

# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 8787

March 5, 1958

Petition of Max R. Kargman and Marie W. Kargman, d/b/a The First Realty Trust of Boston, that the Department order the Boston Edison Company to furnish to the petitioner a proper master meter and sufficient electricity for submetering and resale to its tenants.

APPEARANCES: Edward O. Proctor, Esq., for Petitioners  
Max R. Kargman, pro se  
Frederick Manley Ives, Esq. For Boston Edison Company  
F. H. Perry, Esq.

On September 27, 1949, Max Richmond Kargman and Marie W. Kargman, d/b/a The First Realty Co. of Boston, filed a petition with the Department, which was docketed as D.P.U. 8787, claiming that they are the owners of premises at Nos. 18-32 Tremont Street in Boston, and that they desired to resell electricity to their tenants but that Boston Edison Company, relying upon paragraph 17 of its Terms and Conditions of Service, had refused to furnish them such electricity for that purpose. The petitioners purported to be acting under General Laws, Chapter 164, Section 92. They asked for relief (1) striking out such paragraph from Edison's tariffs and (2) ordering Edison to furnish such current. Before the hearing could be held in this matter, the decision of the Department in D.P.U. 8228 was published, as the result of which Edison asked for a postponement of the hearing in this case for purposes of study. Thereafter, Edison filed the proposed paragraphs 18 and 19 of its Terms and Conditions, the operation of which was promptly suspended and as to which the Department entered upon an investigation in D.P.U. 8862. In view of the fact that the issues in D.P.U. 8787 and D.P.U. 8862 appeared to the Department to be inextricably intermingled, the two matters were heard together. Upon the hearing, it appeared that the premises were in reality subject to a ten-year lease held by Industrial Housekeepers, Inc., for whom the Kargman's acted as agents, and of whose stock they are the sole holders, and a motion to substitute said corporation as petitioners was granted. The corporation and the Kargmans will be referred to indiscriminately as the petitioners. They took the lease from one Paretta who was theretofore Edison's customer and under whose direction the electric arrangements hereinafter described were conducted.

It seems clear to us, as it did when the matter was first presented to us, that, if Edison was justified in requesting approval of the additions of the proposed paragraphs 18 and 19 to its Terms and Conditions, then the petitioner in this case has little or no standing to attack paragraph 17. It seemed to us then and it still seems to us, that it would be a fatuous gesture for us to compel Edison to furnish a building owner with current for resale during the pendency of proceedings which might result in a prohibition of this very practice.

We agree with the petitioner that when two persons similarly situated desire service from a utility at the same rates or under the same conditions, it is no excuse for distinction between them that the one already is so served and the other is not. But there is, we believe, even in the law of public utilities, a modicum of common sense. When it is necessary for us to investigate the propriety of a given rate or practice, it seems to us proper to keep the situation *in statu quo* in the meantime. A clause which freezes rates for existing customers at least temporarily is not at all unknown. There is, and has been for some time, such a clause in effect in New York City applicable to certain customers of what is now Consolidated Edison Company with the tacit, if not expressed approval of the New York Public Service Commission. This Department, as well as many other utility regulatory bodies throughout the nation, has from time to time found it necessary, in order to conserve the supply of gas for general use, to order or to approve temporary tariff amendments providing for the freezing of the availability clauses in house heating rates so that new customers could not be served, though the old ones might continue. We see nothing that shocks the conscience in such an attitude, nor do we think the petitioners

have been the victims of unjust or unreasonable discrimination. See *Re New Eng. Tel. & Tel. Co.* (Vt.) 83 PUR (NS) 414, 451; *Dept. of Pub. Ser. v. Puget Sound P. & L. Co.* (Wash.) 11 PUR (NS) 75; *Re Idaho Power Company*, PUR 1924 E 899.

The premises in question comprise a large office building in downtown Boston, housing about 300 tenants. It is 91 per cent rented presently, as against 95 to 95½ per cent normal occupancy. Petitioners now buy current from Edison for building purposes on the D-1 Rate, and resell a portion thereof to the owners of the adjacent building, No. 10 Tremont Street, at a rate to which there is no parallel in Edison's tariffs, but which amounts to about \$2500 per year. The owners of No. 10 Tremont Street resell to their tenants, as well as using some current for their own purposes. The tenants in petitioners' building now buy direct from Edison. There are 185 Edison customers in this building at present, including the petitioners, who pay a total of \$26,685 annually for 697,622 kilowatt hours of use. It is estimated that Edison's annual revenues from this location, if petitioners' prayer is granted, will be about \$16,823, representing a decrease in revenue to Edison of about 37 per cent.

Petitioners claim the privilege of resale simply and solely because they see a chance to make a profit. They complain that their building is handicapped in the struggle for tenants because it cannot shade its rents to compete with other buildings which fatten up their net income by a profit from reselling current. Petitioners estimate that they would realize \$5000 to \$7000 annually if allowed to resell. They have the written contracts of their tenants to terminate service from Edison and take from the building, if the building can get the current. Petitioners wish to install high speed elevators in their building at a cost of about \$200,000, and claim that the additional revenue to be derived from resale would be important in their ultimate decision in this regard.

Once the decision is made that petitioners are not entitled to relief *pendente lite* by the cancellation of paragraph 17 of Edison's Terms and Conditions, the factual situation of petitioners is exactly the same as that of the other interests aligned against Edison in D.P.U. 8862. We therefore incorporate in this memorandum all of the findings of facts made in our decision in D.P.U. 8862 and all of the conclusions of law to which we have come therein, all as though set forth at length herein.

Boston Edison filed certain requests for rulings of law herein, waiving the ten-day limitation of G.L., Chapter 25, Section 5. Its requests were in two parts, one set of 19 requests being filed in all three cases referred to hereinabove, and one set of four requests being filed specifically in the instant case. As to the former set of requests, we grant its requests Nos. 1, 2, 3, 4, 5, 6, 7, 11, 12, 13, 14, 15, 16 and 17. We deny its requests Nos. 8, 9, 10 and 18. We deny its request No. 19 as unnecessary (See S.M. 1990). As to the latter set of requests, we grant its requests Nos. 2 and 3. We deny its requests Nos. 1 and 4.

Petitioners filed twelve requests for rulings of law herein. We grant its requests Nos. 1 and 8. We deny its requests Nos. 2, 3, 4, 5, 6, 7, 9, 10, 11 and 12.

For the foregoing reasons, after due notice, public hearing, investigation and consideration, it is hereby

**ORDERED:** That the petition of Max Richmond Kargman and Marie W. Kargman, and of Industrial Housekeepers, Inc., as substituted petitioner, be and the same is hereby dismissed.

By order of the Department

(signed) JAMES M. CUSHING  
Secretary.

A true copy.

Attest:

JAMES M. CUSHING  
Secretary.