well and to request reconnection.[9] Ultimately, Complainant

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[6] *Description of the Case*, filed by Nash Dweik, (January 8, 2010) at 2.

[7] Complainant's contention appears to stem from the amount he paid for new electric service. (Exhibit 3 at 5.)

[8] Complaint at 3.

[9] Complainant *Description of the Case* at 3.

explained that PG&E's use of the existing wires to deliver power to the new residence (wires formerly used to deliver power to the well) precludes use of these same wires to reconnect the agricultural well, essentially eliminating the ability to reconnect the well for Complainant's use.

Complainant argues that PG&E gave him conflicting information about its ability to reconnect the well, initially informing him that it could be reconnected but later asserting that the well could not be reconnected because it was not functional.[10] Complainant believes that the well must be reconnected because it is a "back up" well which is used for supplementary irrigation on an as-needed basis. Complainant contends that the County of Tehama Building Inspector considers the well in operation and approved for reconnection.[11] Complainant asserts that by converting the wires to serve his residence, PG&E not only causes harm to him, but to the adjacent property owner as well.

Complainant is very upset with the way PG&E has handled provision of new electric service to his home. Complainant states that PG&E's failure to complete the installation has resulted in lawsuits against him by subcontractors who were unable to complete their jobs and receive payment until the home had electricity.[12] Although Complainant understands that the Commission does not hear complaints for damages, Complainant wants the Commission to be aware

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[10] Exhibit 3 at 8-9.

[11] Complainant provided a copy of building permit number 0907-109, dated July 28, 2009, permitting reconnection of power to an existing irrigation well and a partial tag from the County of Tehama Department of Building and Safety entitled "Authorization to Reconnect" that is dated July 29, 2009. (See, *Response to Pacific Gas and Electric Company's Motion for Summary Judgment*, Exhibit 7.)

[12] Exhibit 3 at 7.

of the way he was treated by PG&E. In addition to allegedly mishandling the application for new service, Complainant is upset that e-mails between PG&E employees reveal "an underlying hatred" towards him.[13]

4.2 PG&E's Defenses

PG&E argues that new residential service extensions are governed by Rule 16, which addresses service extensions. PG&E argues that its design and installation satisfies the requirements of Rule 16 for a residential service extension. PG&E states it initially proposed serving the new residence from an existing transformer on a pole located at the northwest corner of the property but Complainant did not agree to this proposal, in part due to the presence of an irrigation pipe on the north part of the property.[14] PG&E also states that it offered to design an overhead service extension to Complainant's residence when he informed PG&E that he was concerned about the cost of the new service extension.

PG&E explains that the final design called for upgrading the existing 15kVA (kilovolt ampere) distribution transformer at a transformer pole one span south of Complainant's new residence (Pole 1) with a 25kVA transformer; connecting the upgraded transformer through service wires running from Pole 1 to the utility pole designated for new riser service at Pole 2; and connecting the overhead wire through the new riser service at Pole 2 into an underground conduit and to the electrical panel at Complainant's residence through a trench

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[13] Exhibit 3 at 9.

[14] *Verified Answer to Complaint of Defendant Pacific Gas and Electric Company* at 2.

Complainant dug to the Pole 2.[15] PG&E upgraded the transformer in order to accommodate the new additional load from Complainant's residence.

PG&E argues that it never agreed to install a transformer on Pole 2 and that, if it had done so, Complainant would have been required to pay the entire cost of the transformer under Rule 16 (an estimated $4,000-$5,000 cost).[16] PG&E asserts that it is specifically prohibited from installation of facilities under Rule 16 installation (at PG&E expense) where the installation would exceed what is required to meet service adequacy standards.

PG&E explains that the tariff requires voltage drop calculations be no greater than 6.5V (volts) and voltage flicker calculation to be no greater than 8V for residential service to meet service adequacy requirements. PG&E argues that its design meets voltage drop and flicker adequacy standards and therefore satisfies the requirements of Rule 16.[17]

PG&E asserts it has shown that Complainant was not charged for a dedicated transformer. The "Customer Construction Payment Coupon," which itemized the estimated costs for completion of the line extension, delineated the costs borne by PG&E and those borne by Complainant ($2,098.49).[18] PG&E maintains that the cost for upgrading the transformer used in the installation was included in "Betterments" and that Complainant was not charged for any

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[15] Exhibit 100 at 12-13.

[16] *Id*.

[17] *Ibid*., Attachment G.

[18] *Ibid*, Attachment A.

portion of the betterments.[19] Thus, PG&E argues that Complainant has not shown that he paid for a dedicated transformer.

PG&E offered to complete the service extension by either finishing the installation as shown in the February 6, 2009 construction drawing or by redesigning the service installation to accommodate Complainant's request for a dedicated transformer to serve his residence provided Complainant pays the additional costs under Rule 2.[20]

PG&E contends that it did not disconnect service to the agricultural well in question on July 13, 2009 and states that there had been no active service to the well since at least 1999.[21] PG&E explains the three-phase transformer bank[22] was removed in 2001 after being damaged by a bird.[23] PG&E also notes that the well is not located on Complainant's property. PG&E explains that service to the well was established in 1977 in the name of the adjacent property owner where the well is located. PG&E asserts that Complainant was not a customer of record at that time[24] and has not shown he ever applied as a customer for service to the agricultural well. As a result, PG&E maintains it does not owe a duty to

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[19] *Ibid.* at 5-6.

[20] *Reply Brief of Pacific Gas and Electric Company* at 3.

[21] *Verified Answer to Complaint of Defendant Pacific Gas and Electric Company* at 3.

[22] Although Complainant refers to a "three-phase transformer," PG&E explains it was actually an open delta bank consisting of two separate, single-phase transformers, hung together and bussed to provide three-phase power. For convenience sake this decision shall continue to refer to this open bank as a three-phase transformer.

[23] *Declaration of Ronald S. David in Support of Pacific Gas and Electric Company's Motion for Summary Judgment* at Exhibit G.

[24] *Declaration of Ronald S. David in Support of Pacific Gas and Electric Company's Motion for Summary Judgment* at Exhibit I.

Complainant with respect to the maintenance of other customers' service accounts.

PG&E has informed Complainant that he could request electric service to the well if he obtained the proper permits, had the electrical panel inspected and completed an application for new service to the well.[25]

5 Discussion

It is a long-standing requirement of public utility regulation that the lawful tariff provisions must be administered regardless of any statements by the utility at variance with the tariffs, whether oral or written. *Pinney & Boyle Mfg. Co. v Atchison, T. & S.F. Ry.* (1914) 4 Cal RRC 404. A utility is under the 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. Furthermore, the published tariff becomes established by law and can only be varied by law, not by an act of the parties. *Johnson v Pacific Tel. & Tel. Co.* (1969) 69 Cal PUC 290. A misquotation or misunderstanding does not relieve the parties from the terms, conditions and rates in the tariff. *Sunny Sally, Inc. v Lom Thompson* (1958) 56 Cal PUC 552.

For Complainant to prevail in this case, he must establish by a preponderance of evidence that the residential service extension installation to Complainant's home either does not meet the service adequacy requirements of Rule 16 or, in the alternative, that Complainant paid for a special facilities

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[25] *Pacific Gas and Electric Company's Prehearing Conference Statement* at 2.

installation of a dedicated transformer to serve only his residence and that PG&E failed to provide such installation. In addition, Complainant must show that he was either a customer of record or applied for electric service to the agricultural well located on or adjacent to his property and that PG&E failed to provide service to the well. As discussed below, we find Complainant fails to meet this burden of proof.

5.1 Residential Line Extension

As discussed above, residential electric service extensions are governed by Rule 16. Rule 16 requires PG&E to design and engineer new residential service extensions to meet specified service adequacy requirements. In the present case, PG&E's design called for upgrading a transformer so that when Complainant's residence was added to the existing load, it would meet service adequacy requirements. PG&E has shown that the service extension meets both flicker and voltage drop requirements. Complainant has not shown that the design, engineering or installation violates Rule 16.

No evidence was presented to show that Complainant paid for a dedicated transformer to be installed on Pole 2 to serve only his residence. Although the cost of the service extension may have been higher than Complainant expected, he was not charged for a dedicated transformer. PG&E is not obligated to install a dedicated transformer on Pole 2.

We note, however, that if Complainant wants a dedicated transformer installed to provide electric service only to his residence, he may apply for such an installation. PG&E will design a special facilities installation and provide Complainant with a cost estimate for that installation. Complainant would, however, be required to pay for such an installation in accordance with Rule 2

because it would be considered a special facility (above service adequacy standards).

5.2 Agricultural Well

PG&E's disconnection of the agricultural well was not improper. PG&E has conclusively shown that the well was disconnected in 2001 due to damage caused by a bird to the transformer bank which served the well.[26] At the time electric service to the well was disconnected, Complainant was not a customer of record for the well or the transformer bank which served the well.[27] Complainant has not shown he ever applied for service to the well or was a customer of record for electric service to the well.

If Complainant applies for service to the well and meets the relevant permitting requirements for reconnection of the well, then PG&E will reconnect the well based on the requirements of Rule 16.[28]

6 Other Issues

Although Complainant has asserted throughout this proceeding that PG&E made misrepresentations about how the service extension would be installed, complainant has failed to provide evidence of such misrepresentations above non-substantiated hearsay. It is very clear, however, that there was a serious communication problem between PG&E and Complainant. As discussed

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[26] Exhibit G.

[27] Exhibit I.

[28] We note that Complainant's assertion that PG&E has irrevocably converted certain wires improperly is not relevant to the disconnection or reconnection of the well. PG&E is responsible for designing service extensions that meet the requirements of the tariff. If Complainant requests electric service to the well, PG&E is responsible for how it will provide that service.

above, tariff provisions must be inflexibly enforced regardless of whether parties misunderstood the tariff or terms of the service extension installation. However, complaints such as this one might be avoided through more effective customer service. PG&E should endeavor to improve its customer service and to provide sufficient information for applicants to understand what they can expect when requesting a service extension not only in terms of the design and cost of the extension, but also regarding the rights and responsibilities of each party set forth by Rule 16.

During discovery, certain e-mails were provided to Complainant that upset him and he felt revealed a bias from PG&E against him. We admonish PG&E to refrain from discussing customers in e-mail or correspondence that could be read as pejorative or lacking the respect due to its customers. Effective customer service, education, and respect in this case might have saved both PG&E and Complainant from having to expend resources in litigation.

7 Motion to File Under Seal

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, PG&E has filed a motion for leave to file Exhibits 2C, 102C, and 103C under seal. PG&E represents these exhibits contain confidential information of individual PG&E customers, other than the Complainant. PG&E states that the entirety of exhibits 102C and 103C are confidential and not capable of redaction into a public version. A redacted or public version of Exhibit 2C was made available and entered into the record as Exhibit 2. There was no protest to PG&E's motion. We have granted similar requests in the past and do so here regarding Exhibits 2C, 102C, and 103C, which were received into evidence during evidentiary hearings on August 23, 2010.

8 Assignment of Proceeding

This proceeding is assigned to Commissioner Dian Grueneich and ALJ Katherine Kwan MacDonald. ALJ MacDonald is the Presiding Officer.

Findings of Fact

1. Complainant applied for a residential electric service extension to his newly constructed home in September 2008.

2. PG&E provided a Customer Payment Coupon, letter and Statement of Applicant's Contract Anticipated Costs on May 14, 2009.

3. Complainant signed the Statement of Applicant's Contract Anticipated Costs on June 8, 2009 and returned it to PG&E.

4. PG&E completed installation of gas service on July 9, 2009.

5. PG&E was scheduled to complete installation of electric service on July 13, 2009, but did not complete the installation at Complainant's direction.

6. PG&E upgraded an existing 15kVA distribution transformer located south of Complainant's residence to a 25kVA transformer. The new transformer was to be connected to the existing, un-energized wire that spanned from the new transformer to Pole 2; into an underground conduit at the base of Pole 2; and connect to the electrical panel at Complainant's residence through a trench Complainant dug to Pole 2.

7. The voltage drop calculation of 5.78 and voltage flicker calculation of 6.58 of the new service extension meet service adequacy standards.

8. PG&E's design and engineering for service to Complainant's residence meets service adequacy requirements of Rule 16.

9. The total project cost for the residential electric service extension PG&E offered pursuant to Rule 16 was $7,917. Complainant was responsible for payment of $2,098.49.

10. The cost to upgrade the 15kVA transformer to a 25kVA transformer was included in betterments paid for by PG&E.

11. Complainant has not paid for a special facilities installation.

12. Service to the agricultural well was initially established in 1977, in the name of the property owner adjacent to Complainant.

13. Complainant has never been a customer of record for service to the agricultural well.

14. Complainant has not applied for electric service to the agricultural well.

15. Electric service to the agricultural well was not disconnected on July 13, 2009. Electric service to the agricultural well at issue was disconnected in 2001 after damage to the three-phase transformer bank caused by a bird.

16. PG&E filed a motion for leave to file Exhibits 2C, 102C, and 103C under seal. These exhibits contain confidential information of PG&E customers, other than the Complainant.

9 Conclusions of Law

1. The residential electric service extension to Complainant's residence is governed by Rule 16.

2. PG&E must strictly adhere to its lawfully published tariff.

3. The lawful tariff provisions of Rule 16 must be administered and applied regardless of any misquotation by PG&E's representatives or misunderstanding by either party.

4. Installation of a dedicated transformer to serve only Complainant's residence would exceed what is required to meet service adequacy standards and would be considered a special facilities installation under Rule 2.

5. Because the residential electric service extension meets service adequacy requirements of Rule 16 and Complainant has not shown he paid for a special facilities installation, the complaint should be denied.

6. Because Complainant is not, nor has been a customer of record for service to the agricultural well and never applied for electric service to the agricultural well, the complaint should be denied.

7. Complainant should apply for a special facilities installation if he still desires a dedicated transformer for his residence. Complainant may also apply for service to the agricultural well subject to the requirements for establishing service to the well.

8. PG&E's motion to file exhibits 2C, 102C and 103C under seal should be granted.

O R D E R

IT IS ORDERED that:

1. The complaint of Nash Dweik is denied.

2. Pacific Gas and Electric Company's motion to file Exhibits 2C, 102C and 103C under seal is granted. Exhibits 2C, 102C, and 103C shall remain under seal until further order from the Commission, the Commissioner or the Assigned Administrative Law Judge.

3. Motions not specifically addressed are deemed denied.

4. Case 09-11-001 is closed.

This order is effective today.

Dated December 13, 2010, at San Francisco, California.