

**ORIGINAL**

Decision No. 89327 SEP 6 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EASY CONSTRUCTION COMPANY, INC., )

Complainant, )

vs. )

SOUTHERN CALIFORNIA GAS )  
COMPANY, )

Defendant. )

Case No. 10364  
(Filed August 4, 1977)

ORDER OF DISMISSAL

The complainant seeks an order requiring the defendant to install its gas line after sewer construction on new construction. In addition, the complainant requests that the defendant shut down and remove its gas line and pay monetary damages for the extra work crews of the complainant as a consequence of the defendant installing its gas line in the same construction trench as the complainant who was engaged in the installation of sewer lines.

In its answer, the defendant requests that the complaint be dismissed because the allegations fail to state a cause of action or any facts on which relief may be granted and because the allegations are vague, conclusionary, compound, and unclear so as to fail to provide adequate notice to defendant.

On March 22, 1978 the complainant, in a written communication to the Administrative Law Judge, indicated that the job site in question had been completed and that the complainant wished to amend its complaint and obtain a prospective order from the Commission forbidding the defendant to install its gas lines prior to the installation of sewer lines. On

March 28, 1978 the judge communicated with the complainant by written letter setting forth, among other things, the requirements of Section 1702 of the Public Utilities Code, and Rule 9 of the Commission's Rules of Practice and Procedure (Rules), and the comment that neither the original complaint nor the contents of the complainant's letter of March 22, 1978 appeared to comply with the aforementioned Code or Rules. Accordingly, the complainant was permitted thirty days within which to file and serve an amended complaint or else indicate any legal reason why its complaint should not be dismissed. It was further indicated to the complainant that if no reply was received by April 27, 1978, it was presumed that the complainant did not disagree that the case should be disposed of by way of dismissal and without a hearing. On April 3, 1978 the complainant, in a written communication, indicated that it was attempting to amend its complaint. As of May 8, 1978 no further communication or documents were received from the complainant.

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

The complaint failed 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 claimed to be in violation, of any provision of law or of any order or rule of the Commission. Furthermore, since the job site which is the source of complainant's allegations has been completed, the requested relief of having the Commission order the defendant to shut down and remove the gas line is rendered moot.

Findings

1. The Commission is without jurisdiction to order the defendant to pay monetary damages as requested by the complainant for the necessity of using extra work crews.

2. The complaint does not allege any act or thing done or omitted to be done in violation, or claimed 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.

3. The complainant is not in disagreement that the case should be disposed of by dismissal and without a hearing.

The Commission concludes that the complaint should be dismissed.

IT IS ORDERED that Case No. 10364 is dismissed.

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

Dated at San Francisco, California, this 6th day of SEPTEMBER, 1978.

Robert Bateman  
President  
William J. Jensen  
Veronica L. Stuber  
Charles D. Howell  
Commissioners

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