

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

James F. Donahue,

Complainant,

vs.

San Diego Gas & Electric Company,

Defendant.

Case 07-01-018
(Filed January 9, 2007)James F. Donahue, for himself, complainant.Kim F. Hassan, Attorney at Law, for defendant.**DECISION DENYING RELIEF**

In 2000, San Diego Gas & Electric Company (SDG&E) started construction on its Valley Center substation, located one-quarter mile from complainant's (Donahue) undeveloped property. Donahue's neighbor, Clover Cahleen McClellan (McClellan) owned property near the substation, over which property Donahue has a 60-foot-wide non-exclusive easement. SDG&E entered into an agreement with McClellan whereby SDG&E acquired an eight-foot-wide easement within the 60-foot-wide easement for the underground lines and area needed for a cable pole. In exchange for the easement, and at the request of McClellan, in early 2001, SDG&E relocated a distribution pole from the middle of the McClellan property to the edge of the property within the eight-foot-wide easement. Donahue's 60-foot-wide non-exclusive easement over the McClellan

property provides ingress and egress to his own property. The 60-foot-wide non-exclusive easement is also a right of way for other persons and for road and public utility purposes.

On February 8, 2001, Donahue contacted SDG&E, objecting to the location of the distribution pole and alleging that the pole was impermissibly located on his property; he demanded its relocation. He also complained that SDG&E workers drove over and potentially damaged his septic tank. Over the next five years, Donahue further claimed that SDG&E's trucks damaged his rock road, that SDG&E trespassed on his property, that a service line impeded his ability to trim his tree, and that SDG&E failed to remove an unused pole, fill two sink holes, and clean up debris on his property.

This complaint was originally filed under our Expedited Complaint Proceeding, but later investigation showed that should Donahue prevail the amount in controversy would exceed the statutory ceiling of \$7,500. Consequently, on April 19, 2007, the assigned Administrative Law Judge (ALJ) converted the complaint to one to be heard under our regular procedure (ALJ's ruling dated April 19, 2007, Rule 4.5(g) of the Commission's Rules of Practice and Procedure). Public hearing was held on August 23, 2007, and the matter submitted.

Donahue testified that he wants his property put back in its original condition and the pole relocated off his easement. He claims his title policy grants him a 60-foot-wide easement, but SDG&E took eight feet for its easement. He said he is entitled to have the full 60-foot-wide easement so that he can install gates and subdivide his property into separate lots. He said SDG&E damaged his property by placing a pole in his easement; therefore, he cannot subdivide his

property and put multiple gates on his property adjacent to his 60-foot-wide easement. The power pole limits his ability to do that.

Donahue testified that SDG&E drove on his property and probably broke the septic system on his property; he does not know if the septic system is broken because it is buried. He wants SDG&E to dig it up, examine it, and, if broken, to fix it. He also wants a new rock road that he claims SDG&E damaged. In addition, SDG&E took out a pole on his property and filled the hole with rock instead of soil. He demands that SDG&E fill the hole with regular soil and furnish him a compaction report from an engineer that says it is 90% compact. Also, SDG&E left a stub pole in the ground on his property; he wants it removed and the hole filled in and compacted with a confirming engineer's report. Finally, he accuses SDG&E of trespass because SDG&E cut a lock and chain he had installed on his gate in early 2007 to prevent access. He wants \$150 to pay a locksmith to repair the chain.

A witness from SDG&E testified that the distribution pole in question is located within a non-exclusive eight-foot-wide easement that was granted to SDG&E by McClellan in 2000 and does not interfere with Donahue's use of his property. The distribution pole is located within SDG&E's eight-foot-wide easement, approximately eight feet from the easterly edge of the 60-foot-wide easement. The eight-foot-wide easement is within the 60-foot-wide easement. He testified that on July 19, 2005, in an attempt to bring closure to Donahue's many claims, SDG&E sent a letter to Donahue, stating that SDG&E was prepared to move the distribution pole, provided permission was granted by another property owner. Donahue refused to accept SDG&E's offer. Since the July 19, 2005 letter, SDG&E has decided against relocating the pole. He pointed out that SDG&E is lawfully exercising its rights pursuant to a valid easement. The

distribution pole in no way prevents access to the Donahue property or interferes with Donahue's use of his property. For these reasons, SDG&E has determined that the relocation of the distribution pole would be a poor use of ratepayer funds.

In regard to the septic tank, he said SDG&E dug up and extended the septic tank pipe neck and also repaired a water line in early 2005. The septic tank has not been operational for at least six years and there is no evidence that it was in operation prior to SDG&E's construction work in 2000. Moreover, because it appears that the septic tank is disconnected from the public sewer system, and is likely considered an "abandonment of on-site waste system" pursuant to Article 2, Section 68.313.1 of the San Diego County Code of Regulatory Ordinances, Donahue may be required by the County of San Diego to remove the component contents of the septic tank. For those reasons, SDG&E has declined to use ratepayer funds to hire a third party to inspect Donahue's seemingly abandoned septic tank.

The witness testified that SDG&E did not damage Donahue's rock road. He presented photographic evidence, taken on July 27, 2001, after SDG&E completed work on the nearby substation and adjacent properties, which illustrates the good condition of Donahue's rock road. He said since SDG&E completed construction in 2001, SDG&E's use of the rock road has been limited to inspection and maintenance of SDG&E equipment and facilities. No construction work requiring heavy equipment has taken place since construction of the substation ended in 2001. Donahue and his neighbor, who operates a party rental business which involves the use of large commercial vehicles, make frequent use of the rock road which has likely led to the gravel being spread and

compressed into the soil. In addition, other utilities use the rock road to access their facilities.

Addressing Donahue's complaints regarding an unused distribution pole stub on his property, the witness testified that SDG&E cut the distribution pole to ground level in early 2005. Donahue claims that the pole butt is obtrusive and should be removed, but it is a common SDG&E utility practice, in rural areas such as Valley Center, to cut poles down to ground level, rather than remove the pole entirely. The pole butt is not in the way of vehicle traffic, is located in SDG&E's easement, and does not constitute a hazard. For these reasons, SDG&E has decided against removing the pole butt. SDG&E has also trimmed a tree, provided and installed a tree guard, filled two sink holes and removed debris from Donahue's property.

In 2005, SDG&E was prepared to move the distribution pole so that it would be adjacent to Donahue's property line, provided SDG&E could obtain the appropriate easement from the property owner. If this was not acceptable to Donahue, or SDG&E could not obtain the easement, SDG&E was also prepared to enter into an agreement to relocate or underground the line in the event the pole interfered with government mandated access road improvements which require Donahue to improve the access road to his property. Donahue declined this proposal.

In regard to the trespass issue, SDG&E's witness testified that SDG&E owns distribution and transmission poles on Donahue's property, which exist pursuant to an easement granted in 1924. The witness said Donahue installed a gate and fence in December 2006 or January 2007, which he locked, thus obstructing SDG&E's physical and legal access to its easement. In order to access SDG&E facilities located on Donahue's property, on January 25, 2007, the witness

cut a link from the chain and replaced it with an SDG&E lock so that SDG&E could have access through the gate, while maintaining Donahue's ability to use his own lock. Donahue discovered the SDG&E lock in July and has repeatedly called SDG&E insisting that it pay him \$150 for a locksmith to repair the chain.

Discussion

Donahue's complaint is without merit and should be denied. SDG&E relocated a distribution pole within its own easement according to law. Donahue does not have a veto over such construction. SDG&E, in fulfillment of its public utility obligations, cleaned up the area in which it worked, cut a distribution pole to ground level, filled holes, trimmed trees to protect electric wires, installed a tree guard, repaired damaged pipe, and removed debris from Donahue's property. SDG&E had every right to cut the chain Donahue placed on his gate to bar SDG&E from servicing its equipment. Not only did SDG&E have the legal right for access to its easement (and facilities) on Donahue's property, but Donahue's action could be considered a serious safety hazard.

Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

The Appeal of the Presiding Officer's Decision (POD)

Complainant appeals the POD on the grounds that it did not consider SDG&E's violation of its tariff Rule 16A10 and that SDG&E was required to get permission from complainant to move its distribution pole. Further, the POD erred in finding that SDG&E repaired all damage incident to relocating the distribution pole. SDG&E responded to the appeal and recommends denial because the appeal merely reargues and re-litigates the factual issues of the case. We agree with SDG&E.

The only issue that merits further comment is the assertion that SDG&E violated its tariff Rule 16A10. That Rule states:

Rights-of-Way: Rights-of-way or easements may be required by utility to install Service Facilities on Applicant's property to serve only Applicant.

- a. Service Facilities: If the Service Facilities must cross property owned by a third party to serve Applicant, utility may, at its option, install such Service Facilities after appropriate rights-of-way or easements, satisfactory to utility, are obtained without cost to utility; or
- b. Distribution Line Extensions: If utility's facilities installed on Applicant's property, or third-party property, will be or are designed to serve adjacent property, then utility may, at its option, install its facilities under Rule 15, after appropriate rights-of-way or easements, satisfactory to utility, are obtained without cost to utility.

It is clear that SDG&E did not violate this tariff section. SDG&E obtained an easement from the property owner McClellan to relocate the distribution pole. Complainant is not the property owner. No other points require discussion. The appeal is denied.

Findings of Fact

1. In 2000, SDG&E started construction on its Valley Center substation, located one-quarter mile from Donahue's undeveloped property. Donahue's neighbor, McClellan owned property near the substation, over which property Donahue has a 60-foot-wide non-exclusive easement. SDG&E entered into an agreement with McClellan whereby SDG&E acquired an eight-foot-wide easement within the 60-foot-wide easement for the underground lines and area needed for a cable pole. In exchange for the easement, and at the request of McClellan, in early 2001, SDG&E relocated a distribution pole from the middle of

the McClellan property to the edge of the property within the eight-foot-wide easement. Donahue's 60-foot-wide non-exclusive easement over the McClellan property provides ingress and egress to his own property. The 60-foot-wide non-exclusive easement is also a right of way for other persons and for road and public utility purposes.

2. SDG&E relocated a distribution pole within its own easement according to law. SDG&E, in fulfillment of its public utility obligations, cleaned up the area in which it worked, cut a distribution pole to ground level, filled holes, trimmed trees to protect electric wires, installed a tree guard, repaired damaged pipe, and removed debris from Donahue's property.

3. SDG&E acted properly when it cut the chain Donahue placed on his gate to bar SDG&E from servicing its equipment. SDG&E had the legal right for access to its easement (and facilities) on Donahue's property.

Conclusions of Law

1. Donahue has not satisfied his burden of proof in demonstrating that SDG&E has violated any tariff, order, or decision of the Commission, or any provision of the Public Utilities Code, to his detriment.

2. The relief requested should be denied.

O R D E R

IT IS ORDERED that:

1. The relief requested is denied.
2. Case 07-01-018 is closed.

This order is effective today.

Dated _____, at San Francisco, California.