

Decision 02-10-052 October 24, 2002

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

Everett and Karen Downs,

Complainants,

vs.

Citizens Water Resources,

Defendant.

Case 01-11-027  
(Filed November 7, 2001)

Everett and Karen Downs, appearing for themselves, Complainant.  
Steeffel, Levitt & Weiss, LLP, by Lenard G. Weiss and Lori Anne Dolqueist, Attorneys at Law, for California-American Water Company, Inc., Defendant.

**OPINION GRANTING MOTION TO DISMISS**

**I. Summary**

Everett and Karen Downs (Complainants) seek an order from the Commission directing California American Water Company, Inc. (Cal-Am) to remove, at its expense, a cluster of valves from Complainants' property. Cal-Am claims that Citizens Utilities Company (Citizens), whose assets it purchased,<sup>1</sup> has a valid easement to locate its facilities on Complainants' property. Since the

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<sup>1</sup> Cal-Am purchased the assets and took over operations of Citizens in January, 2002.

complaint involves adjudicating competing interests in real property, the Commission concludes that it lacks jurisdiction to grant Complainants' request. Cal-Am's motion to dismiss the complaint is granted.

## **II. Procedural Summary**

The Commission categorized this case as adjudicatory and assigned it to Administrative Law Judge (ALJ) Bertram D. Patrick, who acted as presiding officer. Following a prehearing conference on February 19, and an evidentiary hearing on April 23, briefing was completed and the matter submitted for decision on June 3, 2002. Along with its brief, Cal-Am filed a motion to dismiss the complaint for lack of jurisdiction. We address below the motion to dismiss.

## **III. Background**

Citizens had pipeline facilities in place across the middle of the property prior to purchase by Complainants. At Complainants' request, Citizens relocated these facilities at its expense, so that Complainants could build a house on their property. Citizens now has a cluster of valves on the property, inside Complainants' fence and locked gate. Citizens' employees require access to these valves when responding to an emergency or performing maintenance on the system. Unfortunately, during the course of the relocation there was an incident involving a Citizens employee and Complainants. As a result, Complainants do not want Citizens employees to enter their property.

### **A. Position of Complainants**

Complainants seek an order from the Commission requiring Cal-Am (the new owners of Citizens), at its expense, to relocate the valves outside their property. Complainants contend that they were coerced into giving Citizens an easement. According to Complainants, after Citizens commenced construction they refused to complete the work until Complainants provided an easement in

writing. Complainants also contend that they were not aware that the valves would be on their property, and, as it turned out, be located in the middle of the area for their proposed concrete driveway.

**B. Position of Cal-Am**

Cal-Am states that Citizens commenced the relocation after Complainants verbally agreed to provide Citizens with an easement for the relocated facilities. Due to inclement weather the relocation was not completed as quickly as the parties anticipated. Following the incident involving their employee and Complainants, Citizens decided that it would be in the best interests of all involved to make clear the rights and obligations of the parties. Following negotiations, the parties entered into a settlement agreement and Complainants provided Citizens with an easement covering the relocated facilities. To resolve this complaint, Cal-Am offers to change the location of its easement and have a new bid prepared for relocation of the valves on condition that Complainants pay all the associated costs. By way of explanation, Cal-Am states that Citizens relocated the facilities the first time at its expense because these facilities were above ground and by placing them underground, the relocated facilities would not be subject to the maintenance problems associated with above ground facilities.

**C. Discussion**

The issue is whether the Commission has jurisdiction to: 1) determine the validity of the easement allowing Citizens to locate its facilities on Complainants' property; 2) order a change to the easement now in dispute; and, 3) require Cal-Am to relocate the valves to a new easement at its expense.

As the facts indicate, the relief requested in the complaint simply addresses Cal-Am's and Complainants' conflicting interests in real property and

their respective rights related to those interests. The Commission has held that controversies related to such issues are not within its jurisdiction. (Carmel Mountain Ranch, Inc. v. San Diego Gas and Electric Company (1988) D.88-03-024, 27 CPUC 2d 500, 1988 Cal. PUC LEXIS 67.) As the California Supreme Court stated, the “Commission is not a body charged with enforcement of private contracts.” (Atchinson, T. & S.F.R. Co. v. Railroad Comm. Of California (1916) 173 Cal 577, 582, *see also* Hempy v. Public Utilities Comm. (1961) 56 Cal. 2d 214, 216; Hanlon v. Eshleman (1915) 169 Cal. 200, 203.)

In Carmel Mountain Ranch, Inc., the Complainant Carmel Mountain Ranch, Inc. (Carmel), a private developer, requested that San Diego Gas and Electric Company (SDG&E) relocate SDG&E’s existing transmission line right-of-way over Carmel’s property. SDG&E agreed to relocate its right-of-way for \$661,000. Carmel refused to pay this charge and asked the Commission for an order requiring SDG&E to exchange its prerecorded interest in a specific right-of-way over Carmel’s property for a different right-of-way over the same property. (Carmel Mountain Ranch, Inc., 1988 Cal. PUC LEXIS 67, \*13.) Additionally, Carmel asked the Commission to determine the reasonable amount of monetary compensation that should flow from it to SDG&E as part of the transaction. (*Id.*) The Commission held that the complaint concerned a proposed agreement between SDG&E and a private developer “for the relocation of an interest in real property held by SDG&E. SDG&E’s status as a regulated monopoly has no bearing on whether it should, or will, relocate its right-of-way. We have no jurisdiction to order SDG&E to relocate its right-of-way, much less dictate the terms under which such a relocation should take place.” (*Id.* \*23.)

Similarly, in this case, Complainants are seeking an order requiring Cal-Am to relocate its facilities, notwithstanding Citizens’ recorded interest in a

specific easement and right-of-way over Complainants' property, and addressing compensation for the relocation. As in Carmel Mountain Ranch, Inc., Cal-Am's status as a regulated entity has no bearing on whether it should, or will, relocate its facilities to a new easement. We conclude, as we did in Carmel Mountain Ranch, Inc., that the Commission does not have jurisdiction to compel Cal-Am to relocate an interest in real property owned by Cal-Am, or to dictate the terms of such relocation. We therefore dismiss the complaint for lack of jurisdiction.

The scope of this proceeding is set forth in the complaint and answer. We confirm ALJ Patrick as the presiding officer. The presiding officer's decision was filed with the Commission and served on all parties pursuant to Pub. Util. Code § 1701.2.

#### **IV. Appeal of the Presiding Officer's Decision**

An appeal of the presiding officer's decision was filed by Complainants on August 12 and a response by Cal-Am was filed on August 27, 2002. We have reviewed the appeal and response, and conclude that the appeal merely reiterates arguments already addressed. We further conclude that no change to the presiding officer's decision is warranted. Accordingly, the presiding officer's decision is adopted.

#### **V. Assignment of Proceeding**

Henry Duque is the Assigned Commissioner and Bertram Patrick is the assigned Administrative Law Judge in this proceeding.

#### **Findings of Fact**

1. Complainants seek an order from the Commission requiring Cal-Am to remove certain valves from Complainants' property.
2. Cal-Am claims that the valves are located on Complainants' property pursuant to a valid easement.

3. Complainants dispute the validity of the easement, claiming that the easement was obtained by coercion.

**Conclusions of Law**

1. The Commission does not have jurisdiction to determine the validity of Cal-Am's easement, compel Cal-Am to relocate the valves to a new easement on another property, or to dictate the terms of the relocation.

2. Complainants have not alleged that Cal-Ams' actions violate the law or any rule or order of this Commission, as required by Pub. Util. Code § 1702.

3. Cal-Am's motion to dismiss the complaint should be granted, and Complainants' appeal of the presiding officer's decision should be denied, effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. The motion of California-American Water Company, Inc. (Cal-Am) to dismiss the complaint is granted.

2. The complaint of Everett and Karen Downs against Cal-Am, is dismissed.

3. Complainants' appeal of the presiding officer's decision is denied.

4. Case 01-11-027 is closed.

This order is effective today.

Dated October 24, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY

Commissioners