

ORIGINAL

Decision No. 63564

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Stanley E. Doran

Complainant

vs.

Southern California Edison Company
Defendant

Case No. 7247

Stanley E. Doran, in propria persona, complainant.
Woodbury, Sturges & Tinker, by H. Clinton Tinker,
for Southern California Edison Company,
defendant.

Henry A. Dannenbrink, Jr., for the Commission staff.

O P I N I O N

The above-entitled complaint of Stanley E. Doran, an individual, vs. Southern California Edison Company was filed on December 7, 1961, and was answered by the defendant on January 2, 1962.

A public hearing was held before Examiner Stewart C. Warner on January 24, 1962, at Los Angeles, the matter was submitted on said date and is now ready for decision.

Allegations

The complainant alleged that on February 25, 1960, the defendant unlawfully encroached on complainant's property by overhanging his land with an aerial guy wire and a supply service drop to the home of his contiguous neighbor; that on February 26 and 28, 1960, the complainant orally and by letter demanded the removal by the

defendant of said encroachment; that in March, 1960, complainant granted to the defendant an easement over a portion of his property; that the complainant understood that by granting said easement the defendant would place two poles on his property, one (the line pole) on the steep bank near Glenridge Avenue, which would not reach a greater height than would a 40-foot pole placed at normal depth on Glenridge Avenue, and that the second pole (the service pole) would be of no greater height than was necessary to comply with the provisions of General Order No. 95 concerning the minimum ground clearance for a supply service drop to the home of the complainant's neighbor; that the complainant sought to have the oral representations reduced to writing and made a part of the easement, but that the complainant was advised by the defendant that such reduction to writing was unnecessary; that contrary to said understandings both the said poles were placed on complainant's property with their height exceeding the minimum limitations of General Order No. 95; that although the complainant has so requested, the defendant has refused to lower said poles; that the pole placed in the steep bank just off of Glenridge Avenue is not set at sufficient depth in firm soil and constitutes a safety hazard; and, finally, that although the initial encroachment was removed, the present construction continues to encroach upon a portion of the complainant's property outside the easement granted by him to the defendant.

Relief Prayed For

The complainant seeks an order of the Commission requiring the defendant to remove the presently existing encroachment; to

lower the height of the poles in compliance with the agreement whereby complainant was induced to execute the easement; to place the pole now violating Rule 31.1 of General Order No. 95 at a safe depth; and, in the alternative, requiring the defendant to reconvey to the complainant the easement fraudulently obtained from the complainant, and to remove the poles, wires and necessary appurtenances of the defendant from the complainant's property.

Answer

The defendant denied all of the allegations of the complaint and alleged that, although the complainant requested the incorporation of certain restrictions including pole height in the proposed easement, the defendant advised the complainant that any restrictions whatsoever would be unacceptable to the defendant, but that subsequent thereto the said complainant did execute and deliver the easement.

Motion of Counsel for the Defendant

Counsel for the defendant moved for the dismissal of the complaint on the grounds that the Commission lacked jurisdiction to grant the relief prayed for, and on the further grounds that the relief sought could not be granted without violating the minimum provisions of General Order No. 95.

Evidence

Exhibit No. 1 is an architect's blueprint of the residence of complainant's neighbor on the south on which the supply service drop was installed by the defendant.

Exhibit No. 2 is a sketch together with seven photographs submitted by the complainant showing the complainant's property

line, the location of retaining walls, and the location of the line pole and service pole, and the location of the service wires across the complainant's property to serve his neighbor's house.

Exhibit No. 3 is a sketch which shows the location of the line pole, the six-foot easement granted by the complainant, and the area of alleged continued encroachment; the latter being shown in red crayon.

Exhibit No. 4 is an unexecuted grant of easement for the southeasterly 6 feet of Lot 18, in Block 30, of Tract No. 4948, in the City of Alhambra.

Exhibit No. 5 is a copy of the executed grant of easement for the southeasterly 6 feet of the easterly 44 feet of Lot 18, in Block 30, of Tract No. 4948.

Exhibit No. 6 is a blown-up city-plat map showing the original location of the line pole on the east side of Glenridge Avenue; the proposed relocation of said line pole 35 feet north on the east side of Glenridge Avenue; and the present location of the line pole and service pole on complainant's property.

Exhibit No. 7 is a vertical cross section of the setting of the defendant's line pole.

Exhibit No. 8 is a letter dated October 24, 1960, from defendant's Alhambra District Manager to the complainant stating that the defendant was willing to lower the wires on the service line located partly on the complainant's property, and also the poles, by approximately two feet, and to move the wires approximately three feet horizontally so that they would overhang the property of the complainant's neighbor by about that amount, provided the complainant

paid the cost of the reconstruction, and the complainant's neighbor gave written approval in advance. The estimated cost of moving the wires was less than \$100, and the estimated cost of lowering the poles was between \$500 and \$600. The evidence shows that, if the wires were moved three feet horizontally and a pole or the poles relocated, no infraction of General Order No. 95 would exist. The record further shows, however, that no infraction of General Order No. 95 now exists.

Findings and Conclusions

After a careful review of the record the following findings and conclusions are made:

1. That, since no infractions of General Order No. 95 exist, the Commission will not order the defendant to move the service lines or lower the line pole or service pole.
2. That questions relating to whether the easement obtained by the defendant from the complainant was fraudulently obtained, or whether the defendant is encroaching on the complainant's property, are not within the jurisdiction of the Commission.
3. That the complaint should be dismissed.

O R D E R

Complaint as above entitled having been filed, a public hearing having been held, the matter having been submitted and now being ready for decision based on the findings and conclusions hereinabove set forth,

IT IS HEREBY ORDERED that the complaint of Stanley E. Doran, an individual, vs. Southern California Edison Company, a corporation, be and it is dismissed.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 17th day of APRIL, 1962.

John E. McKeage President
E. Lynn Fox
George E. Traver
Frederick B. Holbrook Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.