

**PUBLIC UTILITIES COMMISSION**

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Adjudicatory**TO PARTIES OF RECORD IN CASE 10-01-005:**

This is the proposed decision of Administrative Law Judge Stephen C. Roscow. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's August 13, 2015 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ KAREN V. CLOPTONKaren V. Clopton, Chief
Administrative Law Judge

KVC:vm2

Attachment

Decision **PROPOSED DECISION OF ALJ ROSCOW** (Mailed 7/2/2015)

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 GRANTING RELIEF

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DECISION GRANTING RELIEF**Summary**

The City of Santa Barbara (the City) requests that the Commission order Verizon California, Inc. (Verizon) to comply with Rule 40A.1.b. of its tariff and pay for its pro-rata share (split equally between Southern California Edison Company (SCE), the City, and Verizon) of the installation of no more than 100 feet of each customer's underground service connection facility for the City's Underground Utility District (UUD) #10, including the costs of private property trenching, installation of the conduit in the trench, and the wiring and cables that run through the conduit, to the extent that SCE pays for each customer's underground service lateral pursuant to SCE's Rule 20A, or to reimburse the City for such costs already expended on its behalf by the City.

We grant the relief sought by the City, with one modification. Verizon shall comply with Rule 40 A.1.b. of its tariff and pay for its pro-rata share of the installation of no more than 100 feet of each customer's underground service connection facility for the City's UUD #10, including: its share of the costs of private property trenching, the cost of the installation of the Verizon conduit in the trench, and the cost of Verizon wiring and cables that run through the conduit. We modify the City's request to remove the requirement that the total cost shall be "split equally between SCE, the City, and Verizon" because we find no such requirement in Commission policy.

We deny each of the three Motions for Summary Judgment filed in this proceeding, because each Motion is procedurally flawed: the Motion filed on August 6, 2010, by the City, the Motion filed on August 6, 2010, by Verizon, and the Motion filed April 30, 2012 by the City.

Case 10-01-005 is closed.

1. Procedural Background

This case arises from a dispute between the City of Santa Barbara (the City) and Verizon California, Inc. (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.

On August 22, 2006, the City Council passed a resolution creating Underground Utility District (UUD) #10 pursuant to Santa Barbara Municipal Code Chapter 22.40.¹ The resolution included authorization for Southern California Edison Company (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.”²

Verizon provides communications services to customers in UUD #10. Under criteria set forth in Verizon’s Rule 40A.1, UUD #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.

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

¹ 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.

² *Id.* Section 4.

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 pay 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, its Rule 40,³ 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. On that basis Verizon has declined to pay the portion of the project costs associated with the trenching and conduit on private property.

The City filed this complaint on January 19, 2010, and Verizon answered on March 8, 2010.

Inasmuch as the case presents a single tariff interpretation issue, the originally-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

³ Schedule Cal. P.U.C. No. D&R, Rule No 40, Facilities to Provide Replacement of Aerial with Underground Facilities (Rule 40). A copy of Rule 40 is provided in Appendix A of this Decision.

facts, so as to bring the issue before the California Public Utilities Commission (Commission) without the need for extended litigation. After meeting and conferring with one another following the conference call, on May 14, 2010, Verizon and the City informed the ALJ by e-mail that they “agree[d] that cross-motions for summary judgment supported by a stipulation of undisputed facts [would be] a proper procedural vehicle for submitting the case for the Commission’s decision.”

A June 28, 2010 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, 2010 and responsive briefs on August 20, 2010.

Unfortunately, the City and Verizon did not follow this agreed-upon procedure, and for this reason, we cannot base our decision in this case upon the cross-motions for summary judgment that both parties filed in 2010. In short, despite their agreement to do so, the City and Verizon did not agree on a joint statement of facts. Instead, each served their own version of a motion: on August 6, 2010, Verizon filed and served a document titled, “Motion for Summary Judgment” consisting principally of argument based upon its tariff language. On the same date, the City sent a letter to the assigned ALJ, with a copy to Verizon, containing a recitation of background information and a section titled, “Points, Authorities and Argument” that presented its legal argument.⁴ Neither party included a stipulated statement of undisputed material facts, nor any supporting affidavits, declarations, or other evidentiary material.

⁴ On April 6, 2011, the ALJ Division authorized the City’s letter submittal to be treated as a Motion for Summary Judgement, and to be deemed to have been filed as of August 6, 2010.

At that point in the proceeding, our decision-making process would have been better served had the assigned ALJ either directed the City and Verizon to follow the procedure to which they had previously agreed, or set the matter for hearings. Instead, our record consisted of filed tariffs, a municipal resolution, and additional documents and matters of which we may take judicial notice, but no stipulated undisputed material facts and therefore nothing upon which to allow us to decide between cross-motions for summary judgment.⁵ Although the ALJ proceeded to draft a proposed decision (PD) and the PD was on the Agenda for the Commission's April 14, 2011 Business Meeting, that PD was ultimately, and properly, withdrawn from the Agenda because it was not based on the proper procedure necessary for our consideration of a motion for summary judgment: since the City and Verizon did not provide a set of undisputed facts,

⁵ A motion for summary judgment is appropriate where the evidence presented indicates there are no triable issues as to any material fact and that, based on the undisputed facts, the moving party is entitled to judgment as a matter of law. (California Code of Civil Procedure, § 437c (Section 437c).) While there is no express Commission rule for summary judgment motions, the Commission looks to Section 437c for the standards on which to decide a motion for summary judgment. Section 437c provides:

The 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 determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers . . . and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact.

we had no evidentiary material to review in order to determine whether either party was entitled to judgment as a matter of law.⁶

Following the retirement of the original ALJ and the assignment of a new ALJ, a prehearing conference (PHC) was convened on February 6, 2012, and additional entities were granted party status, on the basis that the Commission's decision on this two-party complaint was nevertheless likely to affect the balance of financial responsibility in other public interest undergrounding projects between Verizon, the participating electric utility, and the participating governmental entity.⁷ At the PHC, the assigned ALJ initiated a process intended to build the missing factual record by directing Verizon and the other parties to provide information about other "Rule 20A" projects in areas of California where Verizon provides communications services to customers. In our view this process was also procedurally misguided, because our task in this proceeding is nothing more than the interpretation of disputed language in a Commission-approved tariff. Thus, there is no need to engage in a lengthy fact-finding or record-building exercise, because the underlying issue is straightforward. In our decision today, we return to fundamental procedural grounds and resolve the simple dispute between the City and Verizon, namely, the proper interpretation of a Commission-approved tariff.

⁶ The City filed a second motion for summary judgment on April 20, 2012. Verizon responded on May 7, 2012. With no undisputed facts before us, this second round of pleadings is just as flawed as the 2010 pleadings.

⁷ At the February 12, 2012 PHC the assigned ALJ granted party status to SCE and San Diego Gas & Electric Company. The City of Santa Monica was granted party status on April 3, 2012. Pacific Gas and Electric Company was granted party status on August 21, 2012.

2. Positions of the Parties

The City requests that the Commission order Verizon to comply with Rule 40A.1.b. of its tariff and pay for its pro-rata share (split equally between SCE, the City, and Verizon) of the installation of no more than 100 feet of each customer's "underground service connection facility" for the City's UUD #10, including the costs of private property trenching, installation of the conduit in the trench, and the wiring and cables that run through the conduit, to the extent that SCE pays for each customer's underground service lateral pursuant to SCE's Rule 20A, or to reimburse the City for such costs already expended on its behalf by the City. The City supports its complaint with several attachments documenting its communications with Verizon prior to the filing of this Complaint.

In its March 8, 2010 Answer to the City's Complaint, Verizon states that with regard to the cables from the street to the demarcation point on customers' private property (i.e., the point of connection with the customer's home or building), Verizon's tariffed agreement to provide 100 feet of underground service connection facilities is premised on the electric utility providing the trenching and conduit. Verizon thus defines "underground service connection facilities" to mean only the cables that run within that electric-utility-provided trenching and conduit on the customer's private property.

Over the many years that the term "underground service connection facility" has been in Verizon's tariff, Verizon has paid for 100 feet of the cables that traverse the customer's property from the street to the customer's demarcation point. Interpreting Verizon's tariff to mean something else would not only change the meaning of Rule 40A.1.b. and Verizon's

practice, but would also violate Commission policy that all ratepayers or service providers should not pay to benefit a few property owners.⁸

On the basis of its own interpretation of its tariff, Verizon requests that the Commission dismiss the City's Complaint.

3. Discussion

In resolving this complaint, we first review our long-standing approach to interpretation of disputed tariffs. Next we review the history of our policy regarding the undergrounding of utility services. Third, we relate this history to the specific dispute before us and resolve the dispute by applying our rules of tariff interpretation.

3.1. Tariff Interpretation Rules

Tariffs filed with the Commission are administrative regulations, and are subject to the same rules that govern the interpretation of statutes. To interpret a tariff, the Commission must look first at its language, giving the words their ordinary meaning and avoiding interpretations which make any language surplus. The Commission must interpret the words of a tariff in context and in a reasonable, common sense way. If the language of the tariff is clear, the Commission need not look further to interpret the tariff. If an ambiguity exists, the Commission may rely on sources beyond the plain language of the tariff, such as the regulatory history and the principles of statutory construction, to interpret the tariff. An ambiguity exists if language in a tariff may reasonably be

⁸ Verizon Answer at 6.

interpreted in more than one way. The Commission has discretion to determine whether an interpretation of a tariff sought by a party is reasonable.⁹

3.2. The Commission's Undergrounding Policy

In the case before us, the City and Verizon disagree on the meaning of Verizon's Rule 40. With respect to the private property portion of the specific public interest undergrounding project at the heart of this dispute, Verizon defines its obligation regarding each customer's "underground service connection facilities" to mean provision of only the cables that run within electric-utility-provided trenching and conduit on the customer's private property. The City, on the other hand, interprets "underground service connection facilities" to include the costs of private property trenching, installation of the conduit in the trench, and the wiring and cables that run through the conduit. Given that each party to this dispute interprets Verizon's Rule 40 differently, we find that the term "underground service connection facilities" in Verizon's Rule 40 is ambiguous.

As noted above, if ambiguity exists in a tariff, the Commission may rely on sources beyond the plain language of the tariff, such as the regulatory history and the principles of statutory construction, to interpret the tariff. Thus, we turn next to a review of the Commission decisions that created today's regulatory framework for the undergrounding of electric and communications services and facilities. We review this history at some length because, as we shall see shortly, Verizon premised its Answer to the City on a fundamental misreading of this history.

⁹ Decision (D.) 03-04-058 at 6.

The origin of the Commission's current policy on undergrounding of electric and communications services and facilities dates back to 1967. In D. 73078, "Interim Order Establishing New Rules for Electric and Communication Service Connections and Conversion of Overhead to Underground Facilities" the Commission notes that the underlying investigation (Case No. 8209) had been instituted in 1965 "to determine what revision of existing rules, what new rules, or new rates would be required to stimulate, encourage, and promote the undergrounding, for aesthetic as well as economic reasons, of electric and communications services and facilities." According to the Commission, "however useful and often necessary had been the seemingly total preoccupation with the engineering and commercial aspects of our utilities, the time had long passed when we could continue to ignore the need for more emphasis on aesthetic values in those new areas where natural beauty has remained relatively unspoiled or in established areas which have been victimized by man's handiwork."¹⁰ The Commission stated that "it is the policy of this Commission to encourage undergrounding" and that "the record discloses that sufficient evidence has been adduced with respect to two of the three material issues before us; namely service connections and conversions."¹¹

D.73078 provided the following definitions of "service connections" and "conversions":¹²

¹⁰ 67 CPUC 490.

¹¹ *Id.* at 512. The third material issue identified in the decision was "new construction," and the Commission concluded that the issues concerning new construction should be resolved in a further order.

¹² *Id.* at 490.

“Service connections” as used for electric service means overhead and underground conductions leading from a point where wires leave the last pole of the overhead system or the distribution box or manhole, or the top of the pole of the distribution line, to the point of connection with the customers’ outlet or wiring. Conduit used for underground service is included herein.

“Conversions” means the removal of existing overhead facilities and the installation of new underground facilities to serve existing customers.

From our perspective today, we note that in 1967 the Commission also recognized the tension between relatively rapid undergrounding--what it termed “the short run (10 years)” -- and the “long-run,” whereby a proposed “two percent of revenue rule” advocated by Pacific Gas and Electric Company and San Diego Gas & Electric Company, if adopted, “would get the program started but the remainder of this century might not be a long enough period to produce spectacular results.”¹³ The Commission stated that it “is concerned that a reasonable balance be maintained between gaining the advantages of underground service and controlling expenditures so that unreasonable burdens do not fall upon the general ratepayer. For that reason, it is important that rules and practices provide alternatives for the division of cost between the utility and the benefitting property owner.” The Commission also stated that “benefitting

¹³ *Id.* at 510. The “2 percent of revenue rule” proposed by Pacific Gas and Electric Company would have provided for an investment in underground facilities within each city and each county which would be equal to 2 percent of certain electric revenues received during the prior year from the customers in each city, county or combined city/county. The Commission did not adopt this approach.

property owners may be sufficiently interested to participate in financing a portion of the costs as is permitted under the present and proposed rules..."¹⁴

The Commission's Findings in D.73078 provide support for our own findings in today's decision; after considering the evidence the Commission found that:

1. The citizens of California through their elected officials and representatives have indicated a demand for underground electric and communications facilities.
2. The conversion rules herein authorized should provide a framework for the electric utilities and communications utilities to proceed with a reasonable program.¹⁵

Based on these Findings, the Commission then reached a number of Conclusions that provide a framework for our decision today:

1. Uniform policies and practices should be followed by all electric utilities and by all communications utilities in the installation of service connections.
3. All respondent communications utilities should be ordered to file a service connection rule substantially as set forth in Appendix C (of the decision).
6. All respondent communications utilities should be ordered to file a conversion rule substantially as set forth in Appendix E (of the decision).¹⁶

Finally, based on these Conclusions, the Commission ordered that "each respondent providing communication service shall...file the rule substantially as set forth in Appendix C" of the decision (Ordering Paragraph 2), and "each

¹⁴ *Ibid.*

¹⁵ *Id.* at 512: Findings 1 and 2.

¹⁶ *Ibid.* Conclusions 1, 3, and 6.

respondent providing communication service shall...file the rule as set forth in Appendix E” of the decision (Ordering Paragraph 5).¹⁷

The newly-adopted Appendix C of D.73078 provided the text for the adopted rule entitled “Telephone Service Connections” and began with a list of “Telephone Definitions”; we quote below those definitions that we rely upon in this decision:

1. Service Connection

Drop and block wiring or cable, including protective conduit where used, from the point of connection with the company’s distribution facilities to the point of connection with the inside wiring at the premises served.

2. Trenching Costs

Cost of excavating, backfilling and compacting, and, where necessary, cost of breaking and repaving pavement and of restoring landscaping.

3. Underground Supporting Structure

Conduit, manholes, handholds, and pull boxes where and as required, plus trenching costs as defined in 2., above.

Appendix E provides the text for the adopted rule entitled “Facilities to Provide Replacement of Aerial with Underground Facilities.” The adopted rule is divided into two sections, “I. Replacement of Aerial with underground Facilities” and “II. Interior Wiring.” Section I of the rule is further divided into four major sections:

A. In Areas Affected by General Public Interest

B. At the Request of Governmental Agencies or Groups of Applicants

C. At the Request of Individual Applicants

¹⁷ In compliance with this decision, Verizon (at that time, General Telephone Company of California) filed the required tariffs.

D. At Company Initiative

Our decision today makes reference only to Rule I.A., “In Areas Affected by General Public Interest.” We next trace the evolution of this rule through subsequent Commission decisions.

The Commission modified the 1967 Rules in D.820118, issued in 1982.¹⁸ In that decision, the Commission notes that in Case No. 8209, it established a program under which respondent electric utilities are required to annually budget funds for use by the communities they serve to convert a part of the utilities’ overhead distribution systems to underground systems, and states that it reopened Case No. 8209 in order to reexamine the program, largely because of complaints from cities that all funds budgeted to the program were not being spent, and because Commission staff wished to recommend changes in the program.

The Commission’s discussion of the undergrounding program in D.820118 is revealing in the manner in which it refers to the role played by communications companies in undergrounding projects; this discussion informs our decision today:

Unlike electric utilities, telephone utilities do not have the power to determine how much they will spend or how fast they will complete conversion. Their activities are determined by the timetables of the electric utilities with which they share poles.

Once a local government decides that a group of such poles is to be converted, the telephone utility which shares those poles must also convert its lines. This open-ended commitment is

¹⁸ 7 CPUC2d 757.

tolerable because most of the cost of any project is normally attributable to the conversion of electric plant.¹⁹

The Commission repeated this observation later in the Decision: “As noted above, a requirement for additional electric undergrounding will automatically require an increased expenditure by telephone utilities.”²⁰ The manner in which the Commission distinguished between the role of electric and communications utilities in undergrounding projects is important because it assists us today in resolving the ambiguity in the tariff rule that lies at the heart of the City’s Complaint.

After considering the record before it, the Commission made a number of findings regarding allocation of conversion funds between communities. However, for our purposes today, the key outcome of D.820118 was that it ordered a significant change in its previously-adopted undergrounding conversion program. The Commission did this by adding new tariff language to the electric Rule 20 stating that if the local governmental jurisdiction chooses, utilities will install the first 100 feet of underground facilities from the street distribution line to the point of connection with the customer's wiring.

In its discussion of “Funding for Conversion of Services” the Commission stated that “we find reasonable San Diego's proposal that we make Rule 20 funds available for work on customer services (from the street to the point of connection with customer wiring), work which is now done solely at consumer expense when there is undergrounding conversion.” This change to the 1967

¹⁹ *Id.* at 760.

²⁰ *Id.* at 766.

Rule marks a fundamental shift in the Commission's approach to undergrounding. As the Commission explained,²¹

“[Under the 1967 Rule], when a utility and a community agree to convert a section of overhead lines underground under Rule 20 the individual utility customer must pay for the conversion from the distribution line to the residence. This ordinarily means paying for undergrounding from the street, including any modification to the electric service box. These costs vary with distance, the way the premises are constructed (e.g. does a driveway or patio have to be dug up?) and other conditions. Under the new rules we adopt [today] the utility will, if the local jurisdiction requests, pay for up to 100 feet of service between the street (or distribution line) and the service box. However, the customer will still be required to pay for any required modification to his wiring to accept underground service (e.g. modifying the service box). Having the utility pay for the first 100 feet of conversion from the street is consistent with Rule 16, governing installing new service.

Further, if utilities were to modify customer wiring to accept underground service, they would be engaged in premises wiring, traditionally the domain and responsibility of customers, their electrical contractors, and local building inspectors.

The change we do adopt, which is at the discretion of the local governmental entity, allows local government to determine whether all Rule 20 funds go for undergrounding along streets or whether a portion should go to assist customers with part of the conversion expense.

Of course, if the utility installs the underground service from the street to the point of connection to the customer's wiring,

²¹ *Id.* at 770, emphasis added.

those facilities belong to the utility, just as similar facilities installed under Rule 16 (new service).

Based on this record-based discussion, the Commission made several Findings that are directly relevant to our Decision today:²²

7. Local communities should be able to use part of their Rule 20 allocations for converting consumer services, if necessary, to encourage consumer acceptance for desirable projects.
9. Funding should be limited to facilities which the utility traditionally owns: Lines from the street/distribution line to the point of connection with the customer's wiring.
10. If requested by local authorities, electric utilities should be required to expend funds allocated to such local authority for up to 100 feet of underground electric lateral for each customer in an undergrounding district. Any local government electing to expend a portion of its allocation on lateral service construction should have the authority to establish limitations on the amount to be so expended for that purpose.

While the Commission made no specific Conclusions of Law based on these Findings, the Commission did order each respondent electric utility to modify its Rule 20 to add an unnumbered paragraph to follow section A.3 of the Rule, reading:

Upon request of the governing body, the utility will pay for no more than 100 feet of the customer's underground service lateral. The governing body may establish a smaller footage allowance, or may limit the amount of money to be expended

²² *Id.* at 771, Findings 7, 9 and 10.

on a single customer's service, or the total amount to be expended on consumer services in a particular project.²³

We note that not only did the electric utilities change their tariffs in compliance with this decision, but Verizon made the same change, adding this language to its Rule 40:²⁴

Upon request of the governing body, The Utility will pay for the installation of no more than 100 feet of each customer's underground service connection facility occasioned by the undergrounding. The governing body may establish a smaller footage allowance or may limit the amount of money to be expended on consumer services in a particular project. The Utility 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.

Thus, subsequent to the 1982 decision, Verizon's actions indicated an acknowledgement of--and active compliance with--the Commission's fundamental revision of its policy on undergrounding: when a utility and a community agree to convert a section of overhead lines underground under Rule 20, instead of requiring the individual utility customer to pay for the conversion from the distribution line to the residence, the utility will, if the local jurisdiction requests, pay for up to 100 feet of service between the street (or distribution line) and the service box. However, the customer will still be

²³ *Id.* at 772, Ordering Paragraph 1.

²⁴ Verizon filed Advice Letter No. 4887 on July 23, 1984, adding the quoted text to Schedule Cal. P.U.C. No. D&R, Rule No 40, Facilities to Provide Replacement of Aerial with Underground Facilities (Rule 40).

required to pay for any required modification to his wiring to accept underground service (e.g. modifying the service box).

While this change was phrased in language specific to electric utilities, this phrasing is understandable given the Commission's expressed mindset regarding the implications of its undergrounding policy (i.e., that "a requirement for additional electric undergrounding will automatically require an increased expenditure by telephone utilities"). Indeed, Verizon's subsequent modification of its tariff to reflect compliance with the new Commission policy makes perfect sense given the Commission's statements in D.820118.

The next, and most recent, significant development in the Commission's policies and rules regarding undergrounding occurred beginning in 1999, when the Legislature passed Assembly Bill 1149.²⁵ That bill required the Commission to study ways to amend, revise, and improve the rules for the conversion of existing overhead electric and communications lines to underground service and to submit a report to the Legislature. In response, the Commission issued Order Instituting Rulemaking 00-01-005. The Commission subsequently issued D.01-12-009, its "Interim Opinion Revising the Rules for Converting Overhead Lines to Underground." Among other things, that Decision expanded electric Rule 20A criteria and extended the use of electric Rule 20A funds. The Commission also identified and deferred certain issues to a future Phase 2 of the proceeding, including "whether there is a fair and equitable, competitively neutral recovery mechanism for telecommunications carriers and cable companies to recover their undergrounding costs". However, Phase 2 was never completed and the

²⁵ (Aroner) (Stats. 1999, Ch. 844).

Commission closed the Rulemaking proceeding in 2005, stating that “overtaking events in the electric industry required the Commission to manage and control its resources such that Phase 2 of the proceeding was never fully initiated beyond a Prehearing Conference.”²⁶

In short, although the Commission stated its intention to refine its undergrounding policy for communications utilities, it did not do so. As of today, the rules we have approved effectively direct the activities of the electric utilities and are clearly premised on the assumption that the actions of the electric utilities will necessitate coordinated action and spending by the telecommunications utilities: repeating the words of the 1982 Commission, “a requirement for additional electric undergrounding will automatically require an increased expenditure by telephone utilities.” Again, we note that the Commission was comfortable with this state of affairs because, as it also observed in 1982:

Once a local government decides that a group of such poles is to be converted, the telephone utility which shares those poles must also convert its lines. This open-ended commitment is tolerable because most of the cost of any project is normally attributable to the conversion of electric plant.

It is within this historical context that we now turn to the tariff dispute before us today.

²⁶ D.05-04-038 at 2.

3.3. The Plain Language of Verizon's Rule 40A. Supports Allocating a Pro-Rata Share of Installation Costs to Verizon

As we stated above, to interpret a tariff, the Commission must look first at its language, giving the words their ordinary meaning and avoiding interpretations which make any language surplus. The Commission must interpret the words of a tariff in context and in a reasonable, common sense way. The Commission has discretion to determine whether an interpretation of a tariff sought by a party is reasonable.

Verizon argues that its use of the term “underground service connection facility” in Rule 40A.1.b. refers only to the cables that run within trenching and conduit provided by the electric utilities under their own electric Rule 20A. If we examine Verizon's argument closely, we note that Verizon itself ignores other words in its tariff, words that the Commission must consider in resolving this dispute, because we must avoid interpretations which make any language surplus.

First, we note that Rule 40A.1.b. states (emphasis added):

Upon request of the governing body, The Utility will pay for the installation of no more than 100 feet of each customer's underground service connection facility occasioned by the undergrounding. The governing body may establish a smaller footage allowance or may limit the amount of money to be expended on consumer services in a particular project. The Utility 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.

Thus, Rule 40A.1.b. logically states that Verizon will pay for the installation of its wires and cables. The rule does not state that Verizon will pay for the wires and cables alone, perhaps delivering that material to the

construction site and then leaving to others the task of installing the material. The Rule clearly states that Verizon will pay for the installation of those wires and cables. We may not render the word “installation” surplus in our interpretation of the tariff: we must account for the presence of that word and interpret the tariff as a whole. Therefore, we interpret the inclusion of the term “installation” in the tariff language to mean that Verizon must do exactly that: pay the costs of installation of the wires and cables. Specifically, we conclude that Verizon must pay its share of the actions or activity involved in installing its wires and cables, not simply pay for the wires and cables themselves. Therefore, we logically conclude that pursuant to its Rule 40, Verizon is obligated to pay a share of the total costs of undergrounding in the City’s UUD #10. Verizon must pay for its prorata share of the installation of no more than 100 feet of each customer's underground service connection facility for the City's UUD #10, including its share of the costs of private property trenching, the cost of installation of its conduit in the trench, and the cost of its wiring and cables that run through the conduit, to the extent that SCE pays for each customer's underground service lateral pursuant to its Rule 20A. Verizon shall reimburse the City for all such costs that the City has already expended on Verizon’s behalf.

3.4. Verizon Misconstrues Prior Commission Decisions and Current Commission Policy

Our decision on this Complaint is likely to affect other undergrounding projects throughout California. As noted above, even though this proceeding involves a simple dispute between the City and Verizon, other entities sought party status on the basis that the Commission’s decision in this two-party dispute could affect their own interests in similar public interest projects elsewhere in California. This appears to be due to Verizon’s assertions in its

March 8, 2010, Answer to the City's Complaint. In that Answer, Verizon first offers its own summary of the Commission's decisions on undergrounding of utility services, and then relies on the history it has provided to argue that the Commission should deny the City's Complaint. For this reason, we address Verizon's assertions below in order to provide all interested parties guidance regarding our policy on undergrounding conversions.

Verizon first reviews the Commission's 1967 decision, acknowledging that in 1967, the Commission adopted a policy of encouraging undergrounding of electric and communications facilities for aesthetic reasons, and adopted the new conversion program for all rate of return utilities by prescribing tariff amendments: "the resulting overhead to underground conversion policy was numbered tariff Rule 20 for electric companies, Rule 40 for Verizon's predecessor and Rule 32 for Pacific Bell." Verizon further notes that the Commission established the public interest program, which in effect requires electric utilities and communications companies to pay for conversion in the public right-of-way where specified conditions are met. Verizon notes that "Significantly, the Commission ordered each electric utility – but not communications companies – to allocate certain amounts for public interest conversions under Rule 20A, so as to limit ratepayer costs of conversion projects." However, Verizon then misconstrues D.73078 by stating:

The Commission early recognized that property owners benefited from these conversion projects because their property values would increase once aerial facilities were put underground. The Commission therefore required property owners to provide and maintain the underground supporting structure needed on his property to furnish service to him

from the underground facilities. The underground supporting structure includes the trenches and the conduits.²⁷

This interpretation of D.73078 is incorrect. While it is true that in 1967 D.73078 established a framework where the utility paid for undergrounding so long as the governing body adopted an ordinance creating an underground district in the area requiring that “each property owner will provide and maintain the underground supporting structure needed on his property to furnish service to him from the underground facilities of the Utility,” the Commission changed this policy in 1982. As we explained above, in D.820118 the Commission modified the 1967 approach such that today, at the discretion of the local governmental entity, the local government may determine whether all Rule 20 funds are used for undergrounding along streets or whether a portion should be used to assist customers with part of the conversion expense. As we also noted above, in the 1982 decision it is clear that the Commission expected and accepted that a requirement for additional electric undergrounding will automatically require an increased expenditure by telephone utilities. Nowhere in the 1982 decision did the Commission state that communications utilities were exempted from the logical financial implications of the Commission’s decision to allow the local government to determine that a portion of Rule 20 funds should go to assist customers with part of the conversion expense. In other words, the most logical inference to draw from review of the 1982 decision is that it was the Commission’s intent that, if part of the electric-utility-provided underground conversion funding is used to assist customers with part of the expense, then part of the communications-utility-provided underground conversion funding

²⁷ Verizon Answer at 2.

should be used for the same purpose. This is the meaning of the tariff requirement that “the [communications] Utility will replace its aerial facilities at the time and only to the extent that the overhead electric distribution facilities are replaced.”

Verizon misconstrues the 1982 decision and thereby fails to support its position in this complaint. Indeed, by quoting only fragments from D.820118 and ignoring the context of the Commission’s findings, Verizon creates an inaccurate picture of current Commission policy.

Verizon first correctly acknowledges that in D.820118, the Commission allowed local governments to require electric utilities to use Rule 20A-allocated ratepayer-provided funds to pay for trenches and conduits from the street to the building, and added that section to the electric undergrounding tariff rule while “this requirement was not extended to communications companies.”²⁸ However, Verizon then incorrectly states that the City’s complaint is prompted by its refusal to accept “the Commission’s longstanding policy that property owners must pay for the trenching and conduit costs on their property in public interest conversion projects.”²⁹

Verizon cites to D.73078 to support its assertion that Commission policy found in the tariffed rules of utilities and telecommunications carriers require property owners to “provide and maintain the underground supporting structure needed on his property to furnish service to him from the underground facilities” and asserts that “as the Commission noted in D.820118, from the street to the point of connection with customer wiring, the work is ‘done solely at

²⁸ *Id.* at 3.

²⁹ *Ibid.*

consumer expense when there is undergrounding conversion.”³⁰ Verizon quotes only a fragment of the full sentence from D.820118 and thereby changes its meaning. The full sentence reads “We find reasonable San Diego's proposal that we make Rule 20 funds available for work on customer services (from the street to the point of connection with customer wiring), work which is now done solely at consumer expense when there is undergrounding conversion.”³¹

Verizon relies on its own incorrect citation to conclude that “There has always been a cost to the property owners and that cost remains to this day” and that “Put differently, the Commission has never articulated a policy that all customers, ratepayers or service providers should pay to benefit a few property owners.”³² As we demonstrated above, the Commission has articulated exactly the policy that Verizon cannot find: in D.820118 the Commission revised the then-existing utility rules to explicitly allow the local government to determine whether a portion of Rule 20 funds should go to assist customers with part of the conversion expense. Rule 20 funds are, in fact, provided by all electric ratepayers, and they are, in fact, used to benefit specific property owners under the policy adopted by the Commission in D.820118.

The remainder of the argument that Verizon presents in its March 8, 2010 Answer is unconvincing because it rests on this inaccurate procedural history. With no basis in Commission-approved tariffs for the idea that Verizon should not pay for its own conduit and its share of trenching costs, Verizon’s conclusion that the tariff defines “underground service connection facilities” to mean only

³⁰ *Ibid.*

³¹ 7 CPUC2d 770.

³² Verizon Answer at 3.

the cables that run within the trenching and conduits on the customer's private property cannot be supported, nor can Verizon's assertion that "Verizon will provide cables where the electric utility provides the trenching and conduit."

We reject Verizon's reasoning and, finally, we reject Verizon's ultimate conclusion that:

over the many years that the term "underground service connection facility" has been in Verizon's tariff, Verizon has paid for 100 feet of the cables that traverse the customer's property from the street to the customer's demarcation point. Interpreting Verizon's tariff to mean something else would not only change the meaning of Rule 40A.1.b. and Verizon's practice, but would also violate Commission policy that all ratepayers or service providers should not pay to benefit a few property owners.

4. Conclusion

As we have established at great length above, there is no Commission policy "that all ratepayers or service providers should not pay to benefit a few property owners." On the contrary, in 1982 the Commission expressly established a policy that provided a means for local governments to designate a portion of the undergrounding funding provided by all electric ratepayers for the benefit of specific groups of customers within an undergrounding district. In the same decision, the Commission made clear that it understood that once a local government decides that electric service in an area is to be undergrounded, "the telephone utility which shares those poles must also convert its lines. This open-ended commitment is tolerable because most of the cost of any project is normally attributable to the conversion of electric plant."

Verizon's tariff includes the language that expresses the Commission's policy. Verizon's protestations to the contrary are not convincing.

For the procedural reasons discussed above, we limit our actions in this Decision to interpreting Verizon's existing tariff. We grant the relief sought by the City: pursuant to Rule 40A.1.b. of its tariff, Verizon shall pay for its prorata share of the installation of no more than 100 feet of each customer's underground service connection facility for the City's UUD #10, including its share of the costs of private property trenching, the cost of the installation of the Verizon conduit in the trench, and the cost of the Verizon wiring and cables that run through the conduit, to the extent that SCE pays for each customer's underground service lateral pursuant to its Rule 20A. Verizon shall reimburse the City for all such costs that the City has already expended on Verizon's behalf.

We deny each of the three Motions for Summary Judgment filed in this proceeding because they did not include a list of undisputed facts: the Motion filed on August 6, 2010 by the City, the Motion filed on August 6, 2010 by Verizon, and the Motion filed April 30, 2012 by the City. Case 10-01-005 is closed.

5. 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. Therefore, there is no need for a hearing.

6. Comments on Proposed Decision

The PD 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 _____.

7. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Stephen C. Roscow 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 UUD #10 pursuant to Santa Barbara Municipal Code Chapter 22.40. Under criteria set forth in Rule 40, UUD #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 40A.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 #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 obligations.

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. The term “underground service connection facilities” in Verizon’s Rule 40 is ambiguous.

8. In D.73078 the Commission stated that it “is concerned that a reasonable balance be maintained between gaining the advantages of underground service and controlling expenditures so that unreasonable burdens do not fall upon the general ratepayer.”

9. In D.73078 the Commission adopted overhead-to-underground conversion rules intended to provide a framework for the electric utilities and communications utilities to proceed with a reasonable program.

10. Rule 20 allocations are funds from the collection of electric utility rates that are budgeted to assist with undergrounding of electric utilities.

11. In D.73078 the Commission stated that uniform policies and practices should be followed by all electric utilities and by all communications utilities in the installation of overhead and underground service connections.

12. In D.73078 the Commission adopted definitions of Service Connection, Trenching Costs and Underground Supporting Structure.

13. In D.820118 the Commission modified the Rules adopted in D.73078.

14. In D.820118 the Commission stated that unlike electric utilities, telephone utilities do not have the power to determine how much they will spend or how fast they will complete [underground] conversion. Their activities are determined by the timetables of the electric utilities with which they share poles.

15. In D.820118 the Commission stated that once a local government decides that a group of such poles is to be converted, the telephone utility which shares

those poles must also convert its lines and that this open-ended commitment is tolerable because most of the cost of any project is normally attributable to the conversion of electric plant.

16. In D.820118 the Commission found to be reasonable a proposal that Rule 20 funds be made available for work on customer services from the street to the point of connection with customer wiring. Pursuant to In D.73078, that work had previously been done solely at consumer expense when there was undergrounding conversion.

17. In D.820118 the Commission ordered the addition of new tariff language to the electric Rule 20 stating that if the local governmental jurisdiction chooses, utilities will install the first 100 feet of underground facilities from the street distribution line to the point of connection with the customer's wiring.

18. After adoption of D.820118, Verizon's predecessor also changed its tariff Rule 40A.1 to provide that upon request of the governing body, the utility will pay for the installation of no more than 100 feet of each customer's underground service connection facility occasioned by the undergrounding.

19. Verizon states that its use of the term "underground service connection facility" in Rule 40A.1.b. refers only to the cables that run within trenching and conduit provided by the electric utilities under their own Rule 20A, but Verizon ignores other words in its tariff.

20. Rule 40A.1.b. states that Verizon will pay for the installation of the wires and cables for each customer in an undergrounding district upon request of the governing body.

21. The motions for summary judgment filed in this proceeding by the City and Verizon do not include a list of stipulated, undisputed facts.

Conclusions of Law

1. Like other administrative regulations, tariffs filed with the Commission are subject to the rules of statutory interpretation.

2. To interpret a tariff, the Commission should look first at its language, giving words their ordinary meaning and avoiding interpretations which make any language surplus.

3. The words in a tariff should be interpreted in context and in a reasonable, common sense manner.

4. If the language of a tariff is clear, the Commission need not look further to interpret its meaning.

5. If the language of a tariff contains an ambiguity, the Commission may then look to sources beyond the tariff language, such as the regulatory history, and the principles of statutory construction, to interpret the tariff.

6. An ambiguity exists if the language in a tariff may reasonably be interpreted in more than one way.

7. The Commission has discretion to determine whether an interpretation of a tariff sought by a party is reasonable.

8. D.820118 stated that a requirement for additional electric undergrounding will automatically require an increased expenditure by telephone utilities.

9. Verizon's interpretation of the disputed language in its Rule 40 is unreasonable because it ignores certain words in the tariff and does not interpret other words in a reasonable way given their context.

10. The inclusion of the term "installation" in Verizon's tariff language means that Verizon must pay the costs of installing wires and cables for each customer in an undergrounding district upon request of the governing body.

11. Under Verizon's tariff Rule 40A.1.b., because Verizon must pay its share of the actions or activity involved in installing its wires and cables, not simply pay for the wires and cables themselves, Verizon is obligated to pay a share of the total costs of undergrounding in Santa Barbara's UUD #10.

12. Verizon should pay for its pro-rata share of the installation of no more than 100 feet of each customer's underground service connection facility for the City's UUD #10, including its share of the costs of private property trenching, the cost of the installation of Verizon conduit in the trench, and the Verizon wiring and cables that run through the conduit, to the extent that SCE pays for each customer's underground service lateral pursuant to its Rule 20A.

13. Verizon should reimburse the City for all such costs that it has already expended on Verizon's behalf.

14. A motion for summary judgment is appropriate where the evidence presented indicates there are no triable issues as to any material fact and that, based on the undisputed facts, the moving party is entitled to judgment as a matter of law.

15. The motions for summary judgment filed in this proceeding by the City and Verizon should be denied because they do not include a list of undisputed facts.

16. Hearings are not necessary because this case presents a simple tariff interpretation issue.

O R D E R

IT IS ORDERED that:

1. The City of Santa Barbara's August 6, 2010, Motion for Summary Judgment in this matter is denied.

2. Verizon California, Inc.'s August 6, 2010, Motion for Summary Judgment in this matter is denied.

3. The City of Santa Barbara's April 30, 2012, Motion for Summary Judgment in this matter is denied.

4. The City of Santa Barbara's (the City) complaint, filed January 19, 2010, is granted. Pursuant to Rule 40A.1.b. of its tariff, Verizon California, Inc. (Verizon) shall pay for its pro-rata share of the installation of no more than 100 feet of each customer's underground service connection facility for the City's Underground Utility District #10, including its share of the costs of private property trenching, the cost of the installation of the Verizon conduit in the trench, and the cost of the Verizon wiring and cables that run through the conduit, to the extent that Southern California Edison pays for each customer's underground service lateral pursuant to its Rule 20A. Verizon shall reimburse the City for all such costs that the City has already expended on Verizon's behalf.

5. Hearings are not necessary.

6. Case 10-01-005 is closed.

This order is effective today.

Dated _____, at San Francisco, California.