

ALJ/BDP/sid

Mailed

FEB 4 1998

Decision 98-02-027 February 4, 1998

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Richard K. Parry,

Complainant,

vs.

Southern California Edison Company (U 338-E),

Defendant.

Case 96-10-015  
(Filed October 30, 1996)

**ORIGINAL**

**OPINION**

Richard K. Parry (Parry), a subdivider, requests that the Commission issue an order requiring Southern California Edison Company (Edison) to relinquish his subdivision to Valley Electric Association of Nevada (Valley Electric). The subdivision is located on the California-Nevada border. He contends that occupants of his subdivision pay Edison more than double the rate that Valley Electric charges its customers. Valley Electric serves customers a short distance away in Nevada.

The complaint is denied.

**Background**

Parry is the developer of a subdivision known as Tract 117, Inyo County, California. There are six all-electric consumers being served in the subdivision at the present time. The subdivision is composed of 49 homesites, 31 of which have been sold. According to Parry, it should be only a relatively short time before many consumers are in the subdivision.

The east property line of the subdivision is the California-Nevada border. Power is brought to the property line by Valley Electric and is metered by Edison, who distributes the power to the various lots and consumers in the subdivision. Valley Electric provides power to its customers in Nevada at the rate of 5.8¢ per kilowatt-hour

(kWh). Edison charges consumers in the subdivision 12.34¢ and 14.19¢ per kWh for baseline and non-baseline service, respectively.

Parry argues that, in addition to the unfairness of the rate for electricity, Edison's service yard is 2-1/2 hours away from the subdivision. Parry believes this could present many problems in the future, particularly because many of his lots are purchased by elderly retired people whose reliance on their power source could be critical from a health standpoint.

Edison filed a Motion to Dismiss pointing out that the facts and legal issues in this case generally match those in the *Thomas* complaint. The sole difference was that Parry resides in Stewart Valley, and Thomas resides in Mesquite Valley, both adjacent to the California-Nevada border. The Commission discussed the *Thomas* complaint in Decision (D.) 96-12-046, and dismissed the complaint for failure to state a claim upon which the Commission can grant relief.

#### Discussion

We agree with Edison that the material facts in this case and legal issues presented are the same as in the *Thomas* complaint, where we denied relief. In the application of *California Water Service Co.* to extend service in the territory of Westmilton Water System, the Commission in D.83-01-05 stated:

"If customers or would-be developers were allowed to pick and choose between neighboring utilities for their own economic advantage, the situation would be highly unstable and utility planning not only impossible but meaningless. Certainly the public interest always must enter into the consideration, but we must be concerned with the overall welfare of all the public involved in that utility's service territory, and not merely with that of a subdivider and his prospective customers located in the immediate area of the proposed subdivision." (10 CPUC2d 690, 697.)

In this instance, complainant wishes to secede from Edison to join Valley Electric to take advantage of Valley Electric's lower rates. Historically, as we stated above, allowing customers to pick and choose a public utility was not considered in the interest of all the public involved in the utility's service area and was considered inconsistent

with the principle of regulation in the public interest (see D.41682, *Clara Street Water Company v. Park Water Company* (1948) 48 CPUC 154, 158).

Parry would have us require that Edison relinquish his subdivision to Valley Electric. His justification for this relinquishment is the rate differential that exists between Valley Electric's service in Nevada and Edison's rates for service just across the border in California. Wherever electric utility service territories adjoin, the possibility for rate differential exists. The potential for rate differential is exacerbated if the utilities are subject to the regulation of different jurisdictions, as is the case here. Depending upon a variety of circumstances, some of them beyond the control of one or both utilities, these rate differential will vary. The Commission has recognized that the mere existence of the rate differential between adjoining utilities is not, in and of itself, a reason to modify a utility's service territory. (*California Water Service Company 10 CPUC2d 690.*)

This Commission cannot require that Valley Electric service this territory. Therefor we cannot order Edison to relinquish service in this area without knowing whether Valley Electric is willing to extend their service to that territory. Furthermore, Valley Electric does not have the requisite approvals to serve California customers. Valley Electric, if it is to provide utility service as a public utility under the jurisdiction of this Commission, would need to seek, and receive the proper authorities.

There are procedures in place for utilities, assuming that Valley Electric is willing and able to provide service, to resolve boundary changes. It is a matter for Edison and Valley Electric to resolve and bring to the commission for approval should these utilities believe changes necessary.

In summary, there is no legal basis for this Commission to order Edison to relinquish part of its service area to Valley Electric, simply because Valley Electric's rates are lower.

#### **Judicial Review**

Judicial review of Commission decisions is governed by Division 1, Part 1, Chapter 9, Article 3 of the Public Utilities (PU) Code. The appropriate court for judicial

review is dependent on the nature of the proceeding. This is a complaint case *not* challenging the reasonableness of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1. Therefore, it will be subject to judicial review in the Court of Appeals. (See PU Code § 1756(b).)

**Finding of Fact**

Complainant requests that his subdivision be served by a neighboring electric supplier so that purchasers of the subdivided lots can take advantage of lower rates.

**Conclusions of Law**

1. The mere existence of a rate differential between a customer's current electric supplier and a neighboring supplier, however significant the difference may be, is not a reason to modify the current supplier's service territory.

2. Current law and Commission policy does not allow customers to pick the utility that distributes electricity to their homes and businesses. (See D.83-01-005, *California Water Service Co.*, 10 CPUC2d 690, 697; D.41682, *Clara Street Water Company* (1948) 48 CPUC 154, 158.)

3. This is a complaint case not challenging the reasonableness of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1. Therefore, the proper court for filing any petition for writ of review will be the Court of Appeals.

**O R D E R**

**IT IS ORDERED** that Case 96-10-015 is dismissed for failure to state a claim upon which the Commission can grant relief.

This order is effective today.

Dated February 4, 1998, at San Francisco, California.

**RICHARD A. BILAS**  
President  
**P. GREGORY CONLON**  
**JESSIE J. KNIGHT, JR.**  
**HENRY M. DUQUE**  
**JOSIAH L. NEEPER**  
Commissioners