

ORIGINAL

Decision No. 45649

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ARTHUR J. JENNER,

Complainant,

vs.

ASSOCIATED TELEPHONE COMPANY, Ltd.,

Defendant.

Case No. 5274

ORDER OF DISMISSAL

The first four paragraphs of the above complaint (filed March 9, 1951) refer to matters disposed of in 1950 in the adjustment of a disputed bill and bear no relation to the balance of the complaint, which reads as follows:

"5. Damage to real property owned by Complainant account 'installing Engineers' of Telephones for tenants of said real property, by running wires along front of building, over roof and inside apartments owned and operated by Complainant in a promiscuous and hazardous manner causing damage both to outside and inside of said Real Properties, all against the wishes and instructions of the Complainant.

"6. Failure to install phones, ordered by tenants, at time agreed on thereby losing use of a telephone both by business and residential tenants of properties owned and operated by the Complainant, all to his damage and of those tenants who signed up for telephones.

"WHEREFORE the Complainant requests an order

"7. That the Defendant be enjoined from further threats of 'discontinuance of Service' until such time hearings and damages may be assessed by Public Utilities Commission, in view of above complaint."

A copy of the complaint was mailed to defendant by way of infor-

mation, pursuant to Rule 12 of our procedural rules. (1) Thereupon, defendant's counsel submitted a statement asserting paragraphs 5 and 6 of the complaint to be defective in that the allegations therein are so vague and uncertain as to fail to apprise defendant of the nature of the charges.

On April 9, 1951, complainant was advised that in the opinion of the Commission's legal staff such paragraphs are vague and uncertain, and also involve legal questions beyond the Commission's jurisdiction. Complainant was further advised that service of the complaint would be withheld, and reference to the Commission delayed for fifteen days, so that complainant might consult his attorney and consider whether he desired to dismiss the complaint, file an amended complaint, or rely upon the present pleading.

By letter of April 14, 1951, complainant advised in part that he would "take advantage of the fifteen day 'waiting period' to contact further my attorney and if same warrants will submit 'PROFESSIONAL' cause of action complaint, * * *." No further reply has been received

(1) Rule 12 reads as follows:

"Procedure Upon Filing of Complaint. When a complaint is filed, the Commission shall mail a copy to each defendant. A defendant shall be allowed five days within which to point out in writing such jurisdictional or other defects in the complaint as, in defendant's opinion, may require amendment. Trivial defects will be disregarded in considering statements of asserted defects. If it appears to the Commission that the defects brought to its attention are so vital that the complaint should be amended, complainant may be required to amend the complaint. The Commission, without argument and without hearing, may dismiss a complaint for failure to state a cause of action, or strike irrelevant allegations therefrom.

If the complaint is in substantial compliance with these procedural rules, and appears to state a cause of action within the Commission's jurisdiction, the Commission shall serve a copy thereof upon each defendant, together with an order requiring that the matter complained of be satisfied, or that the complaint be answered within ten days after the date of such service. In particular cases, the Commission may require the filing of an answer within a shorter time. Requests for extension of time to answer shall be made to the President of the Commission in writing, with copies thereof to complainant."
(49 Cal. P.U.C. 536.)

from complainant, and no amended complaint has been filed.

It is quite clear that the complaint attempts to allege negligent acts on the part of defendant, resulting in alleged damage to complainant and his tenants. The complaint seeks assessment of damages by the Commission because of such alleged negligent acts.

The Commission may not decide all disputes to which a public utility may be a party, and is without jurisdiction to determine the existence of or liability for alleged negligent acts, or to award damages for alleged negligence. The power to decide such matters rests with the courts.

The complaint herein is hereby dismissed for failure to state a cause of action within the Commission's jurisdiction.

Dated. San Francisco, California, this 1st day of

May, 1951.

Q. J. Dwyer
James F. Calver
Harold P. Hule
Wm. H. Butler
Peter E. McNeill
Commissioners