

Decision 98-11-059 November 19, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Southern California Edison Company, (U-338-E)

Complainant,

vs.

California Cable Television Association,

Defendant.

ORIGINAL

Case 97-04-065
(Filed April 28, 1997)

OPINION

Summary

This decision dismisses a complaint filed by Southern California Edison Company against the California Cable Television Association for failure to state a cause of action.

Procedural Summary

This matter was first filed as a cross-complaint in Case (C.) 97-03-019 (California Cable Television Association (CCTA) versus Southern California Edison Company (Edison or SCB).) An Administrative Law Judge's (ALJ) Ruling dated May 7, 1997 directed that the cross-complaint be refiled as a new complaint, and assigned its own case number. The ruling also invited parties to brief the question of dismissal of the new complaint.

In accordance with the ALJ's ruling, this matter was filed as a new case (C.97-04-065). On May 28, 1997, CCTA filed an Answer and Motion to Dismiss C.97-04-065. SCE filed its Reply to the Motion to Dismiss on June 12, 1997.

At a joint prehearing conference in C.97-03-019 and C.97-04-065 held on June 30, 1997, the ALJ notified the parties of his intention to prepare a decision granting CCTA's motion to dismiss C.97-04-065.

SCE's Complaint

SCE's complaint contains the following three requests for relief:

- "1. A Determination and Order by the Commission that CCTA and its members cease all unauthorized pole attachments immediately;
- "2. A Determination and Order that CCTA and its members compensate Edison for each and every unauthorized pole attachment, plus interest, from the date the attachment was made; and
- "3. A Determination and Order that CCTA and its members comply with all applicable safety requirements contained in General Order 95, for all heretofore unauthorized attachments."
(Pages 4-5.)

Discussion

CCTA's Motion to Dismiss, and our review of the issues presented by the complaint, persuade us that the complaint should be dismissed. It does not appear that CCTA is a defendant over which we have jurisdiction in this matter. Pursuant to Public Utilities (PU) Code Section 1702, a complaint may be filed against a public utility. CCTA is neither a public utility, nor other typical Commission-regulated entity.

PU Code Sections 767.5 and 768.5 give us limited jurisdiction over some entities other than public utilities. SCE argues that California Code of Civil

Procedure Section 382 allows SCE to bring this action here under these PU Code sections against CCTA, relying on CCTA as an association representing its members.¹ We are doubtful of the merits of SCE's argument that California Code of Civil Procedure Section 382 allows SCE to bring CCTA before the Commission as a defendant.

Even assuming, however, for the sake of argument, that CCTA is a proper defendant, and can be brought before the Commission as a representative of its members,² we review the relief sought by SCE and find no merit in hearing the complaint. We discuss the three SCE requests in order.

1. Cease Unauthorized Pole Attachments

The Commission would not issue an order in this proceeding directing CCTA's members to cease all unauthorized pole attachments immediately. CCTA's members have already been directed by Decision (D.) 98-10-058 not to make unauthorized pole attachments. Repetition of such an order by this Commission in this proceeding would serve no useful purpose.

2. Compensate SCE for Unauthorized Pole Attachments

SCE claims it has over one million poles throughout its 50,000 square miles of service territory. SCE asserts it simply cannot police its property, and seeks the Commission's subpoena powers to question cable television company

¹ California Code of Civil Procedure Section 382 provides in relevant part, as cited by SCE: "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."

² CCTA strenuously argues that it cannot be sued on behalf of its members.

executives under oath to determine who, if anyone, has made an unauthorized attachment and is failing to pay rates.

This is an unacceptable use of the Commission's process. If an attachment is made that in SCE's view is unauthorized, SCE must first determine who made the unauthorized attachment. SCE cannot rely on periodically filing a complaint (e.g., once a year) to ask all cable television company executives under oath if they have recently (i.e., in the last year) made unauthorized attachments. We will not allow SCE to use our process in this way. SCE must find another way to maintain and police its property.

3. Comply with General Order 95

The Commission would not issue an order in this proceeding directing CCTA's members to comply with all applicable safety requirements in General Order (GO) 95. CCTA's members have already been directed by D.98-10-058 to comply with GO 95. Repetition of such an order by this Commission in this proceeding would serve no useful purpose.

When an attachment by a cable television company creates an infraction of GO 95 and the Commission staff becomes aware of the infraction, it will issue a citation letter asking the cable company to take corrective action. SCE or any other person can make the Commission staff aware of such infractions or the staff may discover them in the course of its scheduled inspection program.

Findings of Fact

1. The complaint requests that the Commission order CCTA and its members to cease unauthorized pole attachments, compensate SCE for unauthorized pole attachments, and comply with GO 95.
2. The complaint fails to state a basis upon which the requested relief can or should be granted by the Commission.

3. SCE has failed to state a cause of action against CCTA.

Conclusion of Law

The complaint should be dismissed.

O R D E R

IT IS ORDERED that:

1. The complaint is dismissed.
2. Case 97-04-065 is closed.

This order becomes effective 30 days from today.

Dated November 19, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners