

Decision 89 12 033 DEC 1 8 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ronald Zinszer, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 Southern California Edison )  
 Company (U-338-E), Robert E. )  
 Brandt, and Does 1 through 5, )  
 inclusive, )  
 )  
 Defendants. )

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ORIGINAL

Case 89-04-039  
(Filed April 17, 1989)

Nicholas G. Spirtos, Attorney at Law,  
 for Ronald Zinszer, complainant.  
Richard K. Durant, Carol B. Henningson,  
 and James M. Lehrer, Attorneys at  
 Law, for Southern California Edison  
 Company, defendant.

O P I N I O N

Summary of Complaint

Ronald Zinszer (complainant) filed this complaint against Southern California Edison Company, Robert E. Brandt, and Does 1 through 5 (defendants) on April 17, 1989. This complaint pertains to the positioning of a power pole (pole).

Complainant, a licensed contractor, alleges that his electrician wired a house based on an agreement between complainant and defendants that the pole would be moved to a specific location. However, subsequent to the agreement, defendants informed complainant that the pole would not be moved.

Complainant requests that defendants move the pole to the location previously agreed upon because the pole and guide wire, as presently positioned, precludes complainant from completing the

construction of his house. Complainant also seeks authority to recover any damages which may be proved at a hearing.

Answer to Complaint

Defendants answered the complaint on May 22, 1989. Defendants deny that a pole, set in 1949, located in front of complainant's residence precludes complainant from completing construction of his house and denies that the guide wire is illegally positioned.

Defendants confirmed that they did agree to move the pole. However, the agreement was contingent upon complainant obtaining an easement from his neighbor and upon complainant paying the appropriate relocation fee. Absent an easement, defendants offered complainant three options, each of which requires complainant to pay relocation cost. These options were to underground the lines, to move the line north by adding more poles, or to shorten the down guide wire lead from the pole without relocating the pole.

Hearing

An evidentiary hearing was held in Los Angeles before Administrative Law Judge (ALJ) Galvin on August 14, 1989. This proceeding was submitted on September 25, 1989 upon filing of the transcript in the Commission's Formal File.

Patrick Gallagher (Gallagher), and Harvey Zinszer testified on behalf of complainant. Complainant also testified for himself. Robert Brandt (Brandt), a service planner, and Cecil Hensley, a planning manager, testified for defendant.

Discussion

Although the complaint names Robert Brandt and Does 1 through 5 as defendants, these parties are not utilities subject to our jurisdiction. Accordingly, complainant stipulated to the dismissal of Robert Brandt and Does 1 through 5 as defendants. This leaves Southern California Edison Company as the sole defendant in this complaint.

Complainant requests specific performance and seeks recovery of damages. These alleged damages consist of attorney fees, costs incurred because potential buyers would not purchase the house, construction loan costs, and costs associated with the house redesign. Complainant did not request a specific monetary amount of damages or cite any authority which enables us to award damages in this proceeding.

The District Court of Appeal<sup>1</sup> previously held that the Superior Court, under Public Utilities Code § 2106 has jurisdiction over actions for damages against public utilities, and that we have no authority to award damages. Therefore, we make no finding on complainant's damage request.

Complainant contacted defendant in April 1986 to move a power pole so that complainant could build a house in the hilly Topanga Canyon area of Southern California. Complainant acknowledged that defendant told him that certain requirements, which he could not remember, would need to be followed and that complainant would be required to pay the cost of relocating the pole.

Brandt requested complainant to provide plot plans to identify where the pole was located in relationship to the property lines and surveys to determine how the relocation could take place. A portion of this material was provided in June 1986. However, the survey map had discrepancies indicating that the pole plots were incorrect.

On December 30, 1988, after obtaining the requisite building permits, complainant met defendant at his building site to discuss where the pole would be relocated. The house was already framed and ready for rough electrical work.

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<sup>1</sup> Vila v. Tahoe Southside Water Utility (1965) 233 Cal App 2d 469.

At the December meeting the parties agreed to move the pole approximately 5 feet off the property line towards the front or north side of the house. Parties also agreed that the guide wire would run along an easement between complainant's property and his neighbor's property.

Brandt testified that he told complainant at the December meeting that the position of the electrical panel was tentative because of potential easement problems and because it did not yet have a permit from the county to install a pole on county property. Complainant does not recall Brandt's comments.

The existing pole was determined not to be serviceable because complainant's house would be built close to the power lines. State laws require a house to be a certain distance below high voltage lines and a certain distance away from low power lines.

At the December meeting, complainant gave defendant a \$700 nonrefundable deposit for engineering work associated with moving the pole. Although complainant paid a deposit, he did not agree that he should have to pay for the relocation costs. It was paid only to speed up the pole relocation. Complainant intended to dispute the payment issue after the pole was moved.

Gallagher, complainant's electrician, was at the building site during the December meeting and participated in part of complainant's and defendant's conversation regarding the pole relocation. Based on this discussion, Gallagher located the electrical junction box on the right side of the house, near the pole relocation and completed his electrical work. Although defendant subsequently staked and flagged the new pole location, Gallagher was not aware of the markers.

Subsequently, by a January 26, 1989 letter, defendant notified complainant that the pole could not be moved to the proposed location without an easement from complainant's neighbor. The easement was needed because the location of the pole would

result in electrical lines crossing the neighbor's property. The crossing of power lines over a neighbor's property was confirmed by complainant at the hearing.

Although the letter acknowledged that complainant previously indicated that he did not think his neighbor would grant an easement, defendant offered to prepare the easement papers and to mail the papers to the neighbor. Alternatively, defendant proposed several options which, with one exception, would be more costly to complainant. The least expensive option was to leave the pole at its original site and to shorten the down guide wire. Complainant considered none of these alternatives.

Complainant's house has been substantially completed. However, the local building inspector has told complainant that the building will not pass final inspection until the guide wire is moved to conform with current building and safety requirements. Currently, the guide wire, located approximately 8 feet from the house entrance, is a safety hazard and interferes with access to and from the house as shown in Appendix A. The entrance in relationship to the house is shown in Appendix B.

Although complainant did not recall the requirements that needed to be followed before the pole could be moved, he was aware that requirements existed before he started construction. It was not until after the foundation was poured and the house was framed that complainant sought a specific place to relocate defendant's pole. The issue in this complaint is whether there was an agreement that the pole could be moved without any contingencies.

The burden of proof in a complaint case is with the complainant. In this case complainant presented no evidence to show that defendant violated any provision of law or an order or rule of the Commission. On the contrary, defendant's Rule 15(a) precludes defendant from constructing, owning, operating, or maintaining power lines along public lands or private property without the appropriate rights of way.

Complainant was aware that the lines would cross private property and as a licensed contractor should have known that an easement is necessary to cross private property. Defendant took all reasonable measures to assist complainant. Not only did defendant offer to prepare the easement papers and mail them to the neighbor, defendant suggested several alternative locations for the pole, all of which were dismissed by complainant without consideration. We cannot order defendant to place power lines over private property without the owner of the private property's permission.

Complainant was also aware, from his first contact with defendant on this matter, that he would be required to pay for the pole relocation. Again, defendant's Rule 15 requires a party requesting a relocation of services to pay the relocation costs, except when it can be determined that such relocation benefits defendant. Although complainant did not believe that he should be required to pay for the pole relocation, he presented no evidence to substantiate his claim that complainant should not be required to pay for the relocation and presented no evidence to show that the relocation benefits defendant. Complainant should be required to pay for any pole relocation at the site.

Complainant has not carried his burden of proof in this complaint case. This complaint should be dismissed.

Findings of Fact

1. Complainant is a licensed contractor.
2. Complainant wants a power pole moved to a location previously agreed upon between complainant and defendants.
3. Complainant seeks recovery of damages.
4. The pole in question was set in place in 1949.
5. This case was submitted on September 25, 1989.
6. Complainant stipulated to the dismissal of Does 1 through 5 as defendants to the complaint.

7. In connection with the movement of the pole, complainant was aware that certain requirements were applicable, including the payment of the relocation cost.

8. Complainant's survey map had discrepancies indicating that the pole plots were incorrect.

9. Complainant's house was framed and ready for rough electrical when the parties agreed to relocate the pole at a specific location.

10. Brandt told complainant that the relocation was tentative because of potential easement problems and because it did not have a permit from the county to install a pole on county property.

11. Complainant does not recall Brandt's conversation.

12. Complainant considered none of the service options proposed by defendant.

13. The existing pole is not serviceable because complainant's house would be built close to the power lines.

14. Complainant gave defendant a nonrefundable deposit for engineering work associated with the pole.

15. An easement is needed because the power lines will cross the private property of a neighbor.

16. Complainant was aware that the power lines will cross over a neighbor's property.

17. The burden of proof in a complaint case is with the complainant.

18. Defendant's Rule 15(a) precludes defendant from constructing, owning, operating, or maintaining power lines along public lands or private property without the appropriate right of way.

19. Rule 15 requires a party requesting a relocation of services to pay the relocation cost unless such relocation benefits defendant, and complainant presented no evidence to show that this particular relocation benefits defendant.

Conclusions of Law

1. The Superior Court, and not this Commission, has jurisdiction over actions for damages against public utilities.
2. The complaint should be dismissed with prejudice.

ORDER

IT IS ORDERED that the complaint in Case 89-04-039 is dismissed with prejudice.

This order becomes effective 30 days from today.

Dated DEC 18 1989, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

*Wesley Franklin*

WESLEY FRANKLIN, Acting Executive Director

*df*



**THE NEXT**

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**DOCUMENTS ARE**

**POOR ORIGINALS**

*MICROFILMING SERVICES*

*will not assume responsibility*

*for the image quality*

APPENDIX A

|   |
|---|
| Exhibit 1                                     |
| CPUC Proceeding C.89-04-039                   |
| Sponsor/Witness Z/N/20/COMPLAINANT            |
| Date Ident. 8/14/87 Recd. 8/17/89             |
| Michael J. Galvin<br>Administrative Law Judge |



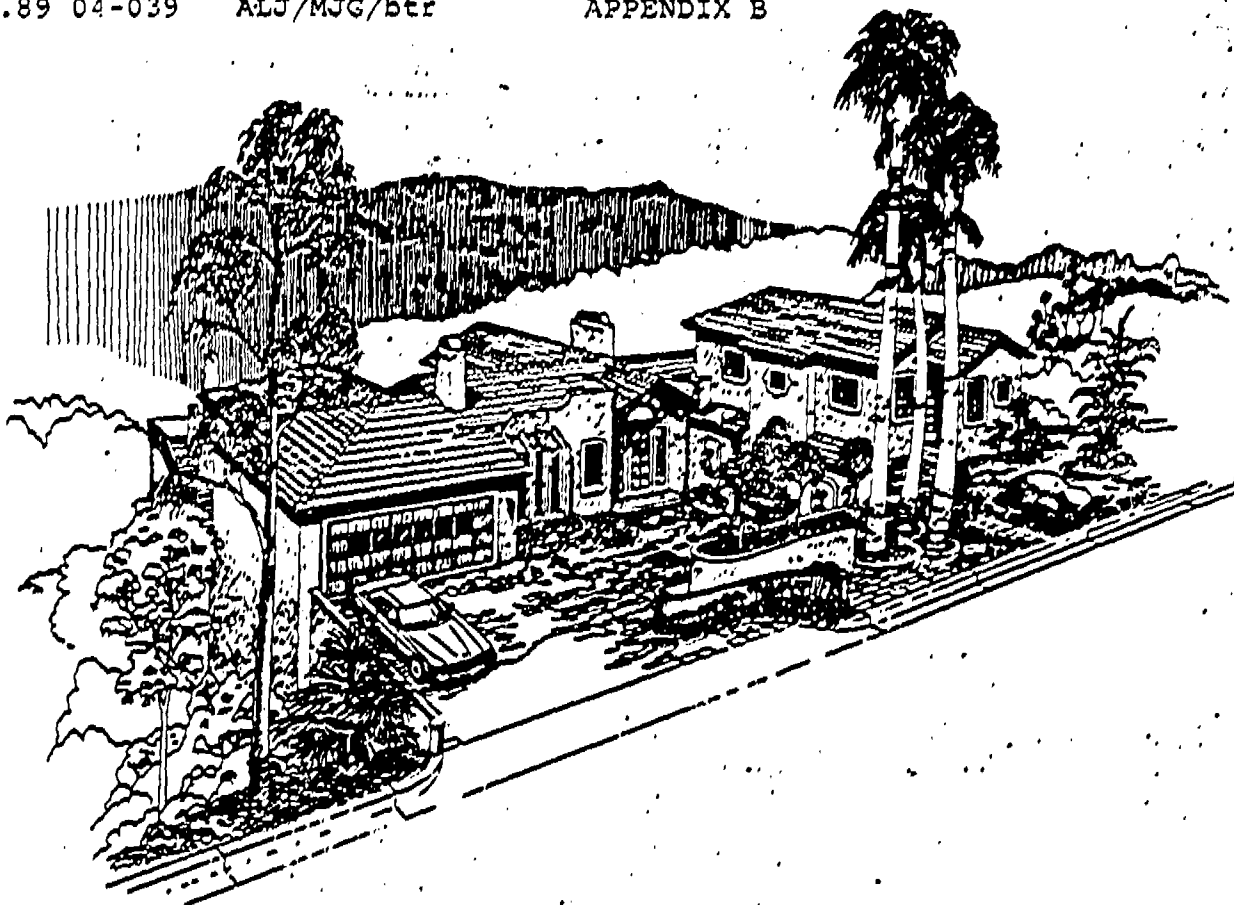
(END OF APPENDIX A)

# 20092 OBSERVATION DRIVE—TOPANGA CANYON

C.89 04-039

ALJ/MJG/btr

APPENDIX B



- Elegant living in a country setting
- Brand new distinctive Mediterranean design
- Approx. 5,200 sq. ft. (engineered for expansion)
- Spacious open plan with stunning vaulted entry
- White washed ceilings in sunny living room
- Attached guest house or maids quarters with private entry
- This fine home... features 5 bedrooms and 4 1/4 baths
- Elegant master suite with fireplace
- Master bath includes a jacuzzi tub, private sauna, walk-in closets and adjoining exercise area
- Formal dining room with built-in buffet constructed of oak and beveled glass
- Wet bar and wine closet for those who entertain often

- Gourmet kitchen with large walk-in pantry, center island and solid oak cabinetry
- Large outside deck with floors throughout
- Complete with satellite dish, intercom system and safe
- Room for stables or pool

**\$849,500**

For complete information,  
please contact.

**ELISABETH CURREY**  
(213) 454-1111/207-2357

This is not intended as a substitute for your property to currently listed with another broker.

*Realtors*



**JON DOUGLAS COMPANY**

15270 Antioch Street • Pacific Palisades, CA 90272

(213) 454-1111

(END OF APPENDIX B)