Decision 08-09-001 September 4, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Marc S. Monson, Complainant, vs. Pacific Gas and Electric Company (U39E), Defendant.	Case 07-10-021 (Filed October 26, 2007)

DECISION DISMISSING COMPLAINT

1. Summary

Case (C.) 07-10-021, which seeks a Commission order requiring the continued presence and use of an electrical line and associated facilities on the property of Complainant's neighbor, is dismissed with prejudice for lack of Commission jurisdiction. C.07-10-021 is closed.

This decision is effective immediately.

2. Background

Complainant Marc S. Monson (Monson) is the owner of a parcel of land at 24682 Hidden Harbor Drive, Los Molinos, in Tehama County. He is a residential customer of Defendant Pacific Gas and Electric Company (PG&E). The PG&E electric line that serves his property crosses an adjacent parcel at 24680 Hidden Harbor Drive owned by Jan Smith (Smith), who is not a party in this proceeding.

This matter derives from a dispute between Monson and Smith concerning the presence of the electric line and associated poles on Smith's property.[1]

The reason why previous owners of 24680 (Smith's parcel) permitted the line to cross the property is unknown, but it is clear that Smith, the current owner, objects to its presence and wants it removed from her parcel. Monson refused to cooperate voluntarily by having PG&E relocate it, and on May 7, 2004, Smith filed a lawsuit in Tehama County Superior Court to clear title to her parcel and compel Monson to remove (or cause to have removed) the electric line. (*Jan Smith, individually, and as Trustee of the J. Smiths'* [sic] *Trust dated December 31, 1992* v. *Joseph W. Schnapp et al., Case No. 52859.)*

Following a bench trial, the Superior Court entered judgment in favor of Smith and against Monson on January 10, 2006. The second paragraph of the judgment orders Monson to remove from Smith's parcel, "all property, equipment and fixtures, including, without limitation, all power lines, telephone lines, cable television lines, and related poles and equipment," within thirty days at no cost to Smith, and further orders Monson to provide written notice to "all power and telephone providers servicing [Monson's] property … of this judgment and of the necessity to disconnect all such service across [Smith's] property," within thirty days. The judgment is now final, and is not appealable.

Following entry of the judgment, PG&E sought Monson's cooperation in arranging to have the line removed as required by the Superior Court. Although

[1] It is not necessary to recount the history of the property ownerships involved, or to discuss the issue of whether there is an easement in favor of Monson appurtenant to the Smith property. The former is irrelevant, and the latter was adjudicated by the Superior Court for Tehama County, as we discuss below.

Monson paid a nonrefundable deposit and obtained an engineering estimate from PG&E for the cost of relocating the line, to date he has not caused PG&E to remove the line from Smith's property. PG&E responded by notifying Monson that it intended to terminate his service because of Smith's revocation of permission for the service line to cross her lot.

Monson sought relief from the judgment, first by filing an informal complaint with the Commission and, after that was unsuccessful, by filing this formal complaint on October 26, 2007. The relief he requests in the complaint is that, "the pole & lines remain intact as they are." On November 30, 2007, PG&E filed its answer, and almost immediately thereafter, on December 3, the Motion to Dismiss Complaint.[2] We address that motion here.

3. Discussion

On its face, Monson's complaint does not allege that PG&E is violating a statute administered by this Commission, or a Commission order, or a Commission-approved tariff. Monson essentially requests a declaratory order that would require PG&E to leave the electric line and poles in place on the adjacent owner's property. However, he provides no legal authority that would empower this Commission to do so.[3]

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[2] Monson filed a Response to the Motion to Dismiss, dated December 17, 2007.

[3] We note that PG&E has not threatened to remove the line from the Smith property. It has only given notice that it will disconnect Monson's service because Smith has withdrawn her permission to have the line cross her property. Smith's basis for making that demand is a judgment of the Tehama County Superior Court that is now final, as discussed below.

We have no power to overrule or otherwise disturb a final judgment of any court of competent jurisdiction in California. The dispute that was brought before the Tehama County Superior Court was a matter relating to the property rights of the parties to the lawsuit, and the judgment removes any cloud from Smith's title to the 24680 parcel, including any claim that her property is subject to an express or implied utility easement in favor of Monson's parcel. The judgment also expressly orders Monson to remove (or cause to have removed) the poles, lines, and other utility equipment from Smith's lot.

In his response to PG&E's motion to dismiss this complaint, as well as in correspondence attached to the complaint, Monson refers to the judgment as "erroneous," and asks the Commission to reverse the Superior Court's decision. But we have no power to do what he asks, and Monson cites no legal authority that suggests that we do. Our jurisdiction is set forth in Article XII, section 4 *et seq.*, of the California Constitution, and in additional grants of authority and jurisdiction by the Legislature that are consistent with that Article. Nowhere in any of these laws that we are aware of is there a grant of jurisdiction to review judicial orders, adjudicate property disputes, or establish a utility easement in favor of one property owner *vis a vis* another. That power resides exclusively in the judiciary.

The effect of the Superior Court's judgment is to negate any colorable claim by Monson that there is an easement in his favor entitling him to maintain the status quo with respect to the location of the electric line. That issue is fully adjudicated. Smith's conduct, coupled with the terms of the judgment, leaves no doubt that she has revoked any permission granted by previous owners to locate the disputed electric line on her parcel. The Superior Court's judgment is the law of the land, and we have no power to alter its terms even if, hypothetically, we

were to agree with Monson that rerouting the line at substantial cost to him is inequitable.

PG&E's notice to Monson that it intends to terminate his service is merely an outgrowth of Smith's revocation of permission to use her parcel. It does not mean that PG&E will remove the electric line after service is terminated, as that remedy has already been addressed in the judgment. Responsibility for effecting the removal (per the Superior Court's judgment) is Monson's, and enforcement of that judgment is a matter within the jurisdiction of the Superior Court. PG&E's belief that Smith's permission to maintain the line has been revoked is justified, as her actions following issuance of the judgment clearly indicate that such is the case. Under these circumstances, Tariff Rule 11.L gives PG&E the authority to terminate Monson's service. Whether Monson thereafter complies with the terms of the judgment is not a matter within our jurisdiction.[4]

4. Conclusion

Viewing the uncontested facts in the light most favorable to Monson, we perceive no jurisdictional basis for his complaint. The Tehama County Superior Court's judgment adjudicates Monson's property rights *vis a vis* Smith, and that judgment forecloses any claim that Monson has a right to maintain the disputed electric line on Smith's property. Smith's revocation of permission for Monson to leave the line in place is clear, and PG&E is entitled to terminate his service

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[4] Tariff Rule 11.L provides:

> If PG&E's service facilities and/or a customer's wiring to the meter are installed on property other than the customer's property and the owner of such property revokes permission to use it, PG&E will have the right to terminate service upon the date of such revocation. If service is terminated

Footnote continued on next page

under Commission-approved Tariff Rule 11.L. Under these circumstances, dismissal of the complaint is appropriate. (*Michael B. Dashjian* v. *Pacific Gas and Electric Company,* Decision 00-01-003 (*mimeo.*), 4 CPUC3d 1 (2000).)

We will dismiss the complaint with prejudice.

5. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by Complainant Monson on August 5, 2008. No reply comments were filed.

Monson's comments cited no factual, legal or technical errors in the proposed decision, as required by Rule 14.3, subdivision (c), of the Commission's Rules of Practice and Procedure. The thrust of his comments is that, "This case is in California, PG&E is a public utility, and this commission oversees public utilities." (Underscoring in original.) Although this is true, it does not alter the circumstance that this Commission is powerless to alter or override the final judgment of the Superior Court. We cannot change our decision.

6. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Victor D. Ryerson is the assigned ALJ in this proceeding.

Findings of Fact

1. Complainant Monson owns a parcel of land at 24682 Hidden Harbor Drive, Los Molinos.

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under these conditions, the customer may have the service restored under

Footnote continued on next page

2. Defendant PG&E is Complainant's residential service provider at the 24682 Hidden Harbor Drive property.

3. Defendant furnishes electrical service to Complainant's property by means of an electric line and associated poles that cross the adjacent parcel at 24680 Hidden Harbor Drive owned by Smith, who is not a party in this proceeding.

4. A dispute arose between Monson and Smith concerning the continuing presence on Smith's property of the electric line serving Monson. Smith filed a lawsuit against Monson and others in the Superior Court for Tehama County to obtain clear title to her lot and cause the removal of the electric line. In the *Judgment after Bench Trial against Marc S. Monson and All Other Persons Unknown Claiming any Right, Title, Estate, Lien, or Interest in the Real Property Described in the First Amended Complaint, adverse to Plaintiff's Ownership or any Cloud on Plaintiff's Title thereto and Permanent Injunction* in Case No. 52859, filed and entered January 10, 2006 (Judgment Book 258, page 126 of the Superior Court of Tehama County), the Superior Court adjudicated the dispute.

5. The second paragraph of the judgment orders Monson to remove from Smith's parcel, "all property, equipment and fixtures, including, without limitation, all power lines, telephone lines, cable television lines, and related poles and equipment," within thirty days at no cost to Smith, and further orders Monson to provide written notice to "all power and telephone providers servicing [Monson's] property … of this judgment and of the necessity to disconnect all such service across [Smith's] property," within thirty days. The judgment is final and is not appealable.

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the provisions of PG&E's line and service extension rules.

6. Following entry of the judgment, PG&E sought Monson's cooperation in arranging to have the line removed as required by the judgment. Although Monson paid a nonrefundable deposit to PG&E and obtained an engineering estimate from PG&E for the cost of relocating the line, to date he has not caused PG&E to remove the line from Smith's property. PG&E responded by notifying Monson that it intended to disconnect his power because of Smith's withdrawal of permission for the service line to cross her lot.

7. PG&E Tariff Rule 11.L provides:

> If PG&E's service facilities and/or a customer's wiring to the meter are installed on property other than the customer's property and the owner of such property revokes permission to use it, PG&E will have the right to terminate service upon the date of such revocation. If service is terminated under these conditions, the customer may have the service restored under the provisions of PG&E's line and service extension rules.

8. After the Superior Court filed and entered the judgment in Case No. 52859, Smith sought, and she continues to seek, removal of the electric line from her property. Her conduct is uncontroverted evidence that she has revoked any preexisting permission to use her lot for the purpose of accommodating the electric line that serves Monson's residence.

9. The only relief Monson seeks from the Commission in this complaint is that, "the pole & lines remain intact as they are." The complaint does not allege that PG&E is in any way violating any statute administered by the Commission, any order of the Commission, or any Commission-approved tariff.

Conclusions of Law

1. The Commission's jurisdiction is set forth in Article XII, section 4 *et seq.,* of the California Constitution, and in additional statutory grants of authority and jurisdiction by the Legislature that are consistent with that Article. Nowhere in

any of these laws is there a grant of jurisdiction to review judicial orders, nor to establish an easement or other property interest in favor of an individual. That power resides exclusively in the judiciary.

2. The effect of the judgment of the Tehama County Superior Court in Case No. 52859 is to negate any colorable claim by Monson that there is an easement in his favor that would permit him to maintain the status quo with respect to the location of the electric line. Under the terms of the judgment in that case, Smith has the unqualified right to compel Monson to remove the electric line and associated facilities from her parcel at any time.

3. The Commission has no power to review or alter the Tehama County Superior Court's judgment by reason of the matters set forth in Conclusions of Law 1 and 2.

4. Smith's conduct following entry of the judgment is uncontroverted evidence that she has revoked any preexisting permission to use her lot for the purpose of accommodating the electric line that serves Monson's residence. Under these circumstances, PG&E may terminate Monson's electric service pursuant to Commission-approved Tariff Rule 11.L.

5. The complaint in this proceeding should be dismissed with prejudice by reason of the matters stated in Conclusions of Law 1 through 3.

6. Today's order should be made effective as soon as possible.

O R D E R

IT IS THEREFORE ORDERED that:

1. Case (C.) 07-10-021 is DISMISSED with prejudice.
2. The hearing determination is changed, and hearings are not necessary.
3. C.07-10-021 is closed.

This order is effective today.

Dated September 4, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners