STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

December 19, 2005 Agenda ID #5184

TO: PARTIES OF RECORD IN CASE 05-10-003

This is the draft decision of Administrative Law Judge Yacknin. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov/PUBLISHED/RULES PRAC PROC/44887.htm. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on ALJ Yacknin and assigned Commissioner Grueneich, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ STEVEN KOTZ for
Angela K. Minkin, Chief
Administrative Law Judge

ANG:jt2

Attachment

Decision **DRAFT DECISION OF ALJ YACKNIN** **(Mailed 12/19/05)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILMOT McCUTCHEN, Complainant, v. PACIFIC GAS AND ELECTRIC COMPANY and CITY OF ORINDA, Defendants.	Case 05-10-003 (Filed October 3, 2005)

OPINION DISMISSING COMPLAINT

This decision dismisses the complaint of Wilmot McCutchen (Complainant) against Pacific Gas and Electric Company (PG&E) and the City of Orinda (collectively, Defendants) for failure to state a claim upon which relief may be granted.

1. Procedural Background

By uncontested application filed June 1, 2005, PG&E and the City of Orinda jointly sought authorization under Pub. Util. Code § 851 to quitclaim a portion of a 115 kilovolt (kV) transmission line easement.[1] The Commission approved the application in Decision (D.) 05-07-017 (July 21, 2005).

[1] Application (A.) 05-06-002.

Complainant filed this complaint on October 3, 2005. By motion filed November 1, 2005, the City of Orinda moved to dismiss itself as a defendant because it is not a public utility subject to the Commission's jurisdiction. Complainant timely filed its opposition to the motion on November 3, 2005.[2]

Defendants timely filed separate answers to the complaint on November 17, 2005. Concurrent with its answer, PG&E filed a motion to dismiss for failure to state a claim upon which relief can be granted. Complainant timely filed its opposition to the motion on November 22, 2005.

2. Statement of Transmission Line Voltage

Complainant claims that Defendants violated Rule 1[3] of the Commission's Rules of Practice and Procedure by falsely stating, in their joint application for authority to quitclaim a portion of an existing transmission line's easement, that the transmission line's voltage is 115 kV. Complainant asserts that the transmission line voltage is 220 kV, as indicated on the map attached as Exhibit A to the application. Complainant alleges that this 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). Even assuming that the

---

[2] Because we dismiss the complaint on other grounds, we do not address the merits of the City of Orinda's motion to dismiss.

[3] "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 an artifice or false statement of fact or law."

transmission line is, as Complainant asserts, 220 kV,[4] Complainant has not stated a claim because the transmission line's voltage has no bearing on the Commission's review of the application.

General Order 131-D sets forth requirements for applications for authorization to construct electrical generation, transmission/power/distribution line facilities and substations located in California. Regardless of the voltage of the transmission line, Application 05-06-002 is not subject to review under General Order 131-D because it does not concern the construction of any facilities.

Rule 17.1(i)(A)(1) provides that the Commission is the lead agency for electric transmission line projects under General Order 131-B.[5] Regardless of the voltage of the transmission line, the Commission is not the lead agency under Rule 17.1(i)(A)(1) because the transmission line is not subject to General Order 131-D.

3. Statement that Easement is No Longer Necessary or Useful

Complainant claims that PG&E violated Rule 1 by falsely stating that the easement area to be partially quitclaimed is no longer necessary or useful in the performance of its duties to the public, even though the transmission line and tower remain on the property.

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

---

[4] PG&E asserts that the transmission line as constructed is 115 kV as indicated in the application, and that the map attached to the application is an historic planning map whose inclusion was not intended to communicate otherwise.

[5] General Order 131-B has been superseded by General Orders 131-C and 131-D.

its duties. Complainant has therefore not stated a claim related to PG&E's statement that the quitclaimed portion of the easement is no longer necessary or useful.

4. Complainant's Other Claims

Complainant charges PG&E with fraud, gross negligence, and breach of warranty, and charges both Defendants with conspiracy to commit securities fraud. These charges are dismissed because they are premised on the Rule 1 claims dismissed above, and because they constitute state or federal torts or criminal charges seeking money damages or other relief beyond the Commission's jurisdiction.

5. Comments to the Draft Decision

The draft decision of 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. Comments were filed on _____.

6. Assignment of Proceeding

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

Findings of Fact

1. By uncontested A.05-06-002, filed June 1, 2005, Defendants jointly sought authorization under Pub. Util. Code § 851 to quitclaim a portion of a 115 kV transmission line easement. The Commission approved the application in D.05-07-017 (July 21, 2005).

2. The map attached as Exhibit A to the application indicates that the voltage of the transmission line is 220 kV.

3. General Order 131-D sets forth requirements for applications for authorization to construct electrical generation, transmission/power/distribution line facilities and substations located in California.

4. Rule 17(i)(A)(1) provides that the Commission is the lead agency for electric transmission line projects under General Order 131-B. General Order 131-B is superseded by General Orders 131-C and 131-D.

5. The transmission line and tower remain on the property upon which the quitclaimed easement area exists.

Conclusions of Law

1. Regardless of the voltage of the transmission line, A.05-06-002 is not subject to review under General Order 131-D.

2. Regardless of the voltage of the transmission line, the Commission is not the lead agency for review of the quitclaim sought in A.05-06-002.

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.

4. The complaint presents no triable issue of law or fact, and Complainant has not stated any claim upon which the Commission may grant relief. PG&E's motion for summary judgment should be granted.

5. The following order should be effective immediately.

O R D E R

IT IS ORDERED that Case 05-10-003 be summarily dismissed.

This order is effective today.

Dated _____, at San Francisco, California.