

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Jibsail, Incorporated,

Complainant,

vs.

San Diego Gas & Electric Company,

Defendant

C.08-06-028
(Filed June 24, 2008)

**ORDER DENYING REHEARING
OF DECISION (D.) 08-11-040**

I. INTRODUCTION

On June 24, 2008, Jibsail, Incorporated (“Jibsail”) filed a complaint against San Diego Gas & Electric Company (“SDG&E”). Jibsail alleged that SDG&E violated certain local ordinances and sections of the Map Subdivision Act.¹ The alleged facts upon which Jibsail based these claims were that SDG&E failed to move the power poles and power lines off its property, and relocate them in existing underground pipes that are referred to in all of the maps for the “Sea Mesa” master development plan that covers Jibsail’s property.² Jibsail claimed that “in the establishment of the master development ‘Sea Mesa’ these power poles and lines were designed, required and agreed to have been

¹ Jibsail Complaint, Section (F)

² Jibsail Complaint, Section (H).

removed and relocated.”³ Jibsail sought an Order from us requiring SDG&E to remove the two power poles and power lines.⁴

On August 8, 2008, SDG&E filed a timely answer to the complaint, concurrently with a Motion to Dismiss the Complaint. The Motion was based on two grounds: (1) that the Complaint failed to state a cause of action for relief over which the Commission has subject matter jurisdiction; and (2) because it did not provide the requisite facts constituting the injury, as mandated by Rule 4.2 of the Commission’s Rules of Practice and Procedure.

In Decision (D.) 08-11-040, we dismissed Jibsail’s Complaint for failure to state a claim for relief over which we have jurisdiction, because:

[t]he object of this complaint is to secure from the Commission an interpretation of a local ordinance, the enforcement of a contract, and/or the adjudication of a property right. The Commission lacks jurisdiction to interpret local ordinances, to enforce contracts, or to adjudicate property rights, except where incidental to or in connection with some established power or duty of the Commission. (*See e.g., A. & E. Ry. V. Northern Elec. Ry.* (1914) 4 CRRC 1155.)⁵

On December 22, 2008, Jibsail, timely filed an application for rehearing challenging the lawfulness of D. 08-11-040. In its rehearing application, Jibsail claims that we incorrectly dismissed the complaint because we do have jurisdiction over the dispute, which it states involves application of SDG&E’s Electric Tariff Rule 15. Jibsail alleges that because we have adjudicated similar disputes in the past, we have jurisdiction to consider this dispute.

³ Jibsail Complaint, Section (F)

⁴ Jibsail Complaint, Section (H).

⁵ See D.08-11-040, p. 2. We treated the first issue regarding our jurisdiction as dispositive of the Motion.

Specifically, Jibsail argues:

The Decision is unlawful and erroneous in that the Commission does have jurisdiction over the dispute, which involves application of SDG&E's electric tariff rules, and the Commission has in the past exercised that jurisdiction to adjudicate similar disputes.”⁶

Jibsail further states that:

Despite having previously agreed to relocate the poles, and having already been compensated for the cost of the relocation, SDG&E now insists on additional compensation, presumably on the basis that it is permitted to seek such compensation pursuant to its Electric Rule 15, which governs the cost of relocation of distribution poles... Pursuant to California Public Utilities Code Section 1702, the Commission has jurisdiction over complaints concerning the violation “of any provision of law or of any order or rule of the commission.”⁷

Jibsail then cites eight Commission decisions in support of its argument that “[d]isputes concerning payments owed for distribution line or service line relocations, and where lines should be located, are commonly heard by the Commission.”⁸ Jibsail claims that we do have jurisdiction over the instant complaint, and that the Decision's conclusion is legally erroneous, because “[m]any of these disputes, as does the current one, turn upon interpretation of utility electric rules approved by the Commission.”⁹

⁶ Rehr. App., at p. 1.

⁷ Rehr. App., at p. 2.

⁸ Rehr. App., p. 2. These eight decisions are: *Crow San Juan Ranch v. SDG&E* [D.83-12-017] (1983) 13 Cal.P.U.C.2d 312; *Scarberry v. PG&E* [D.04-08-036] (2004) ___ Cal.P.U.C.3d ___; *Reclamation District No. 2042 v. PG&E* [D.01-07-010] (2001) ___ Cal.P.U.C.3d ___; *Garbutt v. PG&E* [D.98-05-048] (1998) 80 Cal.P.U.C.2d 319; *Donahue v. SDG&E* [D.07-01-018] (2007) ___ Cal.P.U.C.3d ___; *Sweeney v. SDG&E* [D.02-08-21] (2002) ___ Cal.P.U.C.3d ___; *Gomez v. PG&E* [D.06-05-010] (2006) ___ Cal.P.U.C.3d ___; and *McKenny v. PG&E* [D.99-02-083] (1999) 85 Cal.P.U.C.2d 152 [unpublished].

⁹ Rehr. App., pp. 2 & 3.

On January 6, 2009, SDG&E filed a response, setting forth its opposition to the rehearing application.

We have reviewed each and every allegation raised in the rehearing application. We are of the opinion that Jibsail's application for rehearing has no merit because it is based on the assumption that SDG&E's Electric Rule 15 was referenced in the Complaint, which it was not. Consequently, we must deny the Application for Rehearing of D.08-11-040, because no legal error has been established.

II. DISCUSSION

A. **The Commission correctly concluded that Jibsail's complaint failed to identify claims that were within the Commission's jurisdiction to resolve.**

In its rehearing application, Jibsail argues that we erred in determining that we had no jurisdiction to hear the case. Citing to eight decisions,¹⁰ Jibsail argues that we have decided many similar disputes in the past, and therefore do have jurisdiction over this dispute. This argument has no merit and Jibsail's reliance on the cited past decisions is misplaced. Jibsail's rehearing application is flawed because it fails to correctly state the allegations in the complaint. In its complaint, Jibsail contends that SDG&E violated certain local ordinances and sections of the Map Subdivision Act. These are matters not within our jurisdiction. Accordingly, D.08-11-040 correctly stated:

The Commission lacks jurisdiction to interpret local ordinances, to enforce contracts, or to adjudicate property rights, except where incidental to or in connection with some established power or duty of the Commission.¹¹

¹⁰ See fn. 8, *supra*.

¹¹ D.08-11-040, p. 2.

B. Jibsail incorrectly raises an allegation in its rehearing application that was not raised in its complaint, or discussed in D.08-11-040.

Jibsail argues that we have jurisdiction on the basis of a violation of a tariff, namely SDG&E's Rule 15.¹² However, the complaint contains no claim regarding a violation of any tariff. Thus, the rehearing application erroneously raises a claim that was not addressed in D.08-11-040, and thus, is not properly before us.

The first time Jibsail ever mentioned SDG&E's tariff rules was in its application for rehearing. All the allegations we had before us called for an interpretation of local ordinances, the enforcement of a contract, and the adjudication of a property right. Consequently, Jibsail's application for rehearing has no merit because it is based on the assumption that SDG&E's Electric Rule 15 was referenced in the complaint, which it clearly was not. If Jibsail had connected its allegations to SDG&E's tariff rules in its complaint, rather than to local ordinances or state laws, then the complaint might have survived, and we could have appropriately considered the merits of Jibsail's allegations based on Rule 15.

Further, every one of the decisions Jibsail cites involves a dispute that was specifically tied to the Commission's tariff rules. In all of those cases, there was no need to discuss our jurisdiction over the matter, because we clearly have jurisdiction over disputes that relate to tariff rules. Thus, Jibsail's reliance on these cases is misplaced.

Jibsail cites to no decisions or law to support the proposition that we have the jurisdiction to hear allegations involving the violation of a local ordinance, the enforcement of a contract, and/or the adjudication of a property right, independent of our duty to regulate public utilities, such as SDG&E.

¹² Rehr. App., at p. 2

III. CONCLUSION

For the reasons specified above, the application for rehearing of D.08-11-040 is denied.

THEREFORE, IT IS HEREBY ORDERED that:

1. The application for rehearing of D.08-11-040 is denied.
2. This proceeding, C.08-06-028, is hereby closed.

This order is effective today.

Dated April 16, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY A. SIMON
Commissioners