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Decision 92-04-055 April 22, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| Patric Barry,<br><br>Complainant,<br><br>vs.<br><br>SOUTHERN CALIFORNIA EDISON CO. (U338-E),<br><br>Defendant. | Case 91-08-031<br>(Filed August 14, 1991) |

Patric Barry, complainant.
James P. Scott Shotwell, for Southern California Edison, defendant.

## O P I N I O N

Complainant seeks to be included in defendant's low income rate program (LIRA) for 1990 and 1991. The LIRA program permits qualified ratepayers to obtain a 15% reduction on their electric bills. Defendant asserts that complainant is not eligible for the program. The essential facts of this complaint are not in dispute; only the conclusions to be drawn are disputed. Public hearing was held on before Administrative Law Judge Robert Barnett.

In May 1990, complainant sought to be included in defendant's LIRA program and defendant placed complainant in the program. In June 1991, defendant determined that complainant was not eligible for the program and had not been eligible for the program since complainant applied. Defendant backbilled complainant for $102.40, the amount which represents the difference between complainant's electric bills on defendant's domestic rate and its low income rate.

In early 1991, Edison decided to verify the income of persons on the LIRA program who used in excess of 500 kW a month. Edison had determined that approximately 70% of all persons on the program used less than 400 kWh a month and the next larger percentage was in the range between 400 and 500 kW. To keep the verification program manageable, Edison decided to verify those customers on the program whose usage exceeded 500 kW per month. There are approximately 30,000 people in that use bracket. Edison found that almost 18,000 of the 30,000 were ineligible for the program and rebilled them. Complainant was one of that 18,000.

The standards for participating in the LIRA program vary depending upon the number of persons living in the house and the gross annual income of the household. Edison's tariff shows the standard applied in 1990 and 1991.

Special Condition 2 of Tariff Schedule No. D-LI states:

> A Low Income Household is a household where the total gross income from all sources is less than shown on the table below based on the number of persons in the household. Total gross income shall include income from all sources, both taxable and nontaxable.
>
> Persons who are claimed as a dependant on another person's income tax return are not eligible.

| Number of Persons Living in House | Gross Annual Income From All Sources | |
|---|---|---|
| | 1990 | 1991 |
| 1 - 2 | $13,600 | $14,300 |
| 3 | 16,000 | 16,900 |
| 4 | 19,200 | 20,200 |
| 5 | 22,400 | 23,500 |
| 6 | 25,600 | 26,800 |
| 7 | 28,800 | 30,100 |

> For Households with more than seven persons, add $3,300 annually for each additional person residing in the household.

Complainant testified that he has four people living in his household: his wife, two minor children and himself. For 1990 program eligibility, gross income from all sources in the household could not exceed $19,200. Complainant's amended 1990 federal tax return, Schedule C, shows his gross income was $21,651. Based on that tax return, Edison determined that complainant was not qualified to receive low income rate status for 1990, or until he could show that he qualified.

Complainant testified that he is a real estate broker, in business for himself, who operates out of his home. He said that 1990 was a very bad year and that he had sustained himself and his family by borrowing money. He said that on Schedule C of his federal tax return, he showed reasonable business expenses in excess of $73,000 for a net loss for 1990 of over $48,000. He said that in his brokerage business he had business expenses which included advertising, automobile expenses, commissions, fees, telephone, supplies, taxes, licenses, and miscellaneous expenses.

Edison's witness testified that Edison considers only gross income when determining LIRA eligibility and does not consider deductions from gross income, whether or not business-related. It does not consider deductions from gross income to determine LIRA eligibility because the majority of LIRA applicants are wage earners or are on welfare and do not have the privilege of deducting expenses from their tax returns in order to determine eligibility. Further, Commission General Order (GO) 153 (applicable to a comparable program for telephone customers) refers only to gross income and does not consider any deductions from gross income in determining eligibility.

This case presents two questions: (1) whether loans should be considered as part of gross income for LIRA purposes; and (2) whether business expenses should be considered when determining LIRA eligibility.

In our opinion, loans should be considered in determining gross income for LIRA purposes. In GO 153, we have defined total household income as being "all revenues, from all household members, from whatever source derived, whether taxable or nontaxable, including, but not limited to: wages, salaries, interest, dividends, spousal support and child support payments, public assistance payments, social security and pensions, rental income, income from self-employment, and all employment-related, noncash income." Although loans are not included in the definition of total household income, the evidence in this case compels us to include loans in the definition.

The definition in GO 153 refers to "all revenues...from whatever source derived, whether taxable or nontaxable...." Edison's tariff refers to "total gross income from all sources...." A loan clearly fits both definitions. The policy behind the LIRA program is to provide financial help to those who have limited sources of funds. The seminal decision in this field is Decision (D.) 89-07-062 in Investigation 88-07-009 where we discussed eligibility requirements for the LIRA program in an attempt to help poor people. We set the LIRA eligibility criteria to define a low income household as one whose income did not exceed 150% of the federal poverty level. This is the same income criterion we set for Universal Lifeline Telephone Service (ULTS). Other standards considered in D.89-07-062 were the Home Energy Assistance Program (HEAP) criteria used by the Department of Economic Opportunity (DEO) and the Medical Eligibility Data System (MEDS). Both of these programs are comparable to ULTS. (D.89-07-062 at p. 9.)

The HEAP program provides yearly direct assistance checks to help low income customers pay their utility bills. Ratepayers qualify, among other ways, by virtue of being eligible for benefits such as Aid to Families with Dependent Children, Supplemental Security Income/State Supplemental Payments, Veterans and Survivors' Pension Benefits, or food stamps. The thread that runs through all of these programs is that they are structured to meet the needs of poor people, poor in the sense that they have very little income, not in the sense that for any particular year their income tax form may show a loss. Much of the income which is counted toward the poverty level assistance programs is not income which is reportable on the federal tax form. The LIRA program is to assist low income households, not those households which can sustain themselves on borrowed money. Loans should be considered part of "all revenues...from whatever source derived...."

It is complainant's burden to show that he and his household qualify for the LIRA program. Complainant has not sustained his burden. The relief requested will be denied.

Because of the view we take of the evidence in this case, we do not reach the question of whether business expenses should be considered when determining LIRA eligibility. However, two comments are in order: (1) we don't want to put the utilities in the business of auditing tax returns as that would increase the costs of supervision of the LIRA program prohibitively; and (2) we are concerned about the business person who has a sole proprietorship, such as a gardener. That person has legitimate business expenses such as upkeep on a truck, insurance, gasoline, gardening tools, etc., all of which are out-of-pocket expenses and, if permitted as a deduction, could easily bring that person's household within the criteria for LIRA eligibility. That person's family should not be found ineligible for the LIRA program because the income provider has a sole proprietorship rather than a wage-paying job. We do not underestimate the difficulty in striking a balance between those two goals.

<u>Findings of Fact</u>

1. Complainant applied for and was deemed eligible for defendant's LIRA program in 1990.

2. Complainant was removed from the program in 1991 on the ground that his household income exceeded the eligibility criteria.

3. Complainant submitted his 1990 federal tax return to defendant. That return showed gross income of $21,651 and related business expenses in excess of $73,000. At the time the eligibility criteria for a household of four in the LIRA program was $19,200 to $20,200.

4. Complainant supplemented his income in 1990 and 1991 by borrowing. Complainant did not quantify the amounts borrowed.

5. Loans should be considered part of all revenue of a household when determining eligibility for the LIRA program.

6. Complainant has failed to prove that his 1990 total gross income from all sources was less than $19,200.

Conclusion of Law

The relief requested by complainant should be denied.

## O R D E R

IT IS ORDERED that the relief requested by Patric Barry is denied.

This order is effective today.

Dated April 22, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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

NEAL J. SHULMAN, Executive Director