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Decision 01-07-010 July 12, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Reclamation District No. 2042, Complainant, vs. Pacific Gas and Electric Company, Defendant.	Case 93-06-039 (Filed June 15, 1993)

O P I N I O N

1. Summary

Reclamation District No. 2042 (the District), an agency charged with responsibility for reclamation and flood control for an area of land known as Bishop Tract in San Joaquin County, seeks to recover $353,906 from Pacific Gas and Electric Company (PG&E) for the cost of relocating utility poles and equipment to facilitate the widening of levees. The District claims that it is a state entity, that the levee improvements were undertaken under its authority to engage in flood control efforts, and that the costs of relocation of utility poles should be borne by PG&E. The utility contends that it had no franchise agreement with the District as it does with cities and counties, that the District's work was intended to benefit a few private owners, and that, in any event, PG&E tariffs direct that parties requesting line relocation are required to pay for it. This decision finds that the Legislature has not granted franchise-like authority to

reclamation districts, and that the District in this case has not shown a violation of law or of Commission rule or order by PG&E. The complaint, therefore, is denied.

2. Background

In 1991, the District began a $7 million flood control project, expanding a number of levees in Bishop Tract. The project required relocation of PG&E's poles, electric lines and related facilities. Under protest, the District paid PG&E a total of $353,906.32 for the relocation work. The work was accomplished under a series of facilities agreements, the last of which was executed on April 6, 1992.

On June 15, 1993, the District filed this complaint seeking recovery of the relocation costs. After extensions of time were granted, PG&E timely filed its answer on October 4, 1993. Prehearing conferences were conducted on February 16, 1994, and June 7, 1994. A petition to intervene filed by Pacific Bell was granted, but participation by that utility was limited to the filing of briefs. After submission of prepared testimony, evidentiary hearings were conducted on February 14-17, 1995, and on February 24, 1995. The Commission heard testimony from 11 witnesses and received 42 exhibits into evidence. Briefs were filed on May 12, 1995, and reply briefs were filed on June 26, 1995. On May 9, 1997, the District moved to set aside submission and reopen the record to receive an appellate court decision that had just been issued.[1]

[1] The Commission does not need to reopen the record to take official notice of a judicial decision issued after the evidentiary record is closed. For that reason, the motion to reopen is denied, but the Commission in this decision does consider the appellate court decision cited by the District.

For various reasons, including the unavailability of the assigned administrative law judge (ALJ) for an extended period, the case has languished for some time. The parties on a number of occasions were asked if they would like to have the case reassigned to another ALJ, but counsel for the District and for PG&E declined. In January 2001, the Commission on its own motion reassigned the case. An ALJ Ruling on January 19, 2001 reopened the record and directed parties to state any material issues of fact or law that had arisen since the case was submitted in 1995.

Both parties responded to the ALJ Ruling on March 2, 2001. Each submitted declarations attesting to development of Bishop Tract lands since 1995. Each stated that no further hearings are required.

3. Position of the Reclamation District

Bishop Tract is comprised of 3,115 acres and is located north of Stockton. It was originally swamp and overflow land granted by the state to the original owners for the purpose that these lands be reclaimed. The property is bordered by water on three sides, with its entire eastern boundary running adjacent to Interstate Highway 5. The District's witnesses testified that construction of levees around Bishop Tract began in the mid-1800s and was completed around the turn of the century. In 1919, the Reclamation District was formed, and it paid the then-owner, California Delta Farms, Inc., $116,750 for a 100-foot easement at the levees and for the labor and materials used in constructing and maintaining the levees.

Reclamation districts in California are formed pursuant to Sections 50000 through 53901 of the Water Code. Engineer Christopher H. Neudeck testified that property owners formed the District for Bishop Tract to create a common design for levee improvements, the costs of which are shared through tax

assessments on the owners' properties. The levee improvements relevant to this proceeding occurred in 1991 and 1992 and were intended to increase the width and height of the levees and improve existing drainage and irrigation systems to protect Bishop Tract lands from flooding.

The work also was intended to remove Bishop Tract properties from the 100-year flood plain. The 100-year flood plain is designated by the Federal Emergency Management Agency, or FEMA, as an area where there is a probability of a major flood occurring sometime during a 100-year period. In other words, the area has a 1% chance of a flood occurring in any given year. Bishop Tract prior to 1988 was outside the 100-year flood plain, but new FEMA regulations put it within the plain.

Restoring Bishop Tract to a position outside the 100-year flood plain was a benefit to owners of the land, since it increased the value of the property both for farming (with lessened chance of flooding) and for other uses. City and county planning commissions permit agricultural uses of land inside the 100-year flood plain but do not permit housing, recreation or commercial uses. Neudeck testified that there are five major property divisions with the District's boundaries, each of which has a representative on the District Board. The five major divisions range in size from 832 acres to 340 acres. PG&E owns a four-acre parcel where it has installed a substation. As an owner, PG&E was assessed a pro-rata share of the cost of levee improvements based on its four acres.

The cost of the levee improvements along 8.24 miles of the District's boundary perimeter was $7 million. In 1993, FEMA removed the District from the 100-year flood plain as a result of the improvements made in 1991 and 1992.

Relocation of PG&E utility poles and equipment at Bishop Tract was required as part of the levee work. Neudeck said that when he first contacted

PG&E in early 1989 about the relocation, the utility refused to move the equipment until the District made payment in full for the cost of relocation. The work proceeded when the District agreed to pay under protest.

District Board member Steven A. Malcoun testified that Bishop Tract was outside the 100-year flood plain when he joined the Board in 1987 and that the District's policy has long been to maintain that status. He said the Board's decision to authorize improvements to meet new FEMA requirements was unanimous. The improvements were financed through a bond issued under the Mello-Roos Community Facilities Act of 1982, with landowners within the District's boundaries paying debt service on the bonds through property taxes assessed on a per-acre basis.

Other witnesses for the District testified that Bishop Tract would continue to be used primarily for agricultural purposes for the foreseeable future, and that housing or commercial development of parts of the property was not a substantial factor in the District's decision to proceed with the $7 million levee improvements.

Darrel Ramus, an assistant engineer involved in the levee project, testified that his examination of county surveyor maps of Bishop Tract showed that no power lines existed in the area until after 1922. According to Ramus, this supports the position that the District, formed in 1919, has land rights within Bishop Tract that are superior to those of PG&E.

Based on the testimony, the District takes the position that, among other things:

- The District, as a state agency engaged in flood control efforts, has a governmental "police power" to compel PG&E to relocate its utility lines without cost to the District.

- As a government entity, the District is entitled to the benefits of statutory and common law franchise rights, in which a utility may be compelled to move facilities for projects that are deemed to be in the public interest.

- The District holds easement rights superior to those of PG&E and therefore can require a secondary easement holder to yield its use.

The District also asks that it be awarded interest on the disputed payments, as well as attorneys' fees and costs.

4. Position of PG&E

PG&E's witnesses testified that when they were asked to relocate the utility's facilities at Bishop Tract, they first determined that the District did not have a franchise agreement with PG&E. Franchise agreements are contracts entered into between PG&E and a city or county granting the utility the right to install facilities on roads within the limits of the city or county jurisdiction. In exchange for this, PG&E agrees to relocate the lines without charge should the city or county deem such relocation necessary for road widening or other improvement projects.

Steven W. Huff, the utility's Stockton manager for distribution construction, testified that when he determined that the District did not have a franchise agreement with PG&E, he turned to the utility's tariffs and tariff application guide. He advised the District that the work would be done pursuant to Tariff Rule 16G2, which provides that relocation for the convenience of the applicant is performed by PG&E at the expense of the applicant.

Huff testified that he confirmed his decision with PG&E's land department and legal department. He said that his decision also was influenced by his knowledge that the A.G. Spanos Construction Company was represented on the District's Board of Trustees and was planning to develop a residential housing project on the property once it was removed from the 100-year flood plain. Huff said that he reviewed an Environmental Impact Report confirming plans for the housing project.

Bruce Hardy, a senior land rights agent for PG&E, testified that company records show that the utility proposed plans for a power line along the western boundary of Bishop Tract in 1914, and that construction had taken place by 1918. He said that PG&E through the 1950s extended its lines to serve Bishop Tract customers, placing its service poles next to the levees and outside owners' fields to minimize interference with the agricultural uses of the land. Hardy testified that PG&E was granted easement grants

from underlying property owners for extension of its lines and equipment in 1933, 1947 and in the early 1950s.

Richard L. Volpe, a geotechnical engineer and a consultant to PG&E, testified that the District could have improved its levees under a state matching fund program for about $60,000, and that this would have reduced the threat of flooding for use of the land for agriculture. Instead, he said, the District chose to spend $7 million to meet FEMA requirements to remove the land from the flood plain and make it available, under city and county planning department standards, for housing and commercial development.

Based on its testimony and exhibits, PG&E takes the position that:

- The $7 million expansion of the Bishop Tract levees was done primarily to benefit a few landowners by making their property available for housing and commercial development in the future, and those owners should bear the cost of relocating PG&E facilities.

- PG&E's Tariff Rule 16G2 requires the District to bear the cost of line relocation in the absence of a franchise agreement and where the work is performed for the convenience of the District.

- The District does not have superior property rights under which it can require PG&E to relocate facilities at PG&E's expense.

5. Developments Since Submission

On January 19, 2001, the District and PG&E were asked to respond to the following questions:

1. Since submission on May 26, 1995, have there been any material facts (i.e., construction activities, changes in use of the property, changes in status of parties) that should be before the Commission as it prepares to issue its decision?

2. If the answer to Question 1 is yes, can the additional facts be received through stipulation or otherwise?

3. If the answer to Question 1 is yes, are there material issues as to the facts that require one or more additional hearing days?

4. Since submission on May 26, 1995, have there been any changes in law, tariffs, or other governing authority, that may affect the outcome of this proceeding?

5. Since submission on May 26, 1995, have there been any decisions by courts, agencies or other entities (other than the decision in *City of Livermore v. Pacific Gas and Electric Company* [citation omitted]) that should be before the Commission as it prepares to issue its decision?

6. Have there been any developments, or are any developments contemplated, in the parties' efforts to settle this case?

In their responses, both parties agreed that there were no material issues of fact that require additional hearing. They also agreed that there were no developments in law, other than the *Livermore* case, that they believe should be brought to the attention of the Commission.

While the parties have not stipulated to additional facts, the sworn declarations they submitted as to changes at Bishop Tract since 1995 do not differ appreciably.

At the time of hearing, Bishop Tract had five principal landowners, identified as follows: A&M Farms, 832 acres; A.G. Spanos (north property), 340 acres; Hall property,

674 acres; Granucci property, 690 acres; and A. G. Spanos (south property), 579 acres. (Exhibit 1, Attachment 7.)

According to PG&E, county records show that the Spanos Family Partnership and the Spanos Corporation have acquired the 690-acre Granucci property, bringing total Spanos ownership to about 1,600 acres. Other smaller parcels also have changed hands. PG&E states that the City of Stockton in 1999 received a tentative map of a proposed Spanos Park West development for 682 residential lots and locations for schools, parks and a marina. PG&E states that plans for a golf course and equestrian center on the A&M Farms acreage have not gone forward, but that A. G. Spanos Construction has submitted plans to the San Joaquin Planning Commission for a recreational facility that would include an 18-hole golf course.

The District submitted declarations by its witnesses stating that development to date within Bishop Tract is for the most part in the formative stage, and that primary use of the properties continues to be farming. It acknowledges that 340 acres of Spanos property have been developed into a public golf course and other parts of the property are in the rough grading stage for residential and commercial development. The recently acquired Granucci property continues to be used for agricultural purposes, with no current plans for development. The District states that this slow pace of development supports its contention that the levee improvements were undertaken to protect against the calamity and expense of flood, rather than for private benefit of the landowners.

PG&E states that it has made a non-material change to Tariff Rule 16G2, which provided that when relocation of a PG&E service was "for the convenience of the applicant or customer, such relocation will be performed by PG&E at the expense of the applicant or customer." Rule 16 was modified effective July 1, 1998. The provisions regarding relocations for applicant convenience formerly located at 16G2 have been renumbered at 16F2, and now provide that relocation of PG&E service facilities can be done by PG&E, or by the applicant with PG&E approval, but always at the applicant's

expense. (While the tariff rule is now 16F2, we will continue to refer to it in this decision as 16G2, which was the effective rule at all relevant times in this matter.)

The parties agree that there have been no further efforts to settle this case since 1995.

6. Discussion

6.1 Franchise Rights

The Legislature has authorized cities and counties to enter into franchise agreements with utilities pursuant to the Franchise Act of 1937, codified at Sections 6201 through 6302 of the Public Utilities Code. Relocation of utility facilities is governed by Section 6297, which states:

> "The grantee [of a franchise] shall remove or relocate without expense to the municipality any facilities installed, used, and maintained under the franchise if and when made necessary by any lawful change of grade, alignment, or width of any public street, way, alley, or place, including the construction of any subway or viaduct, by the municipality."

By definition, a "municipality" is a city or county. (Pub. Util. Code § 6201.5.) Special districts, like reclamation districts, are not "municipalities," that is, they are not general purpose governments and can only exercise the powers granted by statute.

Based on the requirements of the Public Utilities Code, PG&E has filed tariffs, approved by this Commission, governing the relocation of its facilities upon proper exercise of franchise authority by a city or county. Where no franchise exists, PG&E's Tariff Rule 16G2 governs, providing in pertinent part:

> "[W]here relocation of a service, including PG&E owned transformers, is for the convenience of the applicant or the customer, such relocation will be performed by PG&E at the expense of the applicant or the customer."

It is undisputed that the District does not have a franchise agreement with PG&E, nor does it have the authority to require the removal of PG&E facilities through the franchise provisions of state law.

Nevertheless, the District argues that it is a public agency and that its expansion of the levees was a proper exercise of its police power in the public interest. Accordingly, it maintains, PG&E's facilities were subject to an implied obligation of relocation at the utility's expense to make way for expansion of public works. The District relies primarily on the case of *City of Livermore v. Pacific Gas and Electric Company* (1997) 51 Cal.App. 4th, in which the Court of Appeal held that a public utility was bound to relocate its facilities when necessary to make way for a proper governmental use.

In, *Livermore*, the City of Livermore had a franchise agreement with PG&E. The city required developers to widen a street from two to six lanes as part of the developers' plans for a shopping center and a residential subdivision. At the developers' request, the city created an assessment district to fund the street widening project. PG&E refused to pay for the relocation of its facilities, arguing that the assessment district should pay because the developers had created the need for widening the streets. The Court of Appeal disagreed, finding that a city's decision to create an assessment district

did not alter a utility's common law and franchise obligation to move its facilities at its own cost to make way for a proper governmental use.

Here, however, PG&E's facilities were not installed under a franchise agreement with a city, as in *Livermore*. Moreover, neither city nor county franchises agreements with PG&E apply to the installations within Bishop Tract, nor did the District at any time seek to have PG&E facilities relocated pursuant to the franchise authority of the city or county.

PG&E urges that we be guided by the case of *PG&E v. Dame Construction Company, Inc.* (1987) 191 Cal.App.3d 233. There, the county board of supervisors approved a developer's plan for a subdivision on the condition that the developer widen a portion of the street adjacent to the site, necessitating the relocation of PG&E facilities. PG&E prevailed in its suit to recover the costs of relocation. The Court of Appeal held that where a private party develops a parcel of land and thereby creates a need for public improvement requiring relocation of utility equipment, the private party must bear the relocation costs.

The *Dame* case, however, centered on the actions of a private developer, rather than a legally constituted government agency like the District. PG&E argues that District Board members who own significant acreage within Bishop Tract are using District authority to accomplish personal gain. We reject that argument. The Water Code contemplates that a reclamation district board will be comprised of landowners (or their legal representatives) within the district. (Water Code § 50700.) The fact that the value of their holdings is increased by a project that restores Bishop Tract to a position outside the 100-year flood plain does not lessen the public interest served by such a project.

It follows that neither *Livermore* nor *Dame* is dispositive on the facts of this case.

We do, however, find instructive another line of cases cited by the Court in *Dame*.[2] These are the so-called "benefit" cases that deal with the question of which of two public entities should assume responsibility for relocation of utility facilities. These cases are exemplified by *County of Contra Costa v. Central Contra Costa Sanitary Dist.* (1960) 182 Cal.App.2d 176. There, a sewer owned by a sanitary district was relocated by the county at the flood control district's request. The county, acting on behalf of the flood control district, sued the sanitary district for the cost of moving the sewer line. The appellate court affirmed the trial court's denial of reimbursement, stating "[t]he cost of relocation should not be borne by the taxpayers of the County generally nor by the taxpayers of the Sanitary District, but rather by the people resident within the Flood Control zone benefited by the improvement." (182 Cal.App.2d at 179-180.) In other words, where a franchise is not determinative, a court may look to the primary beneficiary to absorb the costs of a public works improvement.

One commentator has noted that this decision provides "the basis for an equitable solution" to the utility relocation dilemma. (Van Alstyne, *Governmental Tort Liability: A Public Policy Prospectus* (1963) 10 UCLA L.Rev. 463,

[2] *See, e.g., County of Contra Costa v. Central Contra Costa Sanitary Dist.* (1960) 182 Cal.App.2d 176; *Northeast Sacramento etc. Dist. v. Northridge Park etc. Dist.* (1966) 247 Cal.App.2d 317; *City of Los Angeles v. Metropolitan Water Dist.* (1981) 115 Cal.App.3d 169.

502.) Van Alstyne explains that in the Contra Costa County case, "[n]o relocation expense would have been incurred at all had it not been for the new improvement being constructed by the Flood Control District for the benefit of its residents. The most equitable way to distribute the loss is thus to require the Flood Control District to assume it, thereby passing it on to its taxpayers who are the beneficiaries of the loss-producing activity." (*Ibid.*)

While the District is the only government entity involved in this case, we do have competing claims as to whether taxpayers within the District or ratepayers of PG&E should bear the cost of relocation of utility facilities.

This Commission has applied the benefit test to a case involving a utility's relocation costs. In *Sunrise Oasis Estates v. Southern California Gas Co.* (1978) Decision (D.) 88398, 83 CPUC 325,[3] a city required a developer, as a condition of approval of his planned subdivision, to pave an adjacent public street. Grading by the developer damaged the utility's underground natural gas line. The utility lowered the gas line to remove the hazard, repaired it, and sought reimbursement for the cost of relocation. The Commission ordered the developer to pay for the relocation because the work was done to enable the developer to meet conditions imposed by the city. The Commission distinguished the case from one in which the city itself, under its franchise agreement, performed the roadwork.

Applying the benefit analysis to the facts of this case, we conclude that the owners of the property within Bishop Tract are the primary beneficiaries of the levee expansion, since the work increases the value of their land and enables

[3] Digest only. For the text of D.88398, see 1978 Cal. PUC Lexis 597.

them to consider uses other than farming. As Pub. Util. Code § 6297 makes clear, the purpose of requiring utilities to pay costs of relocation under a franchise agreement is to insulate the government and, consequently, taxpayers, from such expenses. Courts have emphasized that this rule cannot easily be avoided by judicial construction because "[i]t is for the Legislature to decide whether [relocation] expenses should be shifted to the taxpayers." (*Pacific Tel. & Tel. Co v. Redevelopment Agency of Redlands* (1977) 75 Cal.App.3d 957, 968.)

While not dispositive, the benefit line of cases points up the rationale underlying Pub. Util. Code § 6297 and PG&E's tariff rule governing relocation. In the instant case, reasoning analogous to that of *Pacific Tel. & Tel.* favors imposing relocation costs on District landowners (the primary beneficiaries), rather than imposing those costs on PG&E ratepayers, who are comparable to taxpayers.

6.2 Police Power

The District notes that under Water Code § 50900, "[a] district may do all things necessary or convenient for accomplishing the purposes for which it was formed." It follows, according to the District, that it exercises the police power of the state and its levees are public property. Therefore, PG&E's facilities were subject to an implied obligation of relocation at PG&E expense.

We reject the District's argument. To accept it would mean that a reclamation district through exercise of its police power would have the franchise rights that the Legislature has bestowed only upon cities and counties. Had the Legislature intended to grant such authority to reclamation districts, it would have done so directly, rather than by implication through the provisions of the Water Code.

6.3 Easement Rights

Similarly, we are not persuaded by the District's arguments that its easement rights are superior in time to those of PG&E and that, therefore, as a superior easement holder, it may eject or require relocation of facilities owned by a subsequent holder of an easement at the expense of the subsequent holder.

The more credible evidence at hearing, based on contemporaneous corporate records, shows that PG&E had installed electric lines at Bishop Tract prior to the formation of the District in 1919, and that PG&E obtained valid easements for its later installations. The utility lines at issue have been in place for between 40 and 70 years without objection by the District until the filing of this complaint. The easement granted to the District in 1919 by then then-owner of the Bishop Tract was a non-exclusive one. Absent a showing that subsequent easements to PG&E interfered unreasonably with the District's rights, the subsequent easements for public use purposes are as valid as the first. (*Pasadena v. California-Michigan Land & Water Co.* (1941) 17 Cal.2d 576.)

Even if the District could establish a superior easement for part of the electric installations, it has lost its right of ejectment with the passage of time. Where an entity with eminent domain authority (like PG&E) enters on the property of another and establishes a public use of its utility line, the property owner is not entitled to ejectment or quiet title or injunctive relief. Rather, the property owner's remedy is limited to damages in the nature of inverse condemnation. (*Kachadoorian v. Calwa County Water District* (1979) 96 Cal.App.3d 741, 747.) Even that remedy must be brought within three years after constructive notice of the public use installation. (CCP § 338(j).)

While the levees certainly were in place long before electric lines were installed, the evidence shows that the levees were privately owned by California

Delta Farms until 1919, and were not dedicated to the public use until at least 1919. Indeed, there is nothing in the record to suggest that the levees were intended to be public facilities for the protection and use of the public. Thus, the District's assertion that construction of the levees created an implied "public use" easement superior to the easements obtained by the utility must fail.

6.4 Conclusion

What we are required to decide in this complaint case, brought pursuant to Pub. Util. Code § 1702, is whether the District has met its burden of proving by a preponderance of the evidence that PG&E has violated "any provision of law or of any order or rule" of the Commission. The District has sought to show such violation through a claim that it is entitled to rights bestowed on California cities and counties by the Franchise Act of 1937. The Legislature has spoken to that question. Only cities and counties may grant public utility franchises in California. (Pub. Util. Code §§ 6202, 6201.5.) Reclamation districts have no such power. Similarly, the District has failed to show that its easement rights somehow create a franchise-like power to require PG&E to relocate its facilities at ratepayer expense rather than at the expense of the District landowners.

The record shows that PG&E properly relocated its facilities pursuant to what was then its Tariff Rule 16G2 at the expense of the District landowners, who were the primary beneficiaries of the project that necessitated the relocation.

Accordingly, we find for PG&E. The District's complaint is denied.

7. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No comments were received.

Findings of Fact

1. Bishop Tract originally was swamp and overflow land granted by the state to the original owners for the purpose of reclaiming these lands.

2. Construction of levees around Bishop Tract began in the mid-1800s and was completed around the turn of the century.

3. The Reclamation District was formed in 1919, acquiring a 100-foot easement at the levees at a cost of $116,750.

4. Reclamation districts in California are formed pursuant to Sections 50000 through 53901 of the Water Code.

5. The levee improvements relevant to this proceeding occurred in 1991 and 1992 at a cost of $7 million.

6. The levee improvements were intended to increase the width and height of the levees and improve drainage and irrigation systems to protect the land from flooding.

7. The work also was intended to restore Bishop Tract properties to a position outside the 100-year flood plain, a status the properties had enjoyed until 1988 when new FEMA regulations were put in place.

8. City and county planning departments permit agricultural use of lands within the 100-year flood plain, but they do not permit housing or commercial uses for such properties.

9. In 1993, Bishop Tract was removed from the 100-year flood plain as a result of the levee improvements.

10. In 1992, there were five major property divisions within the District's boundaries, ranging in size from 832 acres to 340 acres.

11. Relocation of PG&E utility poles and equipment was required as part of the levee work.

12. PG&E refused to move its facilities until the District made payment for the cost of relocation.

13. Under protest, the District paid PG&E $353.906.32 for the relocation work.

14. For various reasons, including the unavailability of the assigned ALJ for an extended period of time, the case was not immediately decided.

15. Early this year, the case was reopened for the limited purpose of learning from the parties whether any material issues of fact or law had arisen since 1995.

16. The parties agree that no developments since 1995 require further hearing.

17. Since 1995, most use of the Bishop Tract lands continues to be agricultural in nature, although a golf course has been constructed on one of the parcels of land, and plans for residential and commercial development of another parcel have been presented to the City of Stockton.

Conclusions of Law

1. Only municipalities, i.e., cities and counties, are authorized by the Legislature to enter into franchise agreements with utilities.

2. Franchise agreements are contracts that, among other things, allow the franchised utility to install facilities on roads within the city or county limits.

3. In exchange for the right to install facilities, a utility under a franchise agreement agrees to relocate its facilities without charge should the city or county deem such relocation necessary for road widening or other public works.

4. Applying a benefit analysis to the facts of this case, owners of the property within Bishop Tract are the primary beneficiaries of the levee expansion, since the work increases the value of their land and enables them to consider uses other than farming.

5. The District does not have a franchise agreement with PG&E, nor does it have authority to require removal of PG&E facilities through the franchise provisions of state law.

6. Relocation of PG&E facilities for the convenience of an applicant is governed by PG&E Tariff Rule 16G2 (now 16F2), which requires that such relocation be at the expense of the applicant.

7. The reclamation district provisions of the Water Code do not give the District authority under its police power to require PG&E to relocate facilities at the expense of the utility's ratepayers.

8. The District has not shown that it has superior easement rights in Bishop Tract that permitted it to require relocation of PG&E facilities at the utility's cost.

9. The utility lines at issue have been in place for between 40 and 70 years without objection by the District until the bringing of this complaint.

10. The District has not met its burden of proving by a preponderance of the evidence that PG&E violated any provision of law or of any order or rule of the Commission, as required by Pub. Util. Code § 1702.

11. The complaint should be denied, effective immediately, in order to resolve this old dispute without further delay.

O R D E R

IT IS ORDERED that:

1. The complaint of Reclamation District No. 2042 against Pacific Gas and Electric Company is denied.
2. Case 93-06-039 is closed.

This order is effective today.

Dated July 12, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners