

Decision **PROPOSED DECISION OF ALJ BEMESDERFER**  
(Mailed 10/30/2012)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Alfred Labrada,

Complainant,

vs.

Southern California Edison Company  
(U338E),

Defendant.

Case 12-07-022  
(Filed July 27, 2012)

**DECISION DISMISSING COMPLAINT**

**Summary**

The complaint is dismissed for failure to state a claim on which relief may be granted.

**Background**

Complainant Alfred Labrada (Labrada) resides at 180 Haflinger Road in Norco, California. He purchased his residence new from Beazer Homes in late 2003. Labrada says that at the time of the purchase he orally expressed concerns about the safety of a pad-mounted transformer located adjacent to the house driveway in an easement from Beazer Homes to Defendant Southern California Edison Company (SCE). He went ahead with the house purchase in spite of his concerns. In June 2004, SCE installed a street light on the opposite side of the

driveway from the transformer in a public right of way pursuant to an agreement with the City of Norco.

In January 2012, Labrada filed an informal complaint with the Commission's Consumer Affairs Branch (CAB) seeking an order directing SCE to move the transformer to a different location at no cost to Complainant. CAB rejected the informal complaint in May 2012, with the explanation that SCE had not violated any law, rule or order of the Commission by locating the transformer within the easement from Beazer Homes. In July 2012, Labrada filed the present action.

SCE filed a timely answer and motion to dismiss. Labrada requested and received an extension of time to September 26, 2012, within which to respond to the motion to dismiss. He filed a late response which was accepted.

### **Discussion**

We begin by noting the standard of review to be applied when considering a motion to dismiss. A complaint should be dismissed if, "taking the well-pleaded factual allegations of the complaint as true, the defendant is entitled to prevail as a matter of law. In addition, the Commission may properly take official notice of, and consider, the files and records of court and Commission proceedings in ruling on a motion to dismiss." *Everyday Energy Corp. v. San Diego Gas & Elec. Co.*, Decision (D.) 12-03-037 at 7 (quoting *Re W. Gas Res.-Cal., Inc.*, D.99-11-023, 3 CPUC 3d 297, 301). The Commission does "not accept as true the ultimate facts, or conclusions, that Complainant alleges, for instance, that [the utility] has violated its tariffs. After accepting the facts as stated, the Commission examines them in the light of applicable law and policy." (*Id.* at 7.)

SCE asserts three legal bases on which the Complaint should be dismissed pursuant to the above standard of review:

- 1) The Complaint is barred by the applicable statute of limitations;
- 2) It is barred by the doctrine of laches; and
- 3) It fails to allege any wrongdoing by SCE.

We find that the third argument has merit and accordingly we dismiss the Complaint.

### **The Complaint is Not Barred by the Statute of Limitations**

The Public Utilities Act requires that “[a]ll complaints for damages resulting from a violation of any of the provisions of this part... shall ... be filed with the commission ... within two years from the time the cause of action accrues, and not after.” (Pub. Util. Code § 735.) The cause of action ordinarily accrues upon “the performance of the service or the furnishing of the commodity or product with respect to which complaint is filed or claim made.” (*Id.* at § 738.) Reading the Complaint most favorably to Labrada, the latest date at which the cause of action accrued was June 2004, when the utility erected the streetlight served by the transformer. If the statute of limitations in § 735 applies to this situation, Labrada’s right to sue SCE expired two years later, i.e., in June 2006. While the statute of limitations may be tolled by an excusable failure to discover the cause of action, in this case there is no doubt that all of the acts on which the Complaint might be based had been completed by June 2004 and that Labrada was aware of them.

As noted above, the statute of limitations in Pub. Util. Code § 735 applies to “complaints for damages.” However, the Complaint seeks equitable relief, namely, an order directing SCE to move the transformer from its present location

to one more distant from Labrada's driveway. Although SCE argues that an order directing it to take an action at no cost to a customer is equivalent to an award of damages in the amount required to comply with the order, we disagree. Labrada seeks equitable relief and the statute limiting claims for damages is inapplicable to his claim.

### **The Complaint is Not Barred by the Doctrine of Laches**

In plain language the doctrine of laches precludes equitable claims which have been unduly delayed. Although Labrada took no formal action for eight years after his cause of action accrued, his factual allegation, which we are required to accept as true for purposes of ruling on a motion to dismiss, is that he engaged in repeated efforts over time to find an informal solution to the problem through discussions with various SCE employees. We think those efforts represent a good faith attempt to preserve his rights and accordingly hold that laches does not apply in this instance.

### **The Complaint Fails to State a Claim on Which Relief May be Granted**

The Commission may only hear a complaint if it alleges "any act or thing done or omitted to be done by any public utility... in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission." (Pub. Util. Code § 1702.) The essence of Labrada's Complaint is that SCE placed the transformer in an unsafe location. In denying relief in the informal proceeding, CAB found that "[t]he pad mount is properly located with[in] the recorded easement." (May 8, 2012 Letter from M.C. Tognotti to Alfred Labrada). While the determination that the pad mount is properly located within the recorded easement is not determinative of the issue of public safety, in order to be cognizable here, the Complaint has to allege that SCE violated either some ordinance or statute of the City of Norco relating to public safety, some similar

state law, some provision of the Public Utilities Code, or some order or rule of the Commission. Since it makes none of these allegations, the Complaint fails to state a claim on which relief may be granted and must be dismissed.

### **Categorization and Need for Hearings**

On August 2, 2012 in Resolution ALJ 176-3298 this proceeding was preliminarily characterized as adjudicatory and it was preliminarily determined that hearings are required. We affirm the categorization but in view of the dismissal of the Complaint we change the hearing determination to “not required.”

### **Comments of Proposed Decision**

The proposed decision of Administrative Law Judge (ALJ) Karl J. Bemederfer in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. Comments were filed on November 19, 2012 by SCE. The comments supported the decision without suggesting any changes. No comments were received from Labrada.

### **Assignment of Proceeding**

Michael Peter Florio is the assigned Commissioner and Karl J. Bemederfer is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. Complainant Labrada purchased the house at 180 Haflinger Road, Norco, CA in late 2003.
2. A pad-mounted transformer was installed adjacent to the driveway at the time of the house purchase.
3. SCE installed a streetlight powered by the transformer in a public right of way on the other side of the driveway in June 2004.

4. From time to time, Labrada engaged in informal efforts to persuade SCE to relocate the transformer further from his driveway.

5. Labrada filed an informal complaint with the Commission's CAB in January 2012.

6. The CAB rejected the informal complaint in May 2012.

**Conclusions of Law**

1. In order to be heard by the Commission, a complaint must allege a violation of law or an order or rule of the Commission.

2. The Complaint fails to allege a violation of any law or any rule or order of the Commission.

3. The Complaint should be dismissed.

**O R D E R**

**IT IS ORDERED** that:

1. Case 12-07-022 is dismissed.
2. No hearings are required.
3. Case 12-07-022 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.