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

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Adjudicatory

TO PARTIES OF RECORD IN CASE 10-01-005

This is the proposed decision of Administrative Law Judge (ALJ) Victor D. Ryerson. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Ryerson at vdr@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

__/s/ KAREN V. CLOPTON__
Karen V. Clopton, Chief
Administrative Law Judge
KVC:jyc

Attachment

Decision **PROPOSED DECISION OF ALJ RYERSON** (Mailed 3/7/2011)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

City of Santa Barbara, Complainant, vs. Verizon California, Inc. (U1002C), Defendant.	Case 10-01-005 (Filed January 19, 2010)

DECISION DISMISSING COMPLAINT

1. Summary

The City of Santa Barbara's (City) Motion for Summary Judgment is denied, and Verizon California, Inc.'s (Verizon) Motion for Summary Judgment is granted. Case 10-01-005 is dismissed.

We conclude on the basis of the undisputed facts in the record that, within the City's Underground Utility District No. 10 (UUD No. 10), Verizon's obligation under its tariff Rule 40A.1.b is limited to provisioning copper cable and drop wire within the underground service lateral that Southern California Edison Company (SCE) must construct from the public right of way over a customer's private property to the point of connection with the utility pursuant to SCE Rule 20A. Under the Verizon tariff language, Verizon's obligation is to relocate these facilities on the customer's property from the point where service is connected in the public right of way to the point of customer connection, for a

maximum linear distance of 100 feet. Although Verizon's obligation is to relocate its facilities in conjunction with SCE's installation of underground conduit and other facilities in UUD No. 10, its obligation is incremental to that of SCE.

In accordance with our decision, the City's request, as set forth in its Complaint, that Verizon be required to pay or reimburse an equal share (with the City and SCE) of the total cost of installing no more than 100 feet of each customer's underground service connection facility (including the costs of trenching and installing the conduit in the trench on private properties) in UUD No. 10, is denied.

2. Procedural History

This case arises from a dispute between the City and Verizon concerning the interpretation of a Commission-approved tariff that governs the undergrounding of Verizon telephone communications facilities when a city creates a new underground utility district.

The City filed this complaint on January 19, 2010, and Verizon answered in due course. The complaint alleges that Verizon is obligated to pay a pro rata share, together with the City and SCE, of "no more than 100 feet of each customer's underground service connection facility" in the City's UUD No. 10. The City contends that this share specifically includes the costs of private property trenching and installation of conduit in the trench, as well as the wiring

and cables that run through the conduit, to the extent that SCE pays for each customer's underground service lateral pursuant to Rule 20A.[1]

Verizon denies that it is liable for a pro rata share of the total cost, asserting that its obligation is effectively limited to paying the incremental cost of installing its own wire and cable in the customer's underground lateral for a maximum distance of 100 feet from the public right of way to the customer's service connection. Therefore, the issue is how much Verizon is obligated to contribute to the cost of converting overhead aerial service laterals to underground laterals on customers' private property in UUD No. 10 under its tariff.

Inasmuch as the case presents a single tariff interpretation issue, the assigned Administrative Law Judge (ALJ) convened a telephone conference call on May 10, 2010, to establish a procedural schedule for the proceeding. The specific purpose of the call was to discuss whether the matter could be resolved under a mutually agreeable summary procedure, obviating the need for an evidentiary hearing.

One option discussed during the conference call was that of resolving the dispute by dispositive cross-motions based upon a stipulated set of undisputed facts, so as to bring the issue before the Commission without the need for extended litigation. After meeting and conferring with one another following the conference call, on May 14 the parties informed the ALJ by e-mail that they "agree[d] that cross-motions for summary judgment supported by a stipulation

[1] The complaint seeks reimbursement to the City of this pro rata share in the event that the construction has been completed and the City has paid for the work by the time this matter is decided.

of undisputed facts [would be] a proper procedural vehicle for submitting the case for the Commission's decision."

A June 28 e-mail from the parties further advised the ALJ that they had agreed to a briefing schedule. The schedule required a stipulated statement of undisputed facts to be filed on July 9, 2010, followed by opening briefs on August 16 and responsive briefs on August 20.[2]

Two events altered the course of the proceeding after this schedule was set. First, the ALJ was absent on extended medical leave beginning July 29, an anticipated contingency that he had discussed with the parties during the conference call. He suggested that the matter be decided after filing of the second round of briefs, upon his return to work. The parties were amenable to this procedure.

Second, counsel for the City, a member of the City Attorney's staff, was furloughed on June 30 as a consequence of California's budget situation, and a new attorney was assigned to the case. The change in the City's representation resulted in alteration of the procedure to which the parties had earlier agreed. Specifically, the City's new attorney advised Verizon's counsel by e-mail on August 6 that he had "concluded that we probably cannot agree on a joint statement and that we should just each submit our own version of the statement of facts." During the ALJ's absence, Verizon filed a document titled, "Motion for Summary Judgment" consisting principally of argument based upon its tariff

[2] On May 4, 2010, the City of Santa Monica filed two motions, the effect of which was to request leave to join the proceeding as a complainant. On May 25, the ALJ denied leave for the City of Santa Monica to become a party, but allowed it to be an "information only" appearance.

language. The City filed a letter containing a long recitation of background information and a section titled, "Points, Authorities and Argument" that sets out its legal argument. Neither party filed a separate statement of undisputed material facts, nor any supporting affidavits, declarations, or other evidentiary writings. Consequently, our record consists of filed tariffs, a municipal resolution, and additional documents and matters of which we may take judicial notice.

Although the parties did not follow the procedure to which they had agreed, they proceeded without objection. We regard this as an indication that they acquiesce in concluding the proceeding by means of the record as it now stands. We have examined the record closely, and have determined that the parties' briefs, together with the facts admitted in the answer, judicially noticeable records, and relevant tariffs, are sufficient to decide this case. We have disregarded any disputed or immaterial facts offered by either party, and decide this matter solely on the basis of the facts set forth in the factual background set forth below.[3] The litigation will be concluded as agreed by the parties.[4]

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[3] Section 1701, Section (a), of the Public Utilities Code provides "No informality in any . . . proceedings or in the manner of taking testimony shall invalidate any order, decision or rule made . . . by the Commission."

[4] On December 17, 2010, the Commission issued an order extending the statutory deadline for resolving the complaint until January 19, 2012.

3. Factual Background

On August 22, 2006, the Santa Barbara City Council passed a resolution creating UUD No. 10 pursuant to Santa Barbara Municipal Code Chapter 22.40.[5] The resolution included authorization for SCE, the electric utility that serves the district, "to use funds available under SCE Rule 20A for the required customer service conduit and panel modification/conversion."[6]

Verizon provides communications services to customers in UUD No. 10. As arrangements progressed for construction of the project, a dispute arose between Verizon and the City concerning the extent to which Verizon would be obligated to contribute a portion of the project cost. The City sought to obtain a contractual commitment from SCE and Verizon that would provide for the City and each of the two utilities to pay equal shares of the total undergrounding cost. Although Verizon did not object to paying a pro rata share of the project cost for those portions of the undergrounding that were in the public right of way, it declined to agree to paying a pro rata share of the cost of trenching and installing conduit from the public right of way over private property to each customer's service connection. Verizon contends that its tariff governing the undergrounding of existing utility lines, Cal. P.U.C. No. D&R, Rule No 40, Facilities to Provide Replacement of Aerial with Underground Facilities (Rule

[5] Santa Barbara City Council Resolution No. 06-075 (August 22, 2006). The City subsequently supplemented certain aspects of this project by adding new and enhanced street lighting and upgraded electrical circuitry with funds from its own dedicated Underground Utility Funds. That supplementation of the project does not affect the dispute in this proceeding concerning allocation of the cost of customer laterals on private property.

[6] *Id.* Section 4.

40), does not obligate it to pay for more than the cost of provisioning its wire or cable in the conduit from the distribution line to the customer's connection, and on that basis has declined to pay the portion of the project costs associated with the trenching and conduit on private property.

Under criteria set forth in Rule 40, UUD No. 10 is considered an area affected by general public interest (commonly referred to as a "public interest project"), and the City's resolution reflects that the City Council made the mandatory findings requiring Verizon to participate in the undergrounding.[7] The degree of Verizon's participation in such a project is specifically governed by Rule 40.A.1, which provides in pertinent part:

> [Verizon] will, at its expense, replace its existing aerial facilities with underground facilities along public streets and roads, and on public lands and private property across which rights-of-way satisfactory [to Verizon are] obtained, . . . provided [that the governing body makes findings and adopts ordinances specified in subparagraph a.]"
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> * * *
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> b. Upon request of the [City Council, Verizon] will pay for no more than 100 feet of each customer's underground service connection facility occasioned by the undergrounding . . . [Verizon] will pay for the installation of each customer's underground service connection facility at the time and only to the extent that the electric utility pays for the customer's underground electric service lateral.
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> c. [Verizon] will replace aerial facilities at the time and only to the extent that the overhead electric distribution facilities are replaced.

[7] Rule 40 A.1.a.(1).

4. Positions of the Parties

This dispute centers on the meaning of the phrase "underground service connection facility" in Rule 40.A. 1(b), which is not defined in Verizon's tariffs. The City contends that this term encompasses trenching and conduit (pipe) associated with the installation of underground telecommunications utilities to the point of connection with the customer's wiring, in addition to the communication wires and cables themselves.[8] Verizon denies that "underground service connection facility" is intended to be so broadly construed and, in addition to its own tariff language, relies upon undergrounding tariff history and California telecommunications industry practice in support of its position that the term basically refers just to the copper cable and drop wire that runs inside the underground supporting structure of the service lateral.

The City emphasizes language in Rule 40.A.1 that states Verizon will replace aerial with underground facilities in areas affected by general public interest, "*at its expense*, . . . along public streets and roads, and on public lands *and private property* across which" satisfactory rights of way are obtained. (Italics added.) The City also points to the final sentence of Rule 40.A.1.b, which provides that Verizon will pay "to the *extent* that the electric utility pays" for the service lateral, as indicating that the cost burden of Verizon is equal to that of the electric utility. (Italics added.) Verizon does not deny that it has the obligation to pay for its share of the cost of the underground conversion, but argues that "extent" only refers to a measure of distance, and not to a quantum of cost.

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[8] The City's position is also based upon Verizon's purported practice of paying a full pro rata share of the cost of installing service laterals in other utility undergrounding

Footnote continued on next page

The City also relies upon definitions found elsewhere in Verizon's tariffs to support its position. For example, Schedule Cal. P.U.C. No D&R, 11th Revised Sheet 11, describes "service connection" as "[w]ire or cable, and associated underground supporting structure where used, from the point of connection with the Utility's distribution facilities to the point of connection with the network device at the building served." Schedule Cal. P.U.C. No D&R, Original Sheet 3.3, further describes "distribution facilities" as the "[u]tility's cables, wires and associated supporting structures and appurtenances, located in dedicated streets and utility easements designed to serve more than one property and extending from the serving central office to the points of connection with service connection facilities." The City asserts that, taken together, these definitions demonstrate that conduit and trenching, as "supporting structures," must be regarded as part of the underground service connection facility.

Verizon rejects this argument. Verizon contends that this definitional language is not inconsistent with its position, and does not imply that Verizon is responsible for any particular share of the total cost of installation. Rather, Verizon contends that "supporting structure" merely refers to the apparatus *other than wires and cables* necessary to connect the service to the customer side at the demarcation point, and that the conditional language, "where used," reflects that it is not necessarily even an integral part of the underground installation.

The City claims Verizon has a history of paying a full share of all undergrounding costs in other projects, and that this is proof that Rule 40 requires Verizon to pay its full share in the present instance as well. The City

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projects, and upon other conduct that is inconsistent with the position it has taken in this matter.

offers hearsay statements and unsupported representations concerning various other undergrounding projects to make this point. Verizon objects to use of this hearsay, and rejects the City's factual representations concerning other projects. In light of the parties' agreement to resolve this matter on the basis of undisputed facts, we must disregard the City's reliance upon the circumstances of other projects to support its position.[9]

Finally, the City points to Verizon's attempt to remove the phrase "underground service connection facility" from Rule 40.A by filing an advice letter with the Commission in July 2009, founded upon the grounds that the phrase was "ambiguous and confusing,"[10] as conduct indicative that Verizon agrees with the City's tariff interpretation.[11]

Verizon argues that the history of the Commission's utility undergrounding decisions demonstrates that telecommunications carriers were never intended to be required to pay a full pro rata share of the cost of converting aerial facilities to underground installation. Past decisions have held the affected property owners responsible for this cost. However, electric utility ratepayers fund a proportion of undergrounding through allocations set aside from electric utility rates for this purpose by Commission order, and, at the

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[9] Even if the City is correct, we cannot speculate about Verizon's reasons for deciding to treat the UUD No.10 project differently than others. Rule 40.A.4 provides that Verizon "may, from time to time, replace sections of its aerial facilities at [its] expense for structural design considerations or its operating convenience," and we do not know whether Verizon's conduct in other projects reflects the exercise of this discretion.

[10] Advice letter No. 12432 (July 20, 2009).

[11] The Commission's Communications Division rejected the advice letter without prejudice, and without addressing its merits.

option of the local government, those funds can be designated to assist property owners with the cost of undergrounding their service laterals. On the other hand, Commission decisions do not provide for telecommunications customers to fund underground conversions through rates. Consequently, Verizon argues that it would be unfair in this case to be required to pay a share of the undergrounding cost equal to that paid by SCE, the electric utility.

Verizon emphasizes that all other incumbent local exchange carriers and small local exchange carriers in California have tariffs which include a requirement that the benefitting property owner pay for the underground supporting structure where there is an underground conversion.[12] Verizon contends this confirms that the Commission's policy is not to impose these costs on communications carriers. Accordingly, Verizon argues that the electric utility should pay these costs to the extent that they are not paid by the property owner, negating the argument that the communications utility is responsible for paying an equal share.

5. Discussion

By agreement of the parties, we are deciding this matter on the basis of cross-motions for summary judgment. The Commission does not have a rule that expressly governs summary judgment, but we generally follow the standards that govern the courts under section 437c of the California Code of Civil Procedure. (Decision (D.) 07-12-021, *Chevron Products Company v. Equilon Enterprises LLC, dba Shell Oil Products US et al*. – CPUC3d – (December 6, 2007) at

[12] Verizon cites specific tariffs for all other local exchange carriers in California. We take judicial notice that these tariffs, which are filed with the Commission, impose the cost of underground conversion of telephone lines on the benefitted property owners.

5 and note 3.) Section 437c(c) of the Code of Civil Procedure provides that a motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment the Commission is not bound by the procedural requirements of Section 437c. (D.07-08-031, *Cox California Telecom, LLC, v. Global NAPs California Inc.*, - CPUC3d – (August 23, 2007), 15-16.) We thus turn to the record, as we have limited it, to determine whether either party is entitled to summary judgment as a matter of law.

Regulation of the undergrounding of utility lines in California is relatively recent. Prior to 1967, the Commission did not regulate undergrounding, but in D.73078 that year we announced a policy favoring such projects out of concern for aesthetic values "in established areas which have been victimized by man's handiwork." (*Interim Order establishing new rules for electric and communication services connections and conversion of overhead to underground facilities; further order to issue covering rules dealing with new construction of underground facilities*, (1967) 67 CPUC 490 at 490.)[13] We did not establish a detailed program for conversion of existing aerial facilities to underground facilities, nor did we define the respective roles of electric and communications utilities. However, D.73078 focuses on the resources of the large electric utilities. Based upon the record before us at that time, we believed that electric utilities could budget significant amounts for aesthetic conversions for the following year, 1968. (*Id.,* 510 – 511.) This established assumptions concerning the electric utilities' rule that underlie

[13] The decision states, "It is the policy of this Commission to encourage undergrounding." (*Id.,* 512.)

our subsequent tariff approvals. Consequently, D.73078 ordered each electric utility to "file annually a statement setting forth its annual budgeted amount for the replacement of overhead with underground facilities, together with the amounts allocated to each city and unincorporated area." (*Id.,* 511.),[14] but no equivalent budgeting requirement was imposed upon telecommunications carriers.

The decision also required each electric and telecommunications utility to file a respective form of tariff governing underground conversions in instances where the governing body of the city or county has satisfied certain preconditions. The cost of conversion on the customer's property was imposed upon the property owner under these tariffs. The form of tariff prescribed for electric utilities states that, "[t]he applicant [property owner], at his expense, shall perform the necessary trenching, backfill and paving on his property [to install a service lateral from the utility's distribution line to the applicant's termination facilities]," but provides that the electric utility, at its expense, would furnish, install, own, and maintain the first 100 feet of the service lateral. (*Id.*, 516 – 517, Appendix B, paragraphs c and b (1) (a) and (b).)

D.82-01-018, *Changes in the Undergrounding Conversion Program* (1982) 7 CPUC2d 757, added a new feature to this framework. It specifies that *local governments* may require the electric utility's allocated ratepayer funds to be used to pay for up to 100 feet of the customer's underground service lateral. (*Id.* at 772, Ordering Paragraph 1.) This change, which could be invoked to partially or entirely relieve benefitting property owners of the cost of

[14] These budgeted funds later became known as "Rule 20 (or Rule 20A) allocations," a reference to the electric utility undergrounding tariff adopted pursuant to that decision.

undergrounding utilities on their properties, resulted from complaints by cities and concern by Commission staff that allocated funds from the program were not being spent. (*Id.,* 7 CPUC2d at 758.) Nevertheless, D.82-01-018 reiterates that, from the street to the point of connection with customer wiring, the work is "done solely at consumer expense when there is undergrounding conversion" in the absence of municipally-directed assistance, and observes that "most of the cost of any project is normally attributable to the conversion of electric plant." (*Id.* at 760.)

In contrast, the form of tariff for telecommunications utilities prescribed by D.73078 did not impose any cost on the utility, but required each property owner to "provide and maintain the underground supporting structure needed on his property to furnish service to him from the underground facilities of the Company when such are available." (*Id.* at 520, Appendix E, Part I.A.1.b.2.)[15] An additional provision specified that the telecommunications utility must "replace its aerial facilities at the time *and only to the extent* that the overhead electric distribution facilities are replaced." (*Id.,* Appendix E, Part I.A.2. (Italics added.)) These features of the prescribed telecommunications tariff, which have carried over to Verizon's present Rule 40, reflect our recognition that the benefitted property owner, rather than the telecommunications utility, should bear the cost of providing the underground supporting structure if that cost is not borne by the electric utility, and that undergrounding of telecommunications facilities

[15] D.73078 defines "underground supporting structure") as including "[c]onduit, manholes, handholes, and pull boxes where and as required plus trenching costs . . . " (67 CPUC at 520.) "Trenching costs" are defined to include the cost of "excavating, backfilling and compacting, and where necessary, cost of breaking and repaving pavement and of restoring landscaping." (*Id.*)

essentially "piggybacks" onto the electric utility conversion. In other words, we perceived the telecommunications carrier's role to be essentially cost neutral in an undergrounding project.

In the present instance, the City's resolution provides for utilization of Rule 20A funds for "the required customer service conduit and panel modification/conversion" for property owners in UUD No. 10. Although this language directs the use of allocated funds for the project, it does not address whether Verizon is expected to contribute any share of the unfunded cost. To answer that question, we must turn to the disputed Verizon tariff language and its policy underpinnings. Rule 40A.l.b. requires Verizon to provide an underground service connection facility, but only "to the extent the electric utility provides the service lateral." The service lateral incorporates Verizon's underground service connection facility as a component part. SCE is the owner and principal tenant of the underground structure, and is reimbursed for its cost by its ratepayers. Verizon must "piggyback" onto this arrangement, bearing its specific facilities costs to connect to the customer.

Although the City argues that "underground service connection facility" includes all costs of the construction, Rule 20A uses the broader term, "customer's underground service lateral," in referring to payment of the cost of installation on private property with electric utility allocations. The regulatory history and the context in which "underground service connection facility" is used in Rule 40 persuade us that it refers only to the copper cable, drop wire, and related network facilities placed in an underground utility service lateral on the owner's property when aerial facilities are undergrounded, and does not refer to the associated costs of trenching and placement of conduit. A proper reading of

the term should emphasize "connection facility," and not be read as "underground facility."

Consequently, Verizon cannot be compelled to pay for more than the cost of including its own connection facilities in the lateral. It follows that "extent" refers only to a measure of length that is congruent with the linear distance that the electric utility is obligated to install underground facilities. The fact that all other California local exchange carriers have tariffs requiring the property owner to "provide and maintain the underground supporting structure needed on his property to furnish service to him from the underground facilities" reinforces our view that Commission policy does not compel a telecommunications carrier to furnish anything more than the basic wiring and associated connecting facilities at its expense.

Verizon's attempt to revise Rule 40 by deleting the contested language in an advice letter occurred while the present dispute was pending. The Communications Division's rejection of that advice letter cannot be construed as a resolution of the question on its merits, and we will not ascribe any material significance to Verizon's effort to change the tariff language.

Whatever Verizon may have done in connection with past undergrounding projects, in the present instance it is free to reject any demand for greater financial participation than it has already agreed to furnish.

6. Conclusion

For the foregoing reasons, we deny the City's Motion for Summary Judgment, grant Verizon's Motion for Summary Judgment, and dismiss the Complaint.

7. Categorization and Need for Hearing

This decision confirms the categorization of Case 10-01-005 as adjudicatory. While it was preliminarily determined that there would be hearings, this case presented a single tariff interpretation issue. Thus, it was determined that there was no need for a hearing.

8. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

9. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Victor D. Ryerson is the assigned ALJ in this proceeding.

Findings of Fact

1. On August 22, 2006, the Santa Barbara City Council passed Santa Barbara City Council Resolution No. 06-075, creating Underground Utility District No. 10 (UUD No. 10) pursuant to Santa Barbara Municipal Code Chapter 22.40. Under criteria set forth in Rule 40, UUD No. 10 is considered an area affected by general public interest (commonly referred to as a public interest project), and Resolution No. 06-075 includes the Commission mandated findings pursuant to Verizon Rule 40 A.1.a.(1) that require Verizon to participate in the undergrounding.

2. Section 4 of Resolution No. 06-075 includes authorization for SCE, the electric utility that serves the district, "to use funds available under SCE Rule 20A for the required customer service conduit and panel modification/conversion."

3. Verizon provides communications services to customers within UUD No. 10.

4. The City sought to obtain a contractual commitment from SCE and Verizon that would provide for the City and the two utilities each to pay an equal share of the total undergrounding cost. The City's effort to do so was based upon its understanding of Verizon's tariff obligations.

5. Although Verizon did not object to paying a pro rata share of the project cost for the portions of the undergrounding in the public right of way, it did object to paying a pro rata share of the cost of trenching and installing conduit from the public right of way over private property to each customer's service connection, and would not agree to do so, based upon its understanding of its tariff obligation.

6. Verizon has declined to pay or reimburse the portion of the project cost associated with trenching and furnishing the conduit pending resolution of the question by the Commission.

7. Verizon's tariff Rule 40.A.1 provides in pertinent part:

> [Verizon] will, at its expense, replace its existing aerial facilities with underground facilities along public streets and roads, and on public lands and private property across which rights-of-way satisfactory [to Verizon are] obtained, . . . provided [that the governing body makes findings and adopts ordinances specified in subparagraph a.]"
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> b. Upon request of the [City Council, Verizon] will pay for no more than 100 feet of each customer's underground service connection facility occasioned by the undergrounding . . . [Verizon] will pay for the installation of each customer's underground service connection facility at the time and only to the extent that the electric utility pays for the customer's underground electric service lateral.

c. [Verizon] will replace aerial facilities at the time and only to the extent that the overhead electric distribution facilities are replaced.

8. The term "underground service connection facility" is not defined in Verizon's tariffs.

9. Verizon's tariff, Schedule Cal. P.U.C. No D&R, 11th Revised Sheet 11, describes "service connection" as "[w]ire or cable, and associated underground supporting structure where used, from the point of connection with the Utility's distribution facilities to the point of connection with the network device at the building served."

10. Verizon tariff, Schedule Cal. P.U.C. No D&R, Original Sheet 3.3, describes "distribution facilities" as the "[u]tility's cables, wires and associated supporting structures and appurtenances, located in dedicated streets and utility easements designed to serve more than one property and extending from the serving central office to the points of connection with service connection facilities."

11. In Advice letter No. 12432 (filed July 20, 2009), Verizon sought to remove the phrase "underground service connection facility" from Rule 40.A on the grounds that the phrase was "ambiguous and confusing." The Commission's Communications Division rejected this advice letter without prejudice, and without addressing its merits.

12. Filed tariffs for all local exchange carriers in California impose the cost of underground conversion of telephone lines on the benefitted property owners.

13. As used in Verizon's tariff Rule 40.A.1, "underground service connection facility" refers only to Verizon's copper cable and drop wire, plus any associated facilities or apparatus required to provide communications service at the point of connection to the customer's premises. "Underground service connection facility" does not refer to the cost of trenching or conduit under this rule.

14. As used in Verizon's tariff Rule 40.A.1, "extent" refers to a measure of linear distance, and does not refer to a quantitative measure of work or cost involved in an underground conversion project.

15. Rule 20 allocations are funds from collection of electric utility rates that are budgeted to assist with undergrounding of utilities. A local government may direct that some or all of its Rule 20 allocation be used to assist individual property owners with the cost of undergrounding service laterals on their properties.

Conclusions of Law

1. It is the Commission's policy that the property owner, and not the utility, is responsible for the cost of underground conversion (including the cost of trenching and conduit) of facilities on his/her property in a public interest project.

2. Sums budgeted by an electric utility for Rule 20 (Rule 20A) allocations for underground conversions are intended to assist with the overall cost of the project. However, because most of the cost of any underground conversion project is normally attributable to the conversion of electric plant, it is the Commission's intent that Rule 20 allocations be utilized to defray the cost of undergrounding electric utility facilities, and only to benefit communications utilities insofar as its aerial facilities are placed in the underground conduit with the electric utility's facilities. To that end, our policy is to require coordination of the placement of communications facilities in the underground facilities of the electric utility at the time, and to the extent, of the electric utility underground conversion.

3. Under Verizon's tariff Rule 40.A.1.b., Verizon's obligation with respect to conversion of each customer's service lateral in UUD No. 10 is, at its expense, to

remove its aerial facilities and place within the underground conduit its copper cable and drop wire, plus any associated facilities or apparatus required to provide communications service at the customer's point of connection, for a distance of no more than 100 feet.

4. There is no triable issue as to any material fact.

5. Verizon is entitled to judgment as a matter of law by reason of Conclusion of Law 3.

6. The City is not entitled to judgment as a matter of law by reason of Conclusion of Law 3.

O R D E R

IT IS ORDERED that:

1. The City of Santa Barbara's Motion for Summary Judgment in this matter is denied.

2. Verizon California, Inc.'s Motion for Summary Judgment in this matter is granted.

3. The City of Santa Barbara's complaint, filed January 19, 2010, is denied.

4. Hearings are no longer necessary.

5. Case 10-01-005 is dismissed with prejudice.

6. Case 10-01-005 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated March 7, 2011, at San Francisco, California.

/s/ JEANNIE CHANG
Jeannie Chang

N O T I C E

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* *

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