

ORIGINAL

Decision No. 86289

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JANICE WILSON and O'DEAN BARTON,
Complainants,
vs.
SOUTHERN CALIFORNIA EDISON COMPANY,
Defendants.

Case No. 10124
(Filed June 17, 1976)

ORDER OF DISMISSAL

The complaint alleges that:

- "1. Complainants JANICE WILSON and O'DEAN BARTON are both residential customers of Defendant Southern California Edison Company and wholly dependent upon Defendant for electrical service to their respective residences. . . .
- "2. On or about October 9, 1975, the Complainants' respective residential wiring and various electrical appliances connected thereto were suddenly and severely damaged when a voltage surge occurred in the electrical power supplied by Defendant.
- "3. Complainants are informed and believe that said voltage surge was caused when a large bird flew into one of Defendant's pole mounted transformers.
- "4. Complainants are further informed and believe that said occurrence could have been prevented had Defendant used equipment of a different design or provided a fast-acting protective device which would have prevented the surge from reaching Complainants' wiring and appliance.

- "5. Complainants do not seek, in this proceeding, to litigate the issue of civil liability of Defendant for the events which occurred. Rather the matter before the Commission is whether or not Defendant, as a regulated public utility has failed to live up to its obligation to meet its customers' needs in a safe and proper manner. Complainants further seek a determination as to whether Defendant has complied with the tariffs and regulations of this Commission and whether the Commission should require Defendant to take steps to prevent future incidents of this nature."

Defendant filed an answer which admits "that its overhead electrical facilities serving portions of the Simi Valley were damaged when a bird caused a high voltage short circuit of a transformer. . . ." Aside from the identity of the parties, the answer denies all of the other allegations in the complaint. In addition, the answer contends that the complaint does not state facts sufficient to constitute a cause of action.

Public Utilities Code Section 1702 provides in part that: "Complaint may be made...by any corporation or person...by written petition or complaint, setting forth an act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for 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." Rule 10 of the Commission's Rules of Practice and Procedure provides in part that: "The specific act complained of shall be set forth in ordinary and concise language. The complaint shall be so drawn as to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired." The only facts alleged in the complaint are: (1) On or about October 9, 1975 a voltage surge occurred in the electrical power supplied by defendant to complainants, which was caused by a bird flying into a pole mounted transformer, and (2) Residential wiring and appliances belonging to defendants were damaged as a result

of the power surge. Nothing in the complaint sets forth "any act or thing done or omitted to be done...in violation or claimed to be in violation of any provision of law or of any order or rule of the Commission". In the circumstances the complaint should be dismissed for failure to state a cause of action. (Blincoe v PT&T (1963) 60 CPUC 432, 434.)

The Commission finds and concludes that the complaint fails to state a cause of action because it does not allege any violation or claimed violation of any provision of law or of any order or rule of the Commission.

The Commission also concludes that the complaint should be dismissed.

IT IS ORDERED that the complaint in Case No. 10124 is dismissed for failure to state a cause of action.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 24th
day of AUGUST, 1976.

William J. Lyons President
Leonard L. Sturgeon
Donald Ross
Robert Bateman Commissioners