

**ORIGINAL**

Decision No. 70110

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

J. R. CROW,

Complainant,

vs

PACIFIC GAS AND ELECTRIC  
COMPANY, A CORPORATION,

Defendant.

Case No. 7977

Charles S. Hubbard, for complainant.  
F. T. Searls, John C. Morrissey and Ross Workman,  
for defendant.  
W. E. Waldrop, for the Commission staff.

OPINION AND ORDER

Public hearing was held in the above-entitled matter on January 6, 1965 before Examiner Porter in Sacramento, at which time the matter was submitted subject to the filing of briefs. Briefs having been filed, the matter is ready for decision.

In 1956 the complainant or his agent made application for electric service at the complainant's property in Folsom, California. In order to provide that service, defendant, PG&E, placed a pole and guy wire on complainant's property with his knowledge and without objection from him. The pole was originally used to serve one of complainant's duplexes. Later in 1956 PG&E added another wire from the pole to provide service to a second of complainant's duplexes. Also, in 1956 service was supplied from the pole to a neighbor's building. In 1958 a fourth building, another of complainant's duplexes, was served from the pole.

Four times between 1957 and 1962 the complainant asked the defendant to relocate the pole. In 1963 PG&E told the complainant it would move the pole at no expense to him if he would grant an easement to permit PG&E to maintain it in a new location on his property. The complainant refused this offer. In September 1964 PG&E removed the service wire to the neighbor's building from the pole. This left the pole in its original condition, serving only the complainant. The defendant's offer to relocate the pole was reiterated.

The complaint herein seeks (1) removal of the pole from complainant's property, (2) monetary damages, and (3) such other and further relief as the Commission may find just and proper. The defendant's answer asks dismissal of that portion of the complaint seeking monetary damages on the ground that the Commission has no jurisdiction to give such damages.

Defendant stipulated it was willing to relocate the pole if complainant would grant a right of way to maintain it on his property. Complainant indicated he would be willing to grant such a right of way only if paid therefor. Defendant stated its unwillingness to pay a customer for a right of way used only to serve him and cited its Electric Rule No. 16(D) which states:

"No rent or other charge whatsoever shall be made by the customer against the Company for placing or maintaining said transformers, meters, service wires, appliances, fixtures, etc., upon the customers premises."

At the hearing defendant moved to strike that portion of the complaint seeking a monetary award on the ground that the Commission lacks jurisdiction to give damage awards. The motion was taken under advisement.

In addition to removal of the pole, complainant seeks compensation "for his loss and use of land for development during the period of August, 1956 to the date the pole is removed". As noted in Rodgers v. Northwestern Pacific Railroad Co., 18 C.R.C. 618, 619, the Commission "has no jurisdiction over the enforcement of the law as regards trespassing or the entering upon and damaging the property of the complainant". Whether or not a utility has unlawfully encroached on a complainant's property by overhanging his land with an aerial guy wire and a supply service drop to the home of a contiguous neighbor may not be determined by the Commission. (Doran v. So. Calif. Edison Co., Decision No. 63564, Case No. 7247.) The Commission may not decide all controversies in which a public utility may be involved. (Papllham v. So. Calif. Gas Co., Decision No. 62477, Case No. 7136.)

As heretofore stated, the service wire to the neighbor's building was removed during the pendency of this proceeding. The pole now serves only the complainant.

The Commission takes official notice of the defendant's Electric Rule No. 16 on file with this Commission.

Based on this tariff filing, which is binding both on the company and the customer, we find that defendant should not be required to pay complainant for a right of way used only to serve him.

The Commission concludes that the complaint should be dismissed.

IT IS ORDERED that Case No. 7977 is hereby dismissed.

Dated at San Francisco, California, this 21st  
day of DECEMBER, 1965.

Fredrick B. Holbert  
President  
Robert E. Ditchell  
Morgan

William W. Bennett  
Commissioners

I concur in the order.  
George A. Hoover