

Decision 97-12-117      December 16, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

California Alliance for Utility Safety  
and Education,

Complainant,

vs.

San Diego Gas & Electric Company,

Defendant.

**ORIGINAL**

Case 96-03-027  
(Filed March 14, 1996)

**ORDER GRANTING LIMITED REHEARING AND  
MODIFYING DECISION 96-09-093  
AND DENYING REHEARING OF  
THAT DECISION IN ALL OTHER RESPECTS**

On October 17, 1996 the California Alliance for Utility Safety and Education (CAUSE) filed an application for rehearing of Decision (D.) 96-09-093. D.96-09-093 dismisses CAUSE's complaint (C. 96-03-027) against San Diego Gas and Electric Company (SDG&E). The complaint asserted various causes of action concerning the construction and upgrading of a number of power line projects in the Rancho Bernardo community in the City of San Diego.

In its application for rehearing CAUSE argues that D.96-09-093 erred in dismissing CAUSE's claims that: 1) SDG&E violated its Tariff Rule 15.1 (subsequently superceded by Rule 15) in the 1986 construction and upgrading of a 12 kilovolt overhead line adjacent to what later became the Bernardo Heights school; 2) SDG&E acted

“unreasonably” concerning the 1986 project, and concerning the 1979 construction of 69 kilovolt and 12 kilovolt overhead lines in Rancho Bernardo (see H.B. Ranches v. Southern California Edison Company (1983) 11 Cal.P.U.C.2d 400); and 3) SDG&E violated Re Southern California Edison (1990) 37 Cal.P.U.C.2d 413 (Kramer-Victor) in upgrading a 65 kilovolt line in 1993 .

We have carefully considered all the arguments presented by CAUSE, and are of the opinion that limited rehearing of D.96-09-093 is justified in order to clarify that the claims concerning the 1986 and 1979 projects are dismissed on the basis that they are untimely. Therefore, we conclude that our holdings regarding CAUSE’s substantive claims related to the earlier projects are unnecessary and will be deleted. We will grant limited rehearing and modify D.96-09-093 in this order in accordance with these findings. We deny rehearing of the decision in all other respects.

#### **I. 1986 AND 1979 SDG&E PROJECTS**

We find that CAUSE’s claims concerning the 1986 and 1979 SDG&E projects are untimely and therefore barred by the doctrine of laches. Laches is an equitable doctrine which precludes equitable claims, such as these, which have been unduly delayed.

As this Commission has held:

The doctrine of ‘laches’ is based upon grounds of public policy, which for the peace of society requires discouragement of stale demands.... Laches is not merely an affirmative defense but a fundamental defect in the cause of action.

(In re Alternative Regulatory Frameworks (1994) 55 Cal.P.U.C.2d 681, 687.) The claims concerning the 1986 and 1979 projects are 10 and 17 years old respectively. Although there are no specific statutes of limitations for these claims, complainants cannot postpone their claims indefinitely. This would subject utility projects to continuing uncertainty.

It is instructive that statutes of limitations for similar types of actions are much shorter than the periods involved here. For instance, when a utility has charged rates which differ from their tariffs the claim for damages must be brought within three years. (Pub. Util. Code § 736.) A similar time limit would be reasonable for the Tariff Rule 15.1 violations alleged here.

Limitations on other types of environmental actions provide guidance concerning the timing of CAUSE's H.B. Ranches claim. Notably, causes of action alleging California Environmental Quality Act (CEQA) violations are subject to short statutes of limitations of less than one year. (Pub. Resources Code § 21167.) This is largely because of the need for certainty in construction and development projects. In fact, H.B. Ranches claims are ideally brought before a project is constructed, although that may not always be possible. It is clear, however, that the Commission-created H.B. Ranches process was never intended to allow complainants to revisit utility projects which were constructed long ago.

CAUSE argues that its claims should not be barred by laches since the delay did not work to the disadvantage or prejudice of other parties. This is simply not the case. As indicated, it is clearly prejudicial to a project proponent to have its projects subject to uncertainty and challenge years later. Furthermore, as we noted in D.96-09-093, it becomes difficult to examine the circumstances surrounding the construction of project more than ten years ago.

For the foregoing reasons, we hold that CAUSE's claims regarding the 1986 and 1979 projects are barred by laches. Since this is a sufficient grounds to dismiss those claims we need not address CAUSE's substantive arguments concerning these earlier projects. We will order discussion of those substantive issues in D.96-09-093 to be deleted.

## II. 1993 PROJECT

CAUSE contends that SDG&E's construction of the 1993 project violated the Kramer-Victor decision. CAUSE is mistaken. Although CAUSE's claim concerning SDG&E's 1993 project is not as clearly time barred as its other claims, D.96-09-093 correctly concludes that CAUSE has pled no viable cause of action regarding that project.

In Kramer -Victor the Commission evaluated the environmental impacts of Southern California Edison's (Edison's) proposed Kramer-Victor power line. Because of the uncertainties regarding the health impacts of electromagnetic fields (EMF), the Commission required Edison to take low-cost steps to minimize additional exposure to EMF.

As we noted in D.96-09-093, the EMF holdings announced in the Kramer-Victor decision were only binding on the line that was at issue in that proceeding, the Edison Kramer-Victor line. The Kramer-Victor decision did not rule upon other utility projects. In fact, the issuance of the Commission's November 1993 decision on EMF policy was the first time the Commission adopted general EMF standards which were generally applicable to electric utilities. (Re Potential Health Effects of Electric and Magnetic Field of Utility Facilities (1993) 52 Cal.P.U.C.2d 1.) That decision is not at issue in CAUSE's complaint.

CAUSE refers to San Diego Gas & Electric Co. v. Superior Court (1996) 13 Cal. 4th 893 (Covalt), and a letter from a Commission staff member to support its position that the holdings in Kramer-Victor were applicable to all utility projects. Neither the Covalt case nor the staff letter indicates that the dictates of the Kramer-Victor decision apply beyond the Kramer-Victor line. The Covalt case discusses Kramer-Victor as a step in the evolution of the Commission's EMF policy. (Covalt, at pp. 928-929.) Covalt does not hold that the Kramer-Victor holdings applied to all utility projects.

Moreover, a letter from a Commission staff member suggesting that the Kramer-Victor standards be applied to another project is simply a suggestion. Staff

opinions are not binding on the Commission, and the fact that a staff member believed that Kramer-Victor standards should be utilized for another utility project does not indicate that those standards are legally binding on the utility.

Because the holdings of the Kramer-Victor decision were only binding on Edison's construction of the Kramer-Victor line, CAUSE cannot maintain a cause of action based on SDG&E's failure to meet the dictates of Kramer-Victor. CAUSE's claim concerning the 1993 project was correctly dismissed on this basis.

Therefore, **IT IS ORDERED THAT** limited rehearing of D.96-09-093 is granted and D.96-09-093 is modified as follows:

1. The discussion beginning with "In order to determine..." on page four and ending with "...violated Rule 15.1" on page 5 is deleted.
2. The first sentence of footnote 3 is deleted.
3. The section entitled "Decisions 73078 and 85497" on pages six and seven is deleted.
4. The section entitled "Conclusion" is deleted.
5. Conclusion of Law 1 is deleted and replaced with "The complaint's causes of action concerning the SDG&E's 1986 and 1979 power line projects are barred by laches."
6. Conclusion of Law 3 is deleted.

In addition, good cause appearing, **IT IS FURTHER ORDERED THAT:**

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7. Rehearing of D.96-09-093 as modified above is denied in all other respects.
8. This proceeding is closed.

This order is effective today.

Dated December 16, 1997 at San Francisco, California.

**P. GREGORY CONLON**

**President**

**JESSIE J. KNIGHT, JR.**

**HENRY M. DUQUE**

**JOSIAH L. NEEPER**

**RICHARD A. BILAS**

**Commissioners**