

ORIGINAL

Decision No. 88934 JUN 13 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EASY CONSTRUCTION COMPANY, INC., )

Complainant, )

vs. )

SOUTHERN CALIFORNIA EDISON  
COMPANY, )

Defendant. )

Case No. 10498  
(Filed February 14, 1978)

ORDER OF DISMISSAL

The complainant seeks an order requiring the defendant to provide a locator service and information as to the location of all underground utility facilities as of the date they are installed. In addition, the complainant alleges that as a result of the failure of the defendant to provide accurate information as to the location of its underground utility lines, the defendant obtained a court judgment against the complainant in the sum of \$926.01. The complainant seeks damages in the sum of \$926.01 plus court costs and loss of time, which the complainant alleges is in the total sum of \$3,500.

In its first affirmative defense the defendant contends that the matters alleged in the complainant's complaint were previously adjudicated by the Commission in C.10038, D.86546 dated October 26, 1976. In its second affirmative defense the defendant contends that the complaint fails to comply with Rule 9 of the Commission's Rules of Practice and Procedure (Rules) in that the complaint does not set forth any act or thing done or omitted to be done in violation, or claim to be in violation, of any

provision of law or of any order or rule of the Commission. In its fourth affirmative defense the defendant contends that the Commission lacks jurisdiction to award the complainant damages as requested in the complaint. *Administrative Law Judge* *Ed. L.*

On March 28, 1978 the ~~presiding officer~~ communicated with the attorney for the complainant by telephone. The attorney requested and was given one week to file whatever further documents he desired to file or to present a brief in opposition to the affirmative defenses raised by the defendant. As of April 6, 1978 no further documents or communications were received from the attorney for the complainant.

The Commission is without jurisdiction to award damages based on the allegations in the complaint and as requested by the complainant. (Walker v Pacific Tel. & Tel. Co. (1971) 71 CPUC 778; also see cases cited in California Public Utilities Digest, Volume 1, Damages, Section 27-101.)

The remaining allegations in the complaint deal with complainant's request for an order requiring the defendant to provide a locator service and information as to the location of all underground utility facilities as of the date they are installed. These are the same allegations which complainant asserted in Case No. 10038, filed on January 26, 1976, which were adjudicated adversely to complainant in Decision No. 86456 entered on October 26, 1976. The allegations and prayer of the complaint in Case No. 10038 were as follows: "1. The defendant is Southern California Edison Company. 2. The Southern California Edison Company in installing utilities in new subdivisions prepare maps of the utilities in order to put the information into their

computer. 3. The time between the installation of the utilities and the time when the information regarding the location of the said utilities is available is sixty (60) days or more. 4. During this sixty (60) day period, Southern California Edison Company's cable locating field locators and telephone information service incorrectly misrepresent that there are no such underground utilities. 5. Relying on these misrepresentations by the defendant that there are no utility lines in an area, complainant, Easy Construction Company, starts to dig in preparation for installing underground pipelines and breaks a utility line of the Southern California Edison Company and is sued. 6. These material misrepresentations as to the location of the utility lines made by defendant's agent and/or employees as to information that is known or should be known by defendant as to the location of its utility lines and on which complainant, Easy Construction Company, relies and is damaged. This practice is extremely costly to all concerned and is extremely dangerous to all concerned. WHEREFORE, complainant requests an order that Southern California Edison Company and all other utility companies must provide a locator service and information as to the location of all utility lines from the date they are installed." The portions of the complaint here under consideration, over which the Commission has jurisdiction, are as follows: "1. The defendant is Southern California Edison Company. 2. The Southern California Edison Company in installing underground utility lines prepare maps of the utilities and put the information into their computer locator service. In addition the maps are inaccurate and do not show the location of the utility lines. 3. The time between the installation of the utility lines and the availability of the information from the locator service is approximately sixty (60) days and frequently the maps are not accurate. They do not show the actual

location and elevation of the underground utility lines. 4. During this sixty (60) day period, Southern California Edison Company's cable field locating service and telephone information service advise that there are no such underground utility lines or if they do show Edison underground lines they are often inaccurate as to location and elevation of these lines. 5. Relying on these material misrepresentations by the defendant that there are no utility lines in the area or that the location and elevation provided for the utility lines is accurate, complainant, Easy Construction Company, starts trenching in preparation for installing underground pipe lines and discovers Edison underground utility lines where they are not shown either because the location was not provided through the locator service or the lines shown are inaccurate as to location and elevation. 6. These material misrepresentations as to the location of the utility lines made by defendant's agent and/or employees as to information that is known or should be known to defendant as to the location of its utility lines and on which complainant, Easy Construction Company, relies and is damaged. This practice is extremely costly to all concerned and is extremely dangerous to all concerned."

As indicated, Decision No. 86456 was decided against complainant on the same issues sought to be raised herein. Complainant is bound by that decision and cannot relitigate these issues in this proceeding. (Scott Transportation Co. (1957) 56 CPUC 1,5; Foothill Ditch Co. v Wallace Ranch Water Co. (1938) 25 CA 2nd 555; also see cases cited in California Public Utilities Digest, Volume 2, Orders, Section 79-109.)

The complaint fails to comply with Section 1702 of the Public Utilities Code or Rule 9 of the Rules in that it does not set forth any act or thing done or omitted to be done in violation, or claim to be in violation, of any provision of law or of any order or rule of the Commission.

Findings

1. The Commission is without jurisdiction to order the defendant to pay damages to the complainant as requested by the complainant and based upon the facts alleged in the complaint.
2. The allegations in the complaint pertaining to the complainant's request for an order that the defendant provide accurate information of underground utility lines to its locator service from the day they are installed have been previously litigated in C.10038 filed January 26, 1976 resulting in D.86546 dated October 26, 1976, and such order has become final. The doctrine of res judicata is applicable and the matter should not be heard again but the complaint should be dismissed.
3. The complaint does not allege any act or thing done or omitted to be done in violation, or claim to be in violation, of any provision of law or of any order or rule of the Commission as required by Section 1702 of the Public Utilities Code and Rule 9 of the Commission's Rules.

The Commission concludes that the complaint should be dismissed.

IT IS ORDERED that Case No. 10498 is dismissed.

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

Dated at San Francisco, California, this 13th  
day of JUNE, 1978.

Robert B. Berman  
President  
William J. Moore Jr.  
Vernon L. Stueben

Clair T. D. Smith  
Commissioners

Sebastian  
Robert W. Gault