

Decision No. 81841**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
JOHN W. GRUNDY,

Complainant,

vs.

Case No. 9210

SOUTHERN CALIFORNIA EDISON COMPANY,
a corporation,

Defendant.

ORDER DISMISSING COMPLAINT

On April 16, 1971, complainant filed his complaint against Southern California Edison Company (Edison) alleging that Edison had knowingly misrepresented to him the estimated cost of utility bills at his home at 1129 East Caperton Lane, Lancaster, California. Allegedly relying upon representations by Edison that the utilities would vary from \$30.00 to \$67.00 per month or an average of \$46.00 monthly, complainant purchased said home, only to discover that utility bills varied from \$75.21 to \$108.00. Complainant asks the Commission to require Edison to adjust its billing to conform to its representations or to suspend Edison's certificate.

Informal service of a copy of the complaint was made upon Edison, which returned a letter of defects. By letter of May 5, 1971, complainant was given an opportunity to amend, dismiss or stand on his complaint. Complainant responded by letter of May 11, 1971, in which he merely reiterated the content of his complaint. Edison filed its answer to the complaint on May 12, 1971, in which it asks that the complaint be dismissed.

The complaint states a cause of action for the intentional tort of misrepresentation. Such causes are not within the jurisdiction of the Commission. In addition, the relief sought by complainant is either unlawful or impossible to grant. Edison could not be required to adjust its billing without an allegation and evidence that it had charged other than its tariff rates. (Public Utilities Code, section 532.) Complainant makes no such allegation.

Complainant's alternative prayer, that Edison's certificate be suspended, to the extent that it portends a partial or complete shutdown of Edison's electric transmission and distribution system, is fatuous, in the extreme. A utility is constitutionally entitled to earn a reasonable return on its investment devoted to the public service.

Furthermore, there is evidence that the complaint has in fact been satisfied. Correspondence from Edison in the Commission's file indicates that the excessive bills were caused by faulty construction of the heating system in complainant's home; that the builder of complainant's home, Larwin-Southern California, Inc., has assumed full responsibility and has repaired the faulty heating system; and that the builder has paid to complainant the sum of \$78.88 to compensate complainant for his excessive utility bills. Also in the file is a Xerox copy of a document, signed by complainant and dated June 1, 1971, releasing the builder, Larwin-Southern California, Inc., from all claims arising out of insufficient operation of heating and air conditioning equipment, and any utility bills arising therefrom, installed at 1129 East Caperton Street, Lancaster, California. The consideration for the release is the sum of \$78.88.

The Commission concludes that:

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1. The complaint fails to set 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 of any order or rule of the Commission.
2. The complaint fails to state a cause of action within the jurisdiction of the Commission.
3. The Commission may, without argument or hearing, dismiss a complaint for failure to state a cause of action.
4. The complaint should be dismissed.

IT IS ORDERED that the complaint is dismissed.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this
5th day of SEPTEMBER, 1973.

Vernon L. Spurgeon
President
William J. Spurgeon
William J. Spurgeon
William J. Spurgeon
William J. Spurgeon
Commissioners