
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

November 22, 2011

TO PARTIES OF RECORD IN CASE 09-08-021, DECISION 11-11-027

On October 19, 2011, 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 if no appeal or request for review has been filed within 30 days of the mailing of the Presiding Officer's Decision.

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 11-11-027 November 21, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LA COLLINA DAL LAGO, L.P.; and
BERNAU DEVELOPMENT
CORPORATION,

Complainants,

vs.

PACIFIC BELL TELEPHONE COMPANY,
dba AT&T California (U1001C),

Defendant.

Case 09-08-021
(Filed August 27, 2009)

William Markham, Esq., Maldonado & Markham, LLP for
La Collina Dal Lago, LP and Bernau Development
Corporation.

William A. Kershaw, Esq., Curshaw, Cutter & Ratinoff,
LLP for La Collina Dal Lago, LP and Bernau
Development Corporation.

Thomas J. MacBride, Jr., Esq., Goodin, MacBride, Squeri,
Day & Lamprey, LLP for La Collina Dal Lago, LP and
Bernau Development Corporation.

Raymond P. Bolaños, Attorney at Law for Pacific Bell
Telephone Company, dba AT&T California

PRESIDING OFFICER'S DECISION DENYING THE COMPLAINT

1. Summary

La Collina Dal Lago and Bernau Development Corporation
(Complainants) have alleged that Pacific Bell Telephone Company, dba AT&T

California (Defendant) has failed to properly reimburse the Complainants for costs incurred in construction of line extensions to La Collina Dal Lago and Morning Walk, two new residential subdivisions, in violation of AT&T California Schedule Cal. P.U.C. No. A2.1.15. Pacific Bell Network and Exchange Services General Regulations (Rule 15). They further contend that Defendant failed to properly calculate the amount of reimbursement paid to Complainants for trenching costs incurred in construction of the facilities for each line extension. Complainants assert Defendant improperly entered into trenching agreements in violation of Rule 15 in connection with construction of each of the line extensions at issue.

Complainants failed to show they incurred costs in connection with the line extension installed by Defendant at La Collina Dal Lago.¹ At Morning Walk, Complainants were obligated to pay the additional costs related to a developer-installed conduit line extension to its residential subdivision because they chose to utilize a different type of construction from the type of construction the Defendant had authorized. Complainants failed to show Defendant improperly calculated the amount of reimbursement for trenching costs paid by Defendant for Defendant's pro rata share of the joint utility trenches at both La Collina and Morning Walk.

Finally, Complainants failed to show that the trench agreements violated Rule 15. The complaint is denied and the matter is closed.

¹ Although Complainants incurred costs related to trenching, Defendant provided and installed the line extension and related facilities at Defendant's expense. Trenching costs will be addressed separately.

2. Procedural Background

This complaint was filed with the California Public Utilities Commission (CPUC or Commission) at the direction of the Superior Court of California. La Collina Dal Lago, LP and Bernau Development Corporation (Complainants) initially filed a proposed class action in Superior Court on March 10, 2009. On July 28, 2009, the Court ordered Complainants to file an administrative complaint before the CPUC in accordance with the doctrine of primary jurisdiction.² The Court explained:

Primary jurisdiction applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views. (Farmers Ins. Exch. v. Superior Court (1992) 2 Cal. 4th 377, 390.)

On August 27, 2009, Complainants filed the instant action as directed by the Court. A prehearing conference (PHC) was held on November 16, 2009.³

On May 27, 2010, a second PHC was held to set the procedural schedule and determine the proper scope of the proceeding. The assigned Commissioner issued a scoping ruling on August 16, 2010. Evidentiary hearings were held on

² See Superior Court of California, County of Sacramento, Order on Demurrer and Motion to Strike issued July 28, 2009.

³ As a result of this hearing, the assigned Administrative Law Judge (ALJ) required parties to brief the issue of judicial estoppel as applied to certain assertions made by AT&T in its Answer. Ultimately, the ALJ denied Complainants' motion to exclude contrary assertions made in a prior matter, Jensen Enterprises, Inc. v. Oldcastle Precast, Inc., et al. (Case No. 06-0247 SI) under the doctrine of judicial estoppel. The parties subsequently stipulated to the use of discovery from Jensen.

November 16 and 17, 2010. Concurrent opening briefs were filed on January 21, 2011 and concurrent reply briefs were filed on February 4, 2011.

On March 11, 2011, submission was set aside by the ALJ to allow both parties to brief the issue of the applicability of certain statutes of limitation to the underlying complaint. A stipulation on the issue of the statutes of limitation was filed on March 23, 2011. On May 12, 2011, the ALJ ruled that the statutes of limitation issue was outside the scope of the proceeding. The matter was submitted on May 12, 2011.

3. Issues Before the Commission

There are several issues raised by this Complaint. The most basic issue is whether Pacific Bell Telephone Company, dba AT&T California (Defendant) violated any of the applicable tariffs with respect to the line extensions completed at La Collina Dal Lago (La Collina) and Morning Walk, two residential subdivisions located adjacent to each other in Folsom, California.

Complainants ask the Commission to (1) find that the Defendant violated its obligations under AT&T California Schedule Cal. P.U.C. No. A2.1.15. Pacific Bell Network and Exchange Services General Regulations (Rule 15);⁴ (2) require that the Defendant reimburse developers for materials and/or trenching work done in order to install a line extension as directed by Rule 15; (3) determine that contractual agreements must follow Rule 15; (4) find that the Defendant's

⁴ "Rule(s)" refer to the rules contained in AT&T California Schedule Cal. P.U.C. No. A2, unless otherwise indicated.

violation of Rule 15 caused Complainants injury resulting in compensable losses; and (5) consider whether changes to Rule 15 are needed going forward.⁵

In addition, the Superior Court requests that this Commission address certain specific issues which have been determined to be within the scope of this proceeding⁶ as follows:

- Whether Rule 15 applies (and to what extent, if any) to line extensions installed by developers rather than the Defendant;
- Whether Rule 15 requires the Defendants to reimburse developers for any portion of their costs incurred in installing line extensions and, if so, the basis and manner for determining the amount of such reimbursement;
- Whether it is permissible for the Defendant to enter into “trench agreements” with developers with respect to the installation of line extensions and whether the amount of reimbursement set forth in such agreements is binding on the parties regardless of what Rule 15 might otherwise require in the absence of such agreements;
- Whether the Defendant’s actions as alleged in the administrative complaint constitute a violation of AT&T California Schedule Cal. P.U.C. No. A2.1.15. Pacific Bell Network and Exchange Services General Regulations (Rule 15); and
- If the Commission determines that the Defendant’s actions as alleged in the administrative complaint constitute a violation of Rule 15, whether Complainants were damaged by the violation, the nature of the damage, the amount of damage, and the manner in which the damage was calculated.

⁵ Changes to the tariff are not properly within the scope of this proceeding. Such queries are the subject of rulemaking proceedings.

⁶ See Scoping Memo and Ruling of the Assigned Commissioner dated August 16, 2010.

4. Background

4.1. Regulatory Framework

In order to place this proceeding in its proper context and to understand the regulatory framework in which these events occurred, a brief examination of the regulatory background is in order. Article XII of the California Constitution confers regulatory authority over California public utilities to the Commission.

Each utility is required by the California Public Utilities Code (Pub. Util. Code) Section 489 to file tariffs with the Commission for Commission approval. "Tariffs" refer collectively to the sheets that a utility must file, maintain, and publish as directed by the Commission setting forth the rates, terms and conditions of the utility's services to its customers. A public utility's tariffs filed and accepted by the Commission have the force and effect of law (*Dollar-A-Day Rent-A-Car System v. Pacific Tel. & Tel. Co.* (1972) 26 CA 3d 454), and their provisions are binding as well on the utility (*J. Richard Co. v. San Gabriel Valley Water Co.* (1951) 50 CPUC 545).

A line extension is generally required when a new development is constructed in an area without existing utility services. In such cases, the developer must apply to the various utilities, such as electric, gas and telephone, to be connected to the utilities' systems via a line extension. Telephone service is extended by construction of an aerial line extension or an underground line extension.

Rule 15 contains the terms and conditions governing the provision of line extensions. Rule 15.A. - General, lays out the general provisions applicable to all line extensions, and Rule 15.C. - Underground Line Extensions, contains the provisions applicable to underground line extensions for residential, mixed-use, and business subdivisions, as well as other areas where direct buried cable may

be required. An underground line extension may require trenching consisting of excavation, backfilling, compacting, and where necessary, paving or landscape restoration.⁷ In addition, underground line extensions may require certain underground supporting structures including, but not limited to, conduit, underground vaults, manholes, handholes and pullboxes, into which the line extension will be placed, and/or allow access to the line extension. The line extension itself consists of overhead or underground extensions of existing distribution facilities⁸ to new service connection facilities.⁹

Rule 15.C.1 requires use of an underground line extension within new residential subdivisions such as La Collina and Morning Walk. In some cases, such as this, multiple utilities' line extensions (such as electric, cable and telephone) will jointly occupy a trench. Where the trench is jointly occupied, each utility will pay its pro rata share of the trench costs.

There are two basic types of facilities used to provide underground line extensions: direct buried cable and conduit installed cable. Suitable cable is placed directly into an underground trench in a direct buried line extension.

⁷ Trenching costs include the cost of excavating, backfilling, and compacting, and, where necessary, cost of breaking and repaving pavement and of restoring landscaping. (Rule 1.1.)

⁸ Distribution facilities are the cable and associated structures located in the streets or easements that extend from the serving central office to the point of connection with the Company's service connection facilities. (Rule 1.1.)

⁹ The service connection facility denotes wire or cable, whether aerial or buried, used as the entrance facility and the building entrance terminal located up to and including the Utility's local loop demarcation point (the point that separates the responsibility for installation and repair of telecommunications facilities between the Company and the property owner/landlord/agent). (Rule 1.1.)

Cable is placed inside conduits that are often supported by underground vaults and other support structures in a conduit installed line extension.

Rule 15.A.1. requires the Company¹⁰ (here the Defendant) to construct, own, and maintain line extensions along dedicated streets and easements. If an applicant requests a route or type of construction which is feasible but different from that determined by the Company, the applicant must pay any additional cost (Rule 15.A.2.) or the applicant may furnish the materials or perform the work itself as may be mutually agreed between the Company and the applicant. (Rule 15.A.3.)

AT&T California Schedule Cal. P.U.C. No A2.1.4 Contracts (Rule 4) provides that contracts may be used in the case of line extensions. When contracts are used, Rule 4.2. specifies that such contracts cannot exceed a three-year period and must include specific language informing parties to the contract that it may be subject to change by the Commission in the exercise of its jurisdiction.¹¹

The contractual agreements used with line extensions are commonly referred to as trench agreements. Trench agreements govern the rights and obligations between the applicant and the Company with respect to a particular project.

¹⁰ AT&T California Schedule Cal. P.U.C. No. A2.1.15 Pacific Bell Network and Exchange Services General Regulations refer to the Defendant as the Company through out the tariff.

¹¹ Specifically, "This contract shall at all times be subject to such changes or modifications by the Public Utilities Commission of the State of California as said Commission may from time to time direct in the exercise of its jurisdiction." (Rule 4.A.3.)

4.2. The Controversy

Complainants are two real estate development firms. Complainants developed two residential subdivisions, La Collina and Morning Walk, which are located adjacent to each other in Folsom, California. (Exhibit 10 at 1.) In preparing for construction of each residential development Complainants had to coordinate with the various utilities¹² that would eventually provide service to homes within the development. (Exhibit 10 at 11.) In doing so, Complainants applied to the Defendant for telephone service. The language of the applicable tariff refers to the Complainants as the applicant for service from the Company. Complainants will be referred to as “Complainant” in our application of the tariff to the instant facts for greater clarity. Similarly, Pacific Bell Telephone Company, dba AT&T California, referred to as “Company” in the tariffs, is the Defendant in this proceeding and will be referred to as such.

Because the line extensions to La Collina and Morning Walk differ slightly from one another, each will be discussed separately below.

4.2.1. La Collina

After obtaining the general trench requirements from the Sacramento Municipal Utility District, Defendants applied for line extensions from the utilities that were to share a joint trench. The utilities then provided Complainants with their trench design requirements. (Exhibit 10 at 12.)

Complainants requested a line extension to La Collina from the Defendant. (Exhibit 204.) Using the utilities’ design, Complainants solicited multiple bids for construction of the joint trench and used that information to complete Form

¹² The dry utilities (gas, telephone, and cable television) share a trench and the costs associated with building the trench. (Exhibit 11 at 11-12.)

B, Subdivision Development Joint Trench Authorization (Form B). (Exhibit 202.) Form B breaks down the estimated costs to complete the joint trench and divides the cost among the various utilities that will jointly occupy the trench.

Complainants sought reimbursement of \$20,408 for the Defendant's proportionate share of the estimated joint trench costs. (Exhibit 11.) Defendant initially offered to reimburse Complainants \$17,990.15 for Defendant's pro rata share of estimated trench costs. Ultimately, Defendant also agreed to pay an additional \$300 for a structure Defendant requested. As a result, prior to entering into any contract or beginning construction, Complainants were aware that Defendant would pay them a total of \$18,290 for its pro rata share of trenching costs.

Complainants and Defendant entered into a Residential Underground Utility Trench Construction Agreement for a Subdivision (La Collina Trench Agreement) on September 24, 2003, which provided, amongst other things, that the Complainants would be responsible for the trenching and placement of the underground supporting structures and that Defendant would be responsible for the line extension.¹³ The La Collina Trench Agreement further provided that Defendant would pay \$18,290.15 for its pro rata share of the joint trench costs. (Exhibit 12.) The Defendant reimbursed Complainants \$18,290.15 as agreed.

Complainants contend they are entitled to reimbursement of \$20,408 for the full amount of trenching costs requested. Complainants contend that

¹³ The parties have discussed a line extension as if it consisted of all the steps needed to extend utility service to the new developments, but that is imprecise. The line extension itself is simply the cable, whether directly buried or run through conduit from the last point of existing service to the development. Trenching costs and the costs of constructing underground support structures needed and conduit are a separate matter.

Defendants failed to calculate the amount of reimbursement in a reasonable manner.

4.2.2. Morning Walk

Construction of Morning Walk, planned as an eight (8) lot residential development, began in 2007. (Exhibit 13 at 5.) Complainants state that they chose to provide a developer-installed conduit installation for the line extension, rather than allow Defendant to install direct buried cable because they wanted to avoid the delays they experienced waiting for Defendant to install the direct buried cable at La Collina. (Exhibit 13 at 4.) In addition, Complainants allege that Defendant indicated that it would be about seven weeks from the date of the preconstruction meeting before Defendant could construct the line extension.

After Defendant provided trench specifications to Complainants, Complainants solicited multiple bids on construction of the joint utility trench and prepared a Form B that included a breakdown of each utility's pro rata share of the total trench cost. (Exhibit 14.) Complainants requested reimbursement of \$12,078 from the Company for its share of the joint trench costs.¹⁴ (Exhibit 14.)

The Defendant offered to reimburse Complainants \$1,995 for its proportionate share of the joint trench costs. (Exhibit 15.) Complainants requested that Defendant reconsider the amount of reimbursement offered, but Defendant's offer was not negotiable. (Exhibit 13 at 14.) Complainants then prepared a revised Form B reflecting Defendant's offer. (Exhibit 16) Complainants accepted Defendant's offer of reimbursement of \$1,995, and

¹⁴ This amount includes \$3,500 to purchase and install a splice box and \$2,070 to purchase and install conduit. (Exhibit 13 at 3-4.) Complainants ultimately were able to obtain a splice box for \$750 and installed the splice box themselves. (Exhibit 13 at 12.)

subsequently entered into a trench agreement titled Residential Subdivision Trench and Underground Supporting Structure (Morning Walk Trench Agreement) with the Company on February 12, 2008.

The Morning Walk Trench Agreement provides, among other things, that the line extension be constructed in accordance with Rule 15 of the Tariff; that Complainants construct the necessary trenching and underground supporting structure to extend AT&T's existing communications facilities to and within the Morning Walk subdivision; the line extension be built in accordance with the Defendant's specifications; Defendant would reimburse Complainants \$1,995 for the Defendant's share of the joint trench costs; and the agreement may be subject to changes or modifications by the Commission. (Exhibit 16 and Exhibit 17.)

Complainants maintain that Defendants should have reimbursed them for the full amount of trenching costs and for the costs of conduit and splice box.

5. Discussion

5.1. Whether Rule 15 applies (and to what extent, if any) to line extensions installed by developers rather than AT&T¹⁵

Rule 15 governs line extensions irrespective of whether they are installed by AT&T or by a developer.¹⁶ Rule 15.A.1. requires the Company to construct, own and maintain line extensions. When an applicant requests that the line extension follow a different route or utilize a different type of construction than

¹⁵ This issue is not in dispute. We address this issue because it is within the scope of the proceeding and responds to a specific question posed by the Superior Court.

¹⁶ The tariff refers to the Defendant as the "Company" and a developer or other who seeks service from the Company as the Applicant. We will use the language of the tariff

Footnote continued on next page

that specified by the Company, Rule 15.A.2. provides that the applicant must pay for the additional costs involved. Rule 15.A.3. allows an applicant to provide materials or to perform the work where mutually agreed to between the Company and the Applicant.

5.2. Whether Rule 15 requires reimbursement by AT&T to developers for any portion of the costs incurred in installing line extensions and, if so, the basis and manner for determining the amount of such reimbursement

Rule 15 does not require the Defendant to reimburse Complainants for costs (other than Defendant's pro rata share of trenching costs) incurred in connection with the installation of line extension facilities at either La Collina or Morning Walk.¹⁷ Rule 15 requires the Company to reimburse applicants for the costs (other than the Company's pro rata share of trenching costs) that applicants incur in connection with the installation of line extensions only under limited circumstances which are not applicable here.¹⁸ Specifically, in a residential subdivision such as La Collina, Rule 15.C.1. requires the Defendant to construct the line extension at its own expense. Defendant constructed the line extension via direct buried cable at La Collina at its own expense. Complainants did not incur costs in connection with the line extension.

as it generally applies, but refer to the parties specifically as Complainants and Defendant.

¹⁷ The line extension itself is simply the cable, whether directly buried or run through conduit from the last point of existing service to the development.

¹⁸ When a developer requests a line extension to a subdivision where all or a portion of the requirement is for business service and the Company determines that underground support structure is needed, the Company will either provide the material or reimburse the Applicant at the Company's current cost. (Rule 15.C.2 et seq.)

Complainants' contention that they were not properly reimbursed for trenching costs at La Collina will be discussed in detail below.

At Morning walk, Complainants chose a developer-installed conduit line extension which was a feasible type of construction but which differed from a direct buried line extension determined by the Defendant. Complainants state they chose to install conduit for the line extension at Morning Walk to avoid incurring the additional costs related to the Defendant's inability to install direct buried cable in a timely manner consistent with the construction timeline desired by the Complainants.

As a result of Complainants' choice, Rule 15.A.2. requires Complainants to pay for the additional costs of the type of construction they chose. Rule 15.A.3. allows an applicant to furnish materials or perform the work where mutually agreeable but does not require the Company to reimburse an applicant for the additional costs for the type of construction that differs from that determined by the Company.

5.3. Trenching Costs

The Defendant must reimburse Complainants only for its pro rata share of the trenching costs pursuant to Rule 15.C.1.a.¹⁹ Defendants properly reimbursed Complainants as required by the tariff.

Complainants contend that Defendant calculated the reimbursement amounts for trenching costs incurred at both La Collina and Morning Walk in

¹⁹ Although Rule 15 does not dictate a specific method or manner for calculating reimbursement of trenching costs, Pub. Util. Code § 451 provides that all charges demanded or received by any public utility for any product, commodity or service rendered be just and reasonable. Tariffs approved by the Commission must comply with the Public Utilities Code.

bad faith (Complaint at 6) or at a minimum, in an unreasonable manner. Complainants are also dissatisfied with the amount that they were reimbursed for the splice box and conduit used at Morning Walk. Complainants requested reimbursement of \$12,078 for estimated trenching costs at Morning Walk, but the Defendant only agreed to reimburse them for \$1,995.²⁰ Complainants believe the amount of reimbursement is unreasonable and ask the Commission to require the Defendant to use actual costs of the specific project or current market rates to determine the amount of reimbursement required for the pro rata share of trenching costs.

Complainants have failed to produce evidence that the Defendant's calculation of its pro rata share of the trenching costs is unreasonable. Defendant utilizes two different databases, collectively referred to as the "cost decks" to calculate the amount it will offer to reimburse an applicant for trenching costs. Factors such as the number of parties occupying a trench, the geological conditions in various regions and the Defendant's costs for trenching, as well as other information, are included in these databases.²¹ The cost decks are updated several times a year in order to come up with average costs for the state.²²

The cost decks calculate a cost per linear foot for trenching after inputting certain project-specific information, such as the length of the trench and type of

²⁰ Complainants included the cost of a splice box at \$3,500, and the cost for conduit (\$2,070.15) in their estimate of trenching costs. (Exhibit 13 at 14.) Defendant subsequently informed Complainants that line extension costs such as these are not properly included in trenching costs requested on Form B. (Exhibit 13 at 12.)

²¹ RT 152:14-22.

²² RT 156:22-157:6.

soil.²³ The Defendant uses the information provided by the cost decks, the information provided by the Complainant, and the proportion of the joint trench that the Company will occupy to determine the reimbursement amount for a particular project.²⁴

Although we understand that Complainants are dissatisfied with the amount of reimbursement they received for trenching costs, Complainants were aware of the amount of reimbursement that Defendant agreed to pay for trenching costs at both La Collina and Morning Walk prior to entering the relevant trench agreements or beginning construction. Complainants agreed to the amount of reimbursement offered by the Defendant in both instances.

If an applicant chooses to reject the Company's offer because it finds the reimbursement amount insufficient, it can either wait for the Company to construct or it may refer the dispute to the Commission pursuant to Rule 15.A.9. for a special ruling. Complainants entered into the Morning Walk Trench Agreement and the La Collina Trench Agreement, agreeing to, among other things, the amount of reimbursement Defendant would pay for its share of the joint trench costs. Complainants did not refer the matter to the Commission.

5.4. Trench Agreements

Rule 4.A.2. specifically provides for the use of contracts in the case of line extensions. Such contracts generally cannot exceed a three-year period and are required to contain a provision stating that the contract may be subject to

²³ RT 155:1-156:17.

²⁴ RT 166:1-13.

changes or modifications by the Commission in direct exercise of its jurisdiction. The trench agreements used at La Collina and at Morning comply with Rule 4.

A trench agreement, like any contract, allows the Company and an applicant to memorialize the duties and obligations of each party before construction begins. Complainants have failed to show that either the La Collina Trench Agreement or the Morning Walk Trench Agreement violate the applicable tariffs.

5.5. Whether AT&T's actions as alleged in the administrative complaint constitute a violation of Commission Tariff entitled Sec. 2.1.15 Pacific Bell Network and Exchange Services General Regulations (Rule 15)

Complainants allege several violations of Rule 15. As discussed above, the Commission finds that AT&T has complied with Rule 15. Therefore, this decision does not need to consider the last issues of whether Complainants were damaged by the violation, the nature of the damage, the amount of damage, and the manner in which the damage was calculated. The Commission also lacks jurisdiction to award damages.

6. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Katherine Kwan MacDonald is the assigned ALJ in this proceeding.

Findings of Fact

1. La Collina Dal Lago and Bernau Development Corporation (Complainants) are two real estate development firms.
2. Complainants developed two residential subdivisions, La Collina Dal Lago and Morning Walk, which are located adjacent to each other in Folsom, California.

3. A line extension is the means by which a utility extends its network to connect to a new development. In telecommunications, the line extension is simply the cable from the last point of existing service to the new development

4. AT&T California Schedule Cal. P.U.C. No. A2.1.15 contains terms and conditions governing the provision of line extensions.

5. There are two basic types of facilities used to provide line extensions. Direct buried cable is used for line extensions within new residential subdivisions pursuant to AT&T California Schedule Cal. P.U.C. No. A2.1.15.C.1. Conduit and underground supporting structures with cable inside conduits is used within new subdivisions that require business service pursuant to AT&T California Schedule Cal. P.U.C. No. A2.1.15.C.2.

6. The Defendant is required to reimburse the Complainants for its pro rata share of trenching costs incurred for the joint utilities trench by AT&T California Schedule Cal. P.U.C. No. A2.1.15.C.1.a.

7. Defendant completed the line extension to La Collina using direct buried cable at Defendant's expense.

8. After obtaining multiple bids, Complainants sought reimbursement of \$20,408 for Defendant's proportionate share of the La Collina joint trench costs.

9. Defendant offered to reimburse Complainants \$17,990.15 for Defendant's pro rata share of the La Collina joint trench.

10. Complainants entered into the La Collina Trench Agreement with the understanding that they would receive reimbursement of \$17,990.15 for Defendant's share of trenching costs plus \$300 for a structure required by Defendant.

11. The La Collina Trench Agreement provides among other things, that the line extension be constructed in accordance with Rule 15, the developer be

responsible for trenching to and within the subdivision and the costs thereof, the line extension be built in accordance with the Defendant's specifications, and the agreement may be subject to changes or modifications by the Commission.

12. The Defendant reimbursed Complainants \$17,990.15 for its pro rata share of the La Collina joint trench costs plus \$300 for a structure requested by the Defendant totaling \$18,290.15.

13. Complainants chose a type of construction that differed from that determined by the Defendant for the line extension to Morning Walk. Complainants constructed a conduit installation for the line extension to Morning Walk.

14. After seeking multiple bids, Complainants sought reimbursement of \$12,078 for the Defendant's pro rata share of the Morning Walk joint trench costs.

15. Defendant agreed to reimburse Complainants \$1,995 for the Defendant's share of the joint trench costs.

16. Complainants entered into the Morning Walk Trench Agreement with the understanding that Defendant would pay \$1,995 for Defendant's share of the joint trench costs.

17. The Morning Walk Trench Agreement provides, among other things, that the line extension be constructed in accordance with Rule 15; that Complainants construct the necessary trenching and underground supporting structure to extend AT&T's existing communications facilities to and within the Morning Walk subdivision; the line extension be built in accordance with the Defendant's specifications; Defendant would reimburse Complainants \$1,995 for the Defendant's share of the joint trench costs; and the agreement may be subject to changes or modifications by the Commission.

18. AT&T California Schedule Cal. P.U.C. No. A2.1.15.A.2 requires the developer pay for the additional costs if the developer chooses a route or type of construction which differs from that determined by the Company.

19. Defendant develops average costs per linear foot of line extensions for the state using data on geological conditions, type of construction, materials used, number of parties occupying the trench, as well as other factors. The information is updated several times a year. The information is maintained in two computer databases collectively referred to as the "cost decks".

20. The Defendant uses the information provided by the cost decks, information provided by an applicant, and the proportion of the joint trench that the company will occupy to calculate the amount it will offer to reimburse an applicant for the estimated trenching costs of a particular project.

21. If an applicant rejects the Defendant's offer because it finds the reimbursement amount insufficient, it can either wait for the Defendant to construct or it may refer the matter to the Commission pursuant to Rule 15.A.9 for a special ruling or approval of mutually agreed upon special conditions prior to commencing construction.

22. Complainants did not wait for the Defendant to construct the line extension or refer the matter to the Commission. Complainants executed the Morning Walk Trench Agreement.

23. The Defendant paid Complainants \$1,995 for its pro rata share of the joint utilities trench at Morning Walk.

Conclusions of Law

1. AT&T California Schedule Cal. P.U.C. No. A2.1.15. applies to facilities constructed by developers as well as those constructed by the Defendant in connection with construction of line extensions.

2. AT&T California Schedule Cal. P.U.C. No. A2.1.15.C.1. requires the Defendant to provide line extensions without cost to an applicant where all requirements are for residential service.

3. AT&T California Schedule Cal. P.U.C. No. A2.1.15.C.1.a. requires the Defendant to pay for its pro rata share of trenches that will be jointly occupied with other utilities.

4. Because Complainants chose to use a different type of construction, AT&T California Schedule Cal. P.U.C. No. A2.1.15.A.2. requires the Complainants to pay the additional estimated cost involved, as determined by the Defendant.

5. In lieu of payment for the estimated additional costs determine by the Defendant, an applicant can furnish such materials or perform such work as may be mutually agreed between Defendant and an applicant.

6. Complainants failed to produce evidence that the Defendant's calculation of its pro rata share of the trenching costs is unreasonable.

7. AT&T has complied with Rule 15.

8. AT&T California Schedule Cal. P.U.C. No. A2.1.4. allows for the use of contracts in the case of line extensions.

9. A trench agreement is a contract between the utility and the applicant which memorializes the rights and duties of each party with respect to a line extension project before construction begins.

10. The trench agreements at issue do not violate either Rule 15 or Rule 4.

11. The Complaint should be denied.

12. Because the Complaint should be denied, this decision does not need to consider the issues of whether Complainants were damaged, the nature of the damage, the amount of damage, and the manner in which the damage was calculated.

13. The Commission lacks jurisdiction to award damages.

O R D E R

IT IS ORDERED that:

1. The complaint is denied.
2. Case 09-08-021 is closed.

This order is effective today.

Dated November 21, 2011, at San Francisco, California.