

ORIGINALDecision No. 88873 MAY 31 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Richard Rowe,

Complainant,

vs.

Pacific Gas and Electric
Company,

Defendant.

Case No. 10478
(Filed December 29, 1977)ORDER OF DISMISSAL

By this complaint, Richard R. Rowe alleges that he is a customer of defendant; that he planned to do some grading of the land and driveway in front of the house on his property at 6390 Heather Ridge Way, Oakland; that he contacted defendant and requested it to inform him of the location of the gas line across the property to the house in order to avoid any damage to it during the grading operation; that a representative of defendant came to the premises and pointed out the approximate location of the buried line and told him to dig down to see if it was below the proposed new grade; that before the grading was commenced, he dug two trenches, each 10 feet long and 3 feet below the proposed new grade level, across two separate locations along the approximate line pointed out by the representative, and no gas line was exposed; that the grading was then commenced, and during this operation, a 12-foot section of the gas line, which was actually buried approximately 30 feet away from the location pointed out by the representative, was accidentally damaged because of this

misinformation; that he contacted defendant to have it fix the break but was informed by it that this was his responsibility and that he would have to pay for an entire new gas line across the property to the house; and that as a result, defendant required him to pay to it \$464 to install the new gas line. Complainant requests an order directing defendant to refund the \$464 to him.

Defendant's answer, filed January 31, 1978, states that it denies that its representative designated the location of the gas service line for the purpose of complainant's excavation; that the representative informed complainant that further exploration excavation work was necessary to determine the exact location of the service line; that complainant was required to pay the \$464 for a relocation of the existing service due to the excavation work pursuant to Gas Rule 16(E);^{1/} and that the cause of action stated in the complaint is one of negligent misrepresentation which is a matter of tort over which the Commission has no jurisdiction to award damages. The answer requests that the complaint be dismissed with prejudice. Defendant did not file a Consent and Waiver form for the Commission's expedited complaint procedure.

We agree with defendant that the only cause of action stated in the complaint is based on complainant's allegation of negligence on the part of a representative of the defendant in furnishing information to him regarding the location of a gas line on his property and not on an incorrect application or interpretation by defendant of its tariffs and that the Commission does not have

^{1/} Rule 16(E) applies to relocations of gas lines rather than replacements. Thus, Rule 16(E)'s applicability to the instant controversy is uncertain. However, since we determine in this decision that the allocation of the costs of replacing the gas line turns on the issue of negligence, we need not attempt to define the scope of Rule 16(E).

jurisdiction to award damages in such matters. The action herein is a civil matter and should be brought before a court of competent jurisdiction, either the Municipal Court or the Small Claims Division of the Municipal Court.

We find that we do not have jurisdiction over the cause of action herein and conclude that the complaint should be dismissed.

IT IS ORDERED that Case No. 10478 is dismissed.

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

Dated at San Francisco, California, this 31st day of MAY, 1978.

William Guon, Jr. President
Leonard L. Sturgeon
Richard D. Howell

Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.