

FEB 23 1990

Decision 90-02-027 February 23, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROY A. CUNHA,)
)
 Complainant,)
)
 vs.)
)
 PACIFIC GAS AND ELECTRIC)
 COMPANY,)
)
 Defendant.)
)
 (U 39 E))

Case 89-09-036
(Filed September 27, 1989)

OPINION AND ORDER OF DISMISSAL

Statement of Facts

Complainant Roy A. Cunha (Cunha) states that in August of 1988, he purchased two parcels of land from Southern Pacific Transportation Company. The parcels are located in San Joaquin County near Tracy adjacent to Byron Highway, Bethany Road, and Henderson Road.

Cunha asserts that Pacific Gas and Electric Company (PG&E) power lines and poles cross these two parcels. PG&E admits its existing distribution pole line facilities cross the parcels, asserting that these lines originally were installed in franchise positions prior to 1947 and have been in continuous use since that time.

Cunha, stating that the location of these pole lines severely affects the usability and value of his acquired property, and asserting that there are no easements or rights for the pole lines to continue to cross his property, sought to have PG&E remove them at the utility's expense into the Southern Pacific right of way or elsewhere. Unsuccessful, in June of 1989, he sought the assistance of the Commission's Consumer Affairs Branch. When that effort was unfruitful, he filed the present formal complaint with the Commission.

By this complaint Cunha seeks an order from the Commission requiring PG&E to relocate the pole lines at PG&E expense onto the Southern Pacific right of way.

In answer, PG&E avers it has a legal right to keep and maintain the power line and poles where they are, and that the complaint being a dispute over rights in real property not requiring a Commission siting or certification decision, the Commission does not have subject matter jurisdiction over the dispute.

Discussion

Under Public Utilities (PU) Code § 1702, a complaint may be made "setting forth any act or thing done or omitted to be done by any public utility including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission..."

The complaint does not allege a violation of any statute or of any rule or order of the Commission. Nor are there any allegations showing that the Commission has jurisdiction to make the requested order. Questions relating to title to property or rights-of-way involve legal questions to be determined in the courts (City of Vernon v. Southern Pacific RR (1947) 47 CPUC 507).

Findings of Fact

1. The complaint does not allege violation of any statute or of any rule or order of the Commission.
2. The complaint makes no allegations showing that the Commission has jurisdiction.

Conclusions of Law

1. The Commission lacks jurisdiction to make the requested order.
2. The complaint should be dismissed with prejudice.

IT IS ORDERED that Case 89-09-036 filed September 27, 1989 is dismissed with prejudice.

This order becomes effective 30 days from today.

Dated February 23, 1990, 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


NEAL J. SHULMAN, Executive Director

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