

Decision 06-07-007 July 20, 2006

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

Wilmot McCutchen,

Complainant,

vs.

Pacific Gas and Electric Company and City of  
Orinda,

Defendants.

Case 05-10-003  
(Filed October 3, 2005)

**OPINION DENYING THE PETITION OF WILMOT McCUTCHEN  
FOR MODIFICATION OF DECISION 06-01-031**

Wilmot McCutchen petitions for modification of Decision (D.) 06-01-031 in this proceeding. D.06-01-031 dismissed McCutchen's complaint against Pacific Gas and Electric Company (PG&E) and the City of Orinda (City) for failure to state a claim upon which relief may be granted. The complaint alleged that PG&E and the City violated Rule 1<sup>1</sup> of the Commission's Rules of Practice and Procedure by falsely stating, in their joint Application (A.) 05-06-002 for

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<sup>1</sup> "Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by also an artifice or false statement of fact or law." Subsequent rules citations are also to the Rules of Practice and Procedure.

authority to quitclaim a portion of an existing transmission line's easement, that the transmission line's voltage is 115 kilovolt (kV).<sup>2</sup> The complaint asserted that the transmission line voltage is 220 kV, and that PG&E's and the City's false statement misled the Commission into waiving review under General Order 131-D and shirking its responsibilities as lead agency under Rule 17.1(i)(A)(1). D.06-01-031 found that, regardless of the voltage of the transmission line, the application for authority to quitclaim the easement was not subject to review under General Order 131-D (Conclusion of Law 1) and the Commission was not the lead agency for review (Conclusion of Law 2).

McCutchen asserts that Finding of Fact 5 ("The transmission line and tower remain on the portion of the easement which was not quitclaimed") and Conclusion of Law 3 ("PG&E's use of the remaining easement area is consistent with its statement that the quitclaimed area is no longer necessary or useful in the performance of its duties") are inconsistent with the deed records, which indicate that PG&E quitclaimed the entire easement, including the portion of the easement which PG&E continues to use for the operation of its transmission line and tower.

PG&E asks that the petition be denied. We agree with PG&E that the application for authority to quitclaim the easement describes the easement as partial; D.05-07-017 approving the application grants authority to quitclaim only

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<sup>2</sup> The Commission approved the A.05-06-002 in D.05-07-017. McCutchen also petitioned to modify D.05-07-017. In substance, McCutchen's position regarding D.05-07-017, approving the PG&E application, is virtually the same as his position regarding D.06-01-031, denying his complaint, namely, that the transmission line's voltage is not 115 kV, and the quitclaim would deprive PG&E of its ability to continue to use the transmission line and its tower. The Commission denied the petition to modify the application decision in D.06-02-009.

a partial easement; and the City's Resolution No. 19-05, which approved the grant deed from the owner of the property over which PG&E has easement rights, specifically refers to the transferred property as "a negotiated part of the property."

No other matters require discussion. We are not persuaded to modify D.06-01-031. (Rule 47(h).)

### **Comments on Draft Decision**

The draft decision of Administrative Law Judge (ALJ) Yacknin in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the rules of Practice and Procedure. McCutchen filed comments on the draft decision on June 30, 2006, and PG&E filed reply comments on July 6, 2006.

In his comments, McCutchen reiterates his contention that the quitclaim deed deprives PG&E of all easement rights, and argues that PG&E's offer of additional evidence regarding the quitclaim deed concedes his point. PG&E replies that the quitclaim deed filed in A.05-06-002 is accurate and consistent with the additional evidence that PG&E offers to resolve McCutchen's perceived ambiguity. PG&E's offer of additional evidence does not demonstrate factual error in our findings regarding the extent of the quitclaim for which PG&E sought authority in A.05-06-002, the Commission authorized in D.05-07-017, and the City of Orinda approved.

### **Assignment of Proceeding**

Dian M. Grueneich is the Assigned Commissioner and Hallie Yacknin is the assigned ALJ in this proceeding.

**Findings of Fact**

1. PG&E sought, in A.05-06-002, and the Commission granted, in D.05-07-017, authority to quitclaim a partial easement to the City of Orinda.
2. The grant deed approved by the City of Orinda is consistent with PG&E's application for, and the Commission's grant of, authority to quitclaim a partial easement to the City of Orinda.

**Conclusion of Law**

This petition is without merit and should be denied.

**O R D E R**

**IT IS ORDERED** that:

1. The petition for modification is denied.
2. Case 05-10-003 is closed.

This order is effective today.

Dated July 20, 2006, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
Commissioners

