

Decision No. ~~61015~~**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PETER VAN BENSCHOTEN and MARTHA  
 J. VAN BENSCHOTEN, his wife; JOSEPH  
 SKIBINSKI and LAURINE SKIBINSKI,  
 his wife; JOHN LEE and ROSA LEE,  
 his wife; WELLS J. HUNTLEY and  
 MARY HUNTLEY, his wife; JOHN NOVAK  
 and RANCHO GLAMO, a co-partnership,  
 comprised of GLENN R. FEIST and  
 ANY LOU FEIST.

Complainants,

Case No. 7378

vs.

SAN DIEGO GAS & ELECTRIC COMPANY,  
 a Corporation,

Defendant.

ORDER OF DISMISSAL

Complainant property owners allege that defendant has purchased certain property closely adjacent to the property of complainants and plans to build a substation thereon; that the substation will be in an exclusive residential area and will result in decreases in the value of property owned by complainants to their detriment in the amount of \$10,000 each; that complainants have informed defendant that should the substation be built complainants intend to institute an action in inverse condemnation for the damage to be caused to their property; that numerous other parcels are available which are far more suitable for the substation; and that the building thereof will result in lengthy and expensive litigation for defendant.

Complainants request an order restraining defendant from building the proposed substation.

Pursuant to procedural Rule 12 (1) a copy of the complaint was mailed to defendant, and the latter has submitted a statement of asserted defects, to which complainants have replied.

Defendant notes that it acquired the property for the substation by a Superior Court decree in eminent domain entered January 8, 1962 (San Diego G. & E. Co., v. Braum et al., Civil No. 259276.) It urges in part that the Superior Court has exclusive jurisdiction over eminent domain proceedings and any claims for damages arising therefrom.

The complaint states it is brought pursuant to sections 1702 and 762 of the Public Utilities Code. Section 1702 provides in substance that complaint may be made setting forth any act or thing done or omitted to be done by any public utility, in violation or claimed to be in violation of any provision of law or Commission rule or order. The complaint herein makes no such allegation.

Section 762 provides that the Commission, upon finding that additions or improvements in existing utility

---

(1) Rule 12 reads as follows:

"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."

plant or facilities ought reasonably to be made, or that new structures should be erected, may order that such additions be made or structures erected. However, the complaint herein seeks to enjoin erection of a new structure.

Good cause appearing, IT IS ORDERED that the complaint herein is dismissed for failure to state a cause of action within the jurisdiction of the Commission.

Dated at San Francisco, California, this 31st day of July, 1962.

George T. Prover  
Edward J. Mitchell  
Ed. J. Fox  
Ernest W. Page

\_\_\_\_\_  
Frederick B. Holoboff  
Commissioner \_\_\_\_\_ did  
not participate in the disposition of  
this proceeding.