ALJ/BDP/f.s *

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OCT 15 1991

Decision 91-10-006 October 11, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DEAN A. GROSSMAN and CORAZON S. GROSSMAN, Complainants, vs. SOUTHERN CALIFORNIA EDISON COMPANY, Defendant.	Case 90-05-018 (Filed May 10, 1990)

Dean A. Grossman and Corazon S. Grossman, for themselves, complainants.
Gene Everett Rodrigues, Attorney at Law, for Southern California Edison Company, defendant.

O P I N I O N

Dean A. Grossman and Corazon S. Grossman (Grossmans) allege that Southern California Edison Company (Edison) overcharged them for a period of approximately 10 years for electric service provided to Corkill Park in Desert Hot Springs.

A public hearing was held before an administrative law judge on January 14, 1991, in Los Angeles.

Edison has two master meters which serve electricity to mobile home and recreational vehicle (RV) spaces in the park. One master meter serves 96 mobile homes in the front section of the park. The other master meter serves 118 spaces in the rear section of the park; 28 of these spaces have mobile homes and the remaining 90 spaces are for RVs. Of the 90 RV spaces, over 50%[1] are rented

1 This is a tariff criteria for a Qualifying RV Park.

on annual leases; three to 10 spaces are rented by the month for tenancies that last up to nine months of the year; one or two spaces are rented to overnight tenants during weekends in the winter months; and the remaining spaces are vacant.

Every space in the park is submetered and all tenants are separately billed by the park for electricity used. Both front and rear sections were fully submetered prior to 1978.

When the Grossmans purchased the park in February 1978, both master meters were on the same rate schedule, Schedule No. A-6B. The schedule had a built-in margin to cover submetering expense and lifeline allowances.[2] Edison provided the Grossmans with a Monthly Billing Chart, so that tenants served by both master meters could be billed at the same rate and receive lifeline allocations as Edison's domestic service customers.

Effective January 1979, pursuant to Decision (D.) 89711, in Edison's test year 1979 general rate case, Schedule No. A-6B was terminated. Edison placed the master meter serving the front section of the park on a domestic service schedule, Schedule No. DMS, and the master meter serving the rear section on a nondomestic service schedule, Schedule No. GS-2.[3] Edison still continues to provide a Monthly Billing Chart which includes baseline allowances,[4] and in addition provides a chart that includes low-income allowances.

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2 Advice Letter No. 433-E for Schedule No. A-6 cites the lifeline decisions D.86087 and D.86760.

3 Schedule No. DMS had a lifeline allowance and was intended for multifamily accommodations where all the single-family accommodations are submetered. In contrast, Schedule No. GS-2 has no lifeline allowance and does not allow submetering.

4 Baseline replaced lifeline in 1985 (D.84-12-066).

Not until November 1989, when tenants in the rear section of the park applied to Edison for low-income allowance determinations, did the Grossmans become aware that the two master meters were on different rate schedules. Low-income allowances (and baseline allowances) are not available on Schedule No. GS-2, which is the rate schedule for the master meter serving the rear section of the park. To overcome the problem, Edison applied all the low-income allowances to the master meter serving the front section of the park. Later, after explaining that "although the users qualified, the meter did not," Edison withdrew the low-income allowances for the master meter serving the rear section.

The Grossmans estimate that between January 1979 and November 1990, Edison overcharged them $91,090.80. They request that Edison be ordered to refund overcharges for service provided by the master meter serving the rear section of the park and to reinstate that meter on a domestic schedule, Schedule No. DMS-1, which is closed to new installations.

According to the Grossmans, without any explanation or notice, Edison changed the classification of the meter serving the rear section to nonresidential. Also, the Grossmans argue that by providing the Monthly Billing Chart, Edison "dictated" how the tenants should be billed, but failed to inform the Grossmans that after 1978 the chart should not be used to bill tenants in the rear section.

Edison disputes the Grossmans' assertions that they were never notified of the change in their rate schedules. It is Edison's standard practice to either insert notification in every affected customer's bill or send the customer a letter whenever a rate schedule is significantly revised or replaced by a new schedule. Moreover, each bill that the customer receives clearly displays the applicable schedule number and rate under which that customer is being billed.

Further, Edison argues that if the Grossmans had made a simple comparison of the aggregate monthly charges to their tenants with Edison's actual charges, they would have soon discovered the discrepancy. Edison believes that it is only reasonable that the owners of this business assume responsibility to ensure that there are no significant discrepancies between the amount they pay for their tenants' electricity and the revenues they receive from their tenants.

And Edison points out that during the 10-year period at issue, the Grossmans had reasonable alternatives which would have allowed them to recover the full amount of Edison's charges.

First, the Grossmans could have rewired the rear section of the park to take advantage of a lower domestic rate. The 28 mobile home spaces could have been on one master meter, and the 90 RV spaces could have been served by another master meter.

Second, the Grossmans could have included the cost of electricity as a fixed monthly charge in each tenants' space rent for the rear section. The submeters could have been used to analyze the tenants' past consumption so that the fixed monthly charge was based on the tenants' forecasted use. These options have been available to the Grossmans since they purchased the park.

With regard to current rate schedules, Edison's position is that that the RV spaces cannot be submetered since there is no such schedule available and the rear section of the park does not qualify for Schedule Nos. DMS-1 or DMS-2 master-metered discounted service for mobile home parks.[5] Edison argues that these

5 Only RV parks qualified by Edison prior to December 7, 1981, may submeter and individually bill tenants under Schedule No. DMS-1. Schedule No. DMS-1 was closed to new installations after December 7, 1981. Schedule No. DMS-2 applies to mobile homes only. Therefore, there is no schedule currently open that permits submetering in RV parks.

schedules require the single-family mobile home accommodations within the park to meet the definition of a multifamily accommodation, which excludes RVs and enterprises catering to transient tenants. Edison's Rule No. 1 specifically defines Multifamily Accommodation as:

> "An apartment building, duplex, mobile home park, or any other group of permanent residential single-family dwellings located upon a single premises, providing the residential dwellings therein meet the requirements for a single-family dwelling or accommodation. A multifamily accommodation does not include hotels, motels, residential hotels, guest or resort ranches, marinas, tourist camps, recreational vehicle parks, campgrounds, halfway houses, rooming houses, boarding houses, institutions, dormitories, rest or nursing homes, military barracks, or any enterprise that includes or rents to either transient tenants or transient accommodations." (Rule No. 1, emphasis added.)

Edison points out that the rear section of the park fails to meet the criteria for a mobile home park in two distinct ways. First, that section has 90 RV spaces, thereby violating the requirement that RV parks cannot be part and parcel of mobile home parks. Second, the Grossmans have admitted that at least some of their spaces are rented to transient tenants. Therefore, Edison contends that the rear section, as it presently exists, must be served under Edison's general service rate schedule (nondomestic), and, thus the Grossmans are not entitled to the master-meter discount for submetering their tenants in the rear of the park.

Regarding a refund, Edison's position is that the Grossmans are asking that the rest of Edison's ratepayers to subsidize the artificially low energy charges that the Grossmans billed the rear section tenants.

Discussion

We believe that the Grossmans have a valid complaint. Our review leads to the conclusion that, aside from not giving the

Grossmans proper notice when they transferred the rear section of the park to a nondomestic schedule, Edison incorrectly applied its tariff rules that were effective in 1978 and 1979. In reaching this conclusion, we considered several factors.

First, in 1978, prior to the change in classification, the rear section of the park was submetered in accordance with Edison's rules (Rule 18) and all tenants received lifeline allowances. Edison's argument, that submetering of RV parks is prohibited by its Rule No. 1 definition of multifamily accommodation, did not apply in 1978 and 1979 to RV spaces that primarily served long-term tenants. The definition was:

> "**Multifamily Accommodation:** An apartment building, duplex, court group, or any other group of residential units located upon a single premises, providing the residential units therein meet the requirements for a single-family accommodation. Hotels, guest or resort ranches, tourist camps, motels, auto court, and trailer courts, consisting primarily of guest rooms and/or transient accommodations, are not classed as multifamily accommodations." (Rule 1 - Advice Letter Nos. 465-E and 483-E, effective 1978 and 1979, emphasis added.)

Our interpretation of the above definition is that an RV park, known in 1978 and 1979 as a trailer court, did qualify as a multifamily accommodation so long as it did not cater primarily to transient users.[6] The Grossmans submitted evidence to support their contention that Corkill Park does not cater primarily to transient tenants; most of their tenants have long-term leases for nine months or more. Therefore, we conclude that in 1978, the

6 This definition was adopted in D.63562 dated April 17, 1962, in the Commission's review of Pacific Gas and Electric Company's (PG&E) Rule 18. PG&E's current tariffs retain this definition. Why Edison and PG&E currently have different definitions is not a matter for this proceeding.

Grossmans did submeter their RV tenants (and mobile home tenants) in accordance with Edison's rules at that time."

Second, we are not persuaded that Edison gave the Grossmans proper notice that the rear section was being transferred to a nondomestic rate schedule because of a tariff violation. Edison offered no evidence of any such notice, except the assertion that the Grossmans would have received routine notification regarding a rate schedule change resulting from the test year 1979 general rate case decision. Edison misses the point. The issue is notice of the alleged violation of Edison's tariff rule regarding transient tenants in a multifamily dwelling. According to the Grossmans, no such notification was given.

Third, Edison states that the Grossmans always had the option to rewire the rear section of the park. If so, we question why Edison did not inform the Grossmans in 1978 that they would lose their margin for submetering and their tenants would not receive lifeline allowances if their park was not rewired. The wiring configuration in the park was known to Edison since it shifted one master meter to a domestic schedule and the other one to a nondomestic schedule. We believe that Edison had a duty to give the Grossmans notice regarding (1) the loss of the park owners margin for submetering, and (2) the consequences of not rewiring.

Fourth, before the reclassification, the Grossmans were submetering both the front and rear portions of the park in compliance with Edison's rules.[7] In 1979, Edison shifted the master meter serving the rear section of the park to a nondomestic rate schedule which does not permit submetering, but took no affirmative action to warn the Grossmans that they could no longer submeter and bill tenants in the rear portion of the park and that

7 Exhibit 5, a monthly billing chart, shows a lifeline allocation of 240 kWh monthly and is dated January 17, 1978.

they would henceforth be in violation of Edison's rules. Dean Grossman testified, "I was never asked to stop submetering by Edison. And Edison was aware of how the park was built. Edison's aware of what we were doing. They have been out there. So why would I assume that they wouldn't want me to go ahead and submeter?"

Fifth, we find that there is merit to the Grossmans' argument that Edison "dictated" how the Grossmans should submeter their tenants, but failed to advise the Grossmans that the Monthly Billing Charts should not be used to bill the tenants in the rear section of the park after 1978. The charts provide no such warnings. The headings on the charts read "Baseline Billing Chart - Master Metered Multifamily Dwellings." In 1978 and 1979, RV parks qualified as multifamily dwellings according to Edison's Tariff Rule No. 1, and there was no reason for the Grossmans to conclude that the charts did not apply to the multifamily dwellings in the rear section of the park.

Sixth, we find no merit to Edison's argument that the Grossmans should have appeared in Edison's test year 1979 general rate case and made their concerns known. Aside from the fact that Edison did propose to drop Schedule No. A-6B, the Grossmans and their submetered tenants were not placed on notice that they were about to loose their lifeline allowances as a result.

Seventh, Edison's argument that the Grossmans expect the rest of Edison's ratepayers to subsidize the artificially low energy charges the Grossmans billed the rear section tenants has no merit. Those tenants have just as much right to lifeline/baseline allowances and to low-income assistance as the tenants in the front section of the park. The Grossmans gave all tenants baseline allowances in accordance with Edison's Baseline Billing Chart. The tenants received neither more nor less than they were entitled to receive under Edison's domestic schedules. Contrary to Edison's assertions, the rest of Edison's ratepayers have benefited at the

expense of the Grossmans, because the baseline allowances the tenants in the rear section received were provided at the Grossmans' expense.

Lastly, we agree with Edison that owners of a business should be held to a standard of care consistent with the responsibilities of running a business. While it is the Grossmans' responsibility to check the amount received from their tenants against the amount paid to Edison, there are unusual circumstances in this case that warrant consideration. As Corazon Grossman testified, each month she added the Edison bills and paid the total amount.[8] It is likely that if she had compared the totals, she may not have found a significant discrepancy because the bill for the front section of the park had a margin which would have offset the loss on the rear section. Only if she had compared the amount billed to the tenants in the rear section with the Edison bill for that section would the discrepancy have come to light. Nevertheless, it remains the customer's responsibility to exercise due care in paying utility bills.

In summary, we conclude that Edison erred in transferring the rear section of the park to a nondomestic schedule. The tariff definition of multifamily accommodation in effect in 1978 and 1979 did not provide Edison with the authority to shift the rear section of the park to a nondomestic schedule.[9]

Further, we conclude that Edison should refund the account for overcharges since November 23, 1986, three years before

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8 There is a third bill for a water pump meter account which is not significant.

9 It was not until 10 years later that Edison changed its tariff definitions "to be consistent with its longstanding practices". See Advice Letter No. 824-E, p. 2, dated February 27, 1989.

the date the Grossmans notified Edison of their concerns.[10] Since Edison is currently applying a nondomestic schedule to the rear section, the amount of refund should cover the period from November 23, 1986 through the date the refund is made. To reflect the time value of money, the refund should include interest at the three-month commercial paper rate published by the Federal Reserve Bank (G-13).

If the Grossmans rewire the rear section of the park, the 90 RV spaces should be master metered on Schedule No. DMS-1; and the 28 mobile home spaces should be master metered on Schedule No. DMS-2, and would receive the submetering discount applicable to mobile home parks only. Since Edison's current tariff schedules do not permit transient RV tenants to be served on domestic rate schedules, the Grossmans should set aside spaces for such tenants. Those spaces should be on a separate meter, should be served under a general service schedule, and the cost of electricity may be included in space rent.

If the Grossmans choose not to rewire the rear section, the master meter serving this section should be on Schedule No. DMS-1. However, the Grossmans should cease renting RV spaces to transient tenants if such spaces are not served by a separate meter on a general service rate schedule; as we stated above, charges for electricity to all spaces serving transient tenants may be included in space rent.

In summary, we give the Grossmans the options they would have had if Edison had provided them with notice before it shifted the rear section of the park to a nondomestic schedule in 1979.

10 Exhibit 4, Grossman's letter dated November 23, 1989. The three-year refund period was established in D.86-06-035, 21 CPUC 2d 270 at 278. Also, see PU Code § 736.

Other Issues

It is apparent from the testimony of the Grossmans that the rate schedules currently available to long-term RV park tenants do not provide: (1) incentives to conserve electricity because the cost of electricity is bundled in with the tenants' rent; (2) full baseline allowances to individual family units; and (3) low-income allowances to long-term RV park tenants who need them.

We shall address these issues in a separate proceeding.

Findings of Fact

1. In 1978 and 1979, RV parks qualified as multifamily accommodations according to Edison's Tariff Rule No. 1.

2. In 1978 and 1979, and for some years thereafter, Edison's tariffs permitted mobile home parks and qualified RV parks to submeter their tenants and to bill them at the same rates and provide the same lifeline allowances as Edison's domestic service customers.

3. In 1978 and 1979, Edison's Rule 1 definition of RV parks, then called trailer courts, did permit submetering of tenants provided that the park did not primarily serve transient users.

4. In 1978 and 1979, the rear section of Corkill Park did not primarily serve transient users.

5. Prior to 1979, both the front and rear sections of Corkill Park were fully submetered in compliance with Edison's rules. Edison provided Monthly Billing Charts so that all the tenants in the park could be billed at Edison's domestic rates and receive lifeline allowances.

6. Prior to 1979, the Grossmans used Edison's charts to bill all tenants in accordance with Edison's domestic rates and all tenants received lifeline allowances.

7. In January 1979, Edison placed the master meter serving the front section of the park on a domestic schedule, and the master meter serving the rear section on a nondomestic schedule. Edison continued to provide the Grossmans with a Monthly Billing

Chart and later a Low-Income Billing Chart so that submetered tenants could be billed at Edison's domestic rates.

8. Nondomestic rate schedules have different rates than domestic schedules, and do not provide submetering margins, lifeline/baseline allowances, or low-income allowances.

9. In January 1979, Edison did not notify the Grossmans that they should not use the billing charts to bill their tenants in the rear section of the park, that the cost of electricity for these tenants should henceforth be included in their rent, that these tenants would no longer receive lifeline allowances, and that if they continued to submeter these tenants the Grossmans would be violating Edison's rules.

10. In January 1979, before Edison assigned the master meter serving the rear section of the park to a nondomestic rate schedule, Edison did not notify the Grossmans that they could continue to submeter, and the mobile home tenants and the long-term RV tenants could continue to receive their lifeline allowances if the rear section of the park were rewired.

11. Since January 1979, the Grossmans continued to submeter all spaces in the park and bill all tenants in accordance with Edison's domestic rate schedules, including baseline/lifeline allowances.

12. Schedule No. DMS-1 was closed to new installations as of December 7, 1981. However, Schedule No. DMS-1 is available to those RV parks served by Edison prior to December 7, 1981, only if the park consists of single-family accommodations used as permanent residences, does not rent to transient tenants, and meets all other conditions of the schedule.

13. The current Edison rate schedules available to RV parks placed in service after December 7, 1981, do not permit submetering and billing of tenants based on individual consumption; therefore, long-term tenants: (1) do not have an incentive to conserve

electricity; (2) do not receive full baseline allowances; and (3) do not receive low-income allowances.

Conclusions of Law

1. In 1978, Edison erred in applying its tariff rule definition of multifamily accommodation to the master meter serving the rear section of the park.

2. Shifting the meter serving the rear section of the park to a nondomestic rate schedule and depriving 118 tenants of their lifeline allowances is not a routine rate schedule change resulting from Edison's test year 1979 general rate case decision.

3. Edison had a duty to provide appropriate notice to the Grossmans and their tenants in the rear section of the park before terminating their lifeline allowances and reclassifying their master meter as nondomestic. The notice provided by Edison was insufficient in this instance.

4. While customers have the responsibility to check their bills, there are unusual circumstances in this case which may have allowed the billing discrepancy to remain undetected for 10 years.

5. Since the Grossmans did provide all their tenants with lifeline/baseline allowances, they should receive a refund for the period from November 23, 1986, with interest up to the time the refund is made, at the three-month commercial paper rate published by the Federal Reserve Bank (G-13).

6. Notwithstanding that Schedule No. DMS-1 is currently closed to new installations as of December 7, 1981, the master meter serving the 118 spaces in the rear section of the park should be placed on Schedule No. DMS-1, since these spaces would have been on that rate schedule if in 1978 Edison had not misapplied its then current tariff definition of multifamily accommodation.

ORDER

IT IS ORDERED that:

1. Southern California Edison Company (Edison) shall back-bill the master meter serving the rear section of Corkill Park. The back-billing shall be on Schedule No. DMS-1, shall be retroactive to November 23, 1986. Edison shall refund any overcharges from November 23, 1986 through the date the refund is made, and the refund shall include interest at the three-month commercial paper rate published by the Federal Reserve Bank (G-13).

2. If Dean A. Grossman and Corazon S. Grossman (Grossmans) choose not to rewire the rear section of the park, the master meter serving that section shall remain on Schedule No. DMS-1. However, in accordance with Edison's current rules, none of the 118 spaces may serve transient recreational vehicle (RV) tenants unless such spaces are placed on a separate master meter and served under a nondomestic rate schedule.

3. If the Grossmans rewire the rear section of the park, Edison shall master meter the 28 mobile home spaces on Schedule No. DMS-2, and master meter the 90 RV spaces on Schedule No. DMS-1.

However, if the Grossmans wish to continue to rent spaces to transient RV tenants, such spaces shall be on a nondomestic service schedule and may not be submetered.

This proceeding is closed.

This order becomes effective 30 days from today.

Dated October 11, 1991, at San Francisco, California.

JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

Commissioner Patricia M. Eckert, being necessarily absent, did not participate.

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

Neal J. Shapiro, Executive Director