

ALJ/RAB/vdl

Decision 90 09 082 SEP 25 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Gary N. Hess, et al.,
 Complainants,
 vs.
 Southern California Edison Company,
 Defendant.

ORIGINAL

Case 90-02-023
(Filed February 9, 1990)

Gary N. Hess, for complainants.
Gene Everett Rodrigues, Attorney at Law, for
 Southern California Edison Company, defendant.

O P I N I O N

Complainants are 27 customers of defendant who own recreational vehicles and spaces at the Desert Shadows RV resort in Cathedral City, California. They seek an order of the Commission requiring defendant to establish domestic electric service for all lots at the resort except those owned by the developer of the resort and to require defendant to refund to lot owners the difference between the general service rate for electric service which they have been paying and the domestic rate. Defendant answered and denied billing any domestic customer under the general service rate and asserted that it had no knowledge of any specific customer who had been refused Southern California Edison Company's (Edison's) domestic rate if the customer qualifies for the domestic rate. Public hearing was held before Administrative Law Judge Barnett in Palm Springs.

The background of this complaint starts with the case of Wesselink v Southern California Edison Company, C.86-01-004, D.88-09-025 where the Commission opened Edison's master metered multifamily rate schedules to recreational vehicle (RV) parks which qualify for baseline allowances. In the decision we said that:

"We see no reason why permanent residents of RV parks should be treated differently than other domestic customers with respect to baseline allowances. Therefore, we will provide baseline allowances for permanent residents of RV parks."

* * *

"We believe that baseline allowances should be extended to RV parks that rent at least 50% of their spaces on a month-to-month basis for at least nine months of the year." (At p. 11.)

Complainants in the Wesselink case, RV owners, had sought to have their units provided service in a manner comparable to mobile home units. Various California statutes distinguished between mobile homes and recreational vehicles. RVs and RV parks are defined by Civil Code §§ 799.24 and 799.25 while mobile homes and mobile home parks are defined by Civil Code §§ 798.3 and 798.4. It is not pertinent to this case to set forth those definitions as all parties agree that a mobile home is not a recreational vehicle, although the evidence is that many recreational vehicles are taking on the characteristics of mobile homes.

As a result of the Wesselink decision, Edison promulgated its Form No. 14-327, effective September 3, 1989, which all recreational vehicle owners seeking domestic rates must sign. That form requires the applicant to declare, among other things, that the qualifying RV unit is used at the location where service is rendered as the applicant's permanent residence for at least nine months out of the year. The complete form is set forth in Appendix A.

Complainant Hess testified that he owns three lots in the Desert Shadows RV park. In this RV park there are some 460 lots for sale to persons with recreational vehicles. Approximately 430 of those lots have been sold to individuals who have placed RV units on them. All 460 lots are separately metered and receive a monthly bill from Edison. He testified that many of the RVs are more than 40 feet long and are equipped with a kitchen, dining room, bathrooms, and bedrooms, and can house a family for an indefinite length of time. These RVs can cost upward of \$400,000.

Mr. Hess testified that all three of his units are on domestic service and have been since he initially purchased them. He lives in an RV unit on one lot and rents his other two lots to owners of RVs. He testified that he represents the owner of Desert Shadows and sells lots at Desert Shadows to the public. At this time, there are approximately 30 lots still for sale. These lots are on the general service schedule and are not part of the complaint. While lots remain unsold, they are frequently rented on a daily or weekly basis to owners of recreational vehicles, who pay for electricity on Edison's general service schedule. He said that when a lot is sold he informs the purchasers that they have to apply to Edison for domestic service and it is at that time that some purchasers are told by Edison that they don't qualify for domestic service because they do not expect to be residents of the park for nine months a year.

He testified that many RV owners are retired and for economic reasons live in RV parks. He said that the Wesselink decision considered RV parks as rental parks but that the Desert Shadows RV Park is not a rental park; it is an ownership park where people pay as much as \$30,000 for an RV lot. The RV that is placed on that lot is often semi-permanent in nature with an awning, a deck, and skirting around it. He said that when the RV is moved off the lot, electricity is still required on the lot for lighting

the property and for fixtures and appliances that remain on the property all year-round.

The president of the Desert Shadows homeowners association testified that there are about 400 owners of the 430 lots sold to the public. He said that he has a 34-foot travel trailer on his lot plus a shed built for utilities. Electricity is provided to the shed and to the trailer. The trailer is on the lot year-round. He is on the domestic rate and has been since 1987 when he bought his lot. He stated the lots are not transient lots, that many people live there year-round, that all 400 owners pay dues to the homeowners association on a yearly basis, and all owners receive electricity at a separately metered service. He said that some RV owners do not live on the property year-round but do a great deal of traveling. He said there are no commercial uses in the RV park itself. The covenants, conditions, and restrictions of the development do not permit commercial operation of any kind inside the park. There are some units for rent and the association policy is to keep rents on a monthly basis. He said approximately 10% to 15% of the owners will rent their space. His concern is that all owners of lots (except the park developer) should be eligible for domestic service regardless of the time they actually live in the RV park.

Edison presented one witness, an analyst from its tariff department. The witness testified that under Edison's procedures, an owner of a separately metered RV lot is required to notify Edison that he wishes service under the domestic rate and must also complete Form 14-327. He believes there are four individually metered RV parks in Edison's service territory. He said that Form 14-327 was approved by the Commission pursuant to Advice Letter 144-E. He declared that under Edison's tariffs from the moment that an RV leaves the space in the RV park that space automatically becomes a general service use and no longer a domestic use.

On cross-examination he admitted that Edison makes no distinction between an ownership RV park and a rental RV park. He said that the difference between the domestic rate and the general service rate for 300 kilowatt-hours used during the winter months is about \$15.50 with the general service rate being about \$42.50 and the domestic rate being about \$27.00. He testified that a person who owns two residences on the Edison system is entitled to baseline service on the domestic rate at both residences.

Discussion

In Dorner v. Southern California Edison Company, Case 87-02-042, complainant, an RV owner, sought to be served by Edison under Edison's domestic schedule rather than Edison's general service schedule. Although it is not clear from the opinion, apparently Dorner's RV space was separately metered. The Commission, in denying relief, stated:

"D.88-09-025 allows RV parks to elect service under Edison's domestic rate schedule DM if at least 50% of the spaces are rented to tenants who rent their space on a month-to-month basis and occupy the same space for at least nine months a year as a permanent residents. Edison's recent Advice Letter 844-E, effective September 3, 1989, now provides RVs on a single premises served directly by Edison with a same option as RV parks. If an RV owner on a single premises meets the above criteria, Edison will provide service under its domestic rate schedules.

"The complaint does not allege that Edison has incorrently applied its tariffs as they existed at the time the complaint was filed nor does it identify the damages requested. Therefore, we find no cause for granting the relief sought and will dismiss the complaint." (D.89-09-081, p. 2.)

In D.89-12-057, in Application 88-12-055, we clarified the criteria set forth in Wesselink (D.88-09-025). We said:

"Although our language could perhaps be misinterpreted, (referring to the language of D.88-09-025) our standard refers to spaces, rather than to individual tenants. Thus, if an RV park rents at least 50% of its spaces on a month-to-month basis to one or more tenants for at least nine months of the year, then the tenants of such spaces should be considered permanent residents who are also eligible for baseline allowances. (We note that PG&E's current schedule EM, refers to spaces, as we intended.)" (Re PG&E, D.89-12-057 at p. 285.)

It is apparent from reading the three decisions which bear closest to the facts of this case that the Commission was first concerned with submetering, and then with highly transient use of RV spaces. This case concerns neither submetering, because all the spaces at Desert Shadows are separately metered by Edison, nor highly transient use, as all of the spaces are owned by those who occupy the space except for 10 to 15% of the spaces which are rented out.

It appears that the nature of RV parks is changing, and, therefore, our approach to providing electric service to RV parks should also change. From our reading of Wesselink and its progeny the Commission has recognized that many RV parks are domestic in nature, rather than commercial, and as a consequence are entitled to receive domestic service including baseline quantities if 50% of the spaces in the RV park are rented for nine months of the year. As we understand the decisions and their applicability, if the criteria are met then the entire RV park is placed on the domestic service.¹ Since the parks that qualify under Wesselink are

¹ Because these are master-metered parks, the qualifying parks receive baseline allowances based on the number of RV spaces that meet the nine-month criteria. The RV park owners may not resell the electricity by the kWh, but furnishes electricity as part of the tenants' space rental. Consequently, all tenants benefit, but the nine-month tenant gets less than a full baseline allowance.

submetered parks none of the users of the RV space are required to request service from the electric company but automatically receive domestic service with baseline. In contradistinction to a submetered RV park, the case at bar concerns an RV park in which all spaces are individually metered. In this case the RV users (or owners) must individually apply to Edison and show that they meet the nine-month qualification. Should 99% of the Desert Shadows owners meet the requirements and receive domestic service, still the other 1% would not receive domestic service. This contrasts to the submetered park situation where if 50% meet the requirements for domestic service then 100% receive it. It seems to us that Desert Shadows is being discriminated against because its lots are individually metered.

It is also apparent that the owner of an RV lot who uses the lot as a second home is being discriminated against when compared to a homeowner who owns two houses or condominiums or a landlord who owns houses and/or condominiums. In the case of the homeowner or landlord who owns a number of houses and/or condominiums in each instance each of those units receives domestic service. Edison asks no questions regarding whether the house or condominium is a second home or is used for commercial purposes, i.e., a rental unit. There is no reason to consider the owner of the RV lot any different from the owner of a second home. The fact that an RV may drive down the street seems irrelevant in these circumstances as a homeowner who lives in his second home only a month out of a year pays the domestic service for the month that he uses it and when the second home is vacant it is no different than an empty RV lot.

In our opinion the owner of an RV lot should obtain domestic electric service in the same manner as an owner of a second home, merely upon application for domestic service.

The difference between this case and Dorner, supra, is that in Dorner we were concerned with whether Edison had correctly applied its tariffs applicable to RVs; in the case at bar we are concerned with the reasonableness of Edison's tariffs applicable to RVs. Mr. Dorner, as an individual, could not challenge the reasonableness of Edison's tariffs; Mr. Hess and his fellow complainants, totaling 27 customers can. (Public Utilities Code § 1702.)

We are mindful of changes in living patterns. At one time all hotels were classified as commercial customers, but as many people began using hotels more as residences than as transient accommodations we recognized that shift and classified certain hotels as residential, to permit the occupants to receive the benefits of baseline rates. In Re PG&E (1983) 14 CPUC 2d 15, we said: "In our view residential hotels should be treated no differently than multi-unit apartment dwellings which correctly qualify for lifeline allowances." (At p. 235.) In that instance we were considering master-meter units.

In our opinion the distinction between general service rates and domestic rates for master-metered RV parks remains valid and our criteria for determining when a master-metered RV park may switch to domestic rates remain reasonable. But the differences between master-metering and separately metering are significant enough to require different standards to determine whether an end-user qualifies for the domestic or the general service rate. In determining whether a master-meter RV park qualifies for the domestic rate we should look at the total enterprise, but on separately metered premises we need look only to the individual use. We believe the appropriate comparison is not separately metered RV lot vis-a-vis master-metered RV lot, but separately metered RV lot vis-a-vis separately metered second home. Edison's tariffs permit a second home (or third or fourth) to obtain domestic service with baseline and does not require certification

of nine months' use. The home could be used for any length of time, no matter how short, and qualify for baseline. Yet an RV owner living in a unit for eight months a year would not qualify. It is no answer, as Edison argues, to say that because an RV unit can move off the lot it should be treated differently from a second home. The more appropriate analogy is that moving off the lot is akin to closing the second home until the next vacation. In both cases the electricity is turned off. The nine-month permanent residency requirement for separately metered residential RV units is discriminatory.

We should keep this case in perspective. We are reviewing our concept of where people live, how they live, and how they obtain the basic necessities of life. Drawing on other aspects of residency, we see that the term "residence" is defined in Elections Code § 200(c) as: "The residence of a person as used in this article, is that place in which the person's habitation is fixed for some period of time, but wherein he or she does not have the intention of remaining. At a given time, a person may have more than one residence." In the case of Collier v Menzel (1985) 176 CA 3d 24, 221 Cal Rptr. 110, homeless persons sleeping in the park were allowed to register to vote, giving the park as their residence address. Although the analogy is stretched, if sleeping in the park is sufficient residence for voting, then residing in a RV park (under the circumstances of this case) should be sufficient residence for domestic electric service.

Findings of Fact

1. Complainants are 27 customers of defendant who own recreational vehicles and spaces at the Desert Shadows RV resort in Cathedral City, California.

2. In this RV park there are some 460 lots of which approximately 430 have been sold to individuals who have placed RV units on them. All 460 lots are separately metered by Edison and received a monthly bill from Edison.

3. Many of the RVs are more than 40 feet long and are equipped with a kitchen, dining room, bathrooms, and bedrooms.

4. There are no commercial uses in the RV park on the lots purchased by individuals. From 10% to 15% of those individuals will rent their space at times. The rent is almost always on a monthly basis.

5. Under present Edison tariffs a person in the RV lot who desires domestic service must certify that he or she will reside on the lot for at least nine months of the year.

6. Edison's tariffs permit persons who own two or more homes or condominiums within Edison's service territory to obtain domestic service at both units without any certification regarding length of residency at the units.

7. The nature of RV parks is changing. More and more of them are becoming places where RV owners purchase the lot upon which they place their RV unit and stay for substantial periods of time.

8. The owner of an RV lot who uses the lot as a second home, but not for nine months in a year, is being discriminated against when compared to a homeowner who owns two or more houses or condominiums or a landlord who owns two or more houses or condominiums.

9. The owner of an RV lot should obtain domestic electric service in the same manner as an owner of a second home, merely upon application for domestic service.

10. A nine-month permanent residency requirement for separately metered residential RV units is discriminatory.

11. Edison's tariffs and forms which require applicants for service at RV parks to certify that they will occupy a particular space for at least nine months in a year are unreasonable and should be canceled.

Conclusions of Law

1. Edison should forthwith remove from its tariffs applicable to RV parks all references to length of residency needed to obtain domestic service where the individual lot in the RV park is owned by a person who uses the lot as his or her residence and is individually metered by Edison. Residency should be required for domestic service but there should be no requirement of a minimum residency time, or permanent residence, or permanent location, or intent to remain, or whether the RV will or will not be removed.

2. During all times covered by this complaint Edison applied its tariffs in a reasonable manner. No reparations should be made to those complainants who have been charged under the general service rate.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company shall forthwith remove from its tariffs applicable to RV parks all references to length of residency needed to obtain domestic service where the individual lot in the RV park is owned by a person who uses the lot as his or her residence. Residency shall be required for domestic service but there shall be no requirement of a minimum residency time, or permanent residence, or permanent location, or intent to remain, or whether the RV will or will not be removed.

2. In all other respects the complaint is denied.

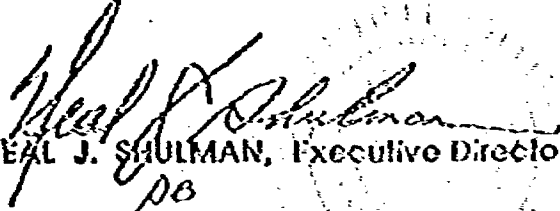
This order is effective today.

Dated SEP 25 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
PATRICIA M. ECKERT
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SHULMAN, Executive Director
DB

APPLICATION AND ELIGIBILITY DECLARATION FOR SCHEDULE D

TO SOUTHERN CALIFORNIA EDISON COMPANY (EDISON):

1. I declare that my recreational vehicle (RV), located at:

_____ is a Qualifying RV Unit which:

- (a) Is used at this location as my permanent residence for at least nine months out of the year; and
- (b) Is permanently located and has been in the same space continuously for nine months or more; or within the last nine months has been permanently located in the same space with the intent of remaining in excess of nine continuous months; and
- (c) Is not removed from this location on a regular basis; and
- (d) Is a single-family dwelling as described in Section 2 below.

2. I understand that a single-family dwelling is a permanent residential dwelling which contains cooking facilities (not necessarily electric) and which is used as a residence by a single family.

3. I further understand that:

- (a) All the terms and conditions of Edison's tariffs, including Schedule D, Domestic Service, as now authorized or as revised by the Public Utilities Commission shall apply.
- (b) It is my responsibility to notify Edison of any change in condition of use of my RV that may affect my eligibility for Schedule D or Baseline allocations.
- (c) Eligibility for service under Schedule D, and any information provided regarding Baseline allocations are subject to verification, from time to time, by Edison.
- (d) In the event Edison determines that this account is not eligible for domestic service under Schedule D, or I have not complied with this Eligibility Declaration, this Account will be transferred to an applicable general service rate schedule and I may be rebilled accordingly.

(Please Print or Type, except for Signature)

Account No. _____ Name _____

Telephone (____) _____ Address _____

Date _____

Signature

Form No. 14-327