

Mailed

Decision 96-11-055 November 26, 1996

NOV. 26 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Martin R. Balding, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 Southern California Edison Company, )  
 )  
 Defendant. )

Case 96-07-038  
(Filed July 26, 1996)

ORIGINAL

OPINION

The complaint is dismissed for failure to state a cause of action for which the Commission may grant relief.

Chaffey College (college) in Alta Loma has two swimming pools which are heated by a gas boiler. About ten years ago, a 75-kilowatt diesel engine electric cogeneration facility was added. Waste heat from the engine supplements the gas boiler for pool heating. The electricity generated bypasses the Southern California Edison Company (Edison) system and is fed directly into the college electric grid. The gas boiler is over 20 years old and needs replacement.

At the request of the college, Edison performed an analysis of alternatives for heating the swimming pools. Subsequent to receipt of the analysis, the college decided to cease operation of the cogeneration system.

Balding, the maintenance person for the cogeneration system, alleges that Edison used faulty information to convince the college to cease operation of its cogeneration system. Also, he disputes the amounts of \$50,000 for an engine overhaul and \$20,000 for modifications to meet air quality requirements included in the Edison study. He requests that the Commission order Edison to pay a third party, such as the California Energy Commission (CEC), to analyze the college's cogeneration system. If Edison is found to be in error, Balding requests that the Commission order Edison to

pay the CEC to reanalyze all school cogeneration sites where Edison has provided studies to allegedly discourage the use of cogeneration. Also, Balding requests that Edison compensate Chaffey College so that its cogeneration system can be returned to service. And Balding requests compensation in the amount of \$15,000 for lost income, distress, and loss of reputation.

Edison denies Balding's contention that it used faulty data to persuade the college to stop using its cogeneration system. Edison acknowledges that Balding provided it with data on the system. Edison denies that it intentionally failed to communicate with Balding, failed to acknowledge receipt of Balding's data, or that Balding's data were disregarded in the preparation of the reports. According to Edison, virtually all of the data provided by Balding were incorporated into the reports. In each instance in which the data used in the reports differed from data provided by Balding, Edison used data which were consistent with industry standards. Also, Edison states that in some cases, the data it used were more favorable to the continued operation of the cogeneration system.

Also, Edison denies that its employees engaged in any activity designed to discourage the use of cogeneration units. Edison states that the college engaged the engineering consulting firm, Paulo Fundament of Newport Beach (Paulo Fundament), to advise it regarding campus-wide energy issues. Edison attended several in-person meetings involving college administrators, Balding, and members of the Paulo Fundament firm at which the cogeneration system was discussed, among other things.

Further, Edison states that, in late March 1996, subsequent to the meetings between itself and the college, the college engaged a third party to undertake emissions testing of the cogeneration system. The test results demonstrated that the cogeneration system was not in compliance with South Coast Air Quality Management District (SCAQMD) emissions standards, and that the college was subject to penalties thereby. Edison believes that the college was advised by the third party, and ultimately decided, to shut down the cogeneration system shortly upon receiving the test results in order to

take advantage of an SCAQMD "amnesty" program which waived any penalties which may have accrued from operation of the cogeneration system. According to Edison, it was not advised or consulted by the college regarding the emissions testing conducted by the third party, or of the college's decision until the cogeneration system had already been shut down.

Discussion

If Balding had concerns regarding Edison's alleged bias against small cogeneration projects, he should have communicated his concerns to the college. Also, if Edison had used faulty data in its report, Balding should have pointed that out to the college. The decision with regard to continuation of the cogeneration project is for the college to make and is beyond the Commission's jurisdiction. The college hired its own consultant and may have had its own reasons for not wanting to continue operation of the cogeneration system. Meeting SCAQMD emissions standards may have been a factor.

Further, Balding has failed to specifically allege "any 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 entity, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission." (Public Utilities (PU) Code § 1702).

With regard to Balding's request for money damages, the Commission is not empowered to make an award of damages arising as a consequence of alleged tortious conduct or contractual violations, even if proven. The Superior Court has jurisdiction over claims to recover damages asserted against public utilities. (PU Code § 2106; see *Schumacher v. Pac. Tel & Tel.*, 64 CPUC 295 (1965); see also *Vila v. Tahoe Southside Water Utility*, 233 Cal.App.2d 469, 479 (1965).) Consequently, Balding's request for money damages is in excess of the Commission's jurisdiction. For the reasons set forth above, the complaint should be dismissed.

**Findings of Fact**

1. Balding alleges that Edison used faulty data in its report, thereby causing the college to cease operation of its cogeneration system, causing him loss of income, distress, and loss of reputation. He seeks damages of \$15,000.

2. Balding requests that the Commission order Edison to pay a third party, such as the CEC, to analyze Edison's report. If the third party finds Edison's report to be in error, Balding requests that Edison pay the third party to reanalyze all school cogeneration sites where Edison has used its studies to allegedly discourage cogeneration projects.

**Conclusions of Law**

1. Balding has failed to state a claim upon which the Commission may grant relief.

2. The Commission does not have jurisdiction to award money damages for tortious conduct or contractual violations. The Superior Court has jurisdiction over actions for damages against public utilities.

**ORDER**

**IT IS ORDERED** that the complaint is dismissed.

**This order is effective today.**

**Dated November 26, 1996, at San Francisco, California.**

**P. GREGORY CONLON**  
President

**DANIEL Wm. FESSLER**

**JESSIE J. KNIGHT, JR.**

**JOSIAH L. NEEPER**

Commissioners

Commissioner Henry M. Duque,  
being necessarily absent, did not  
participate.