

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 8886

March 5, 1958

Petition of Max R. Kargman and Marie W. Kargman, doing business as The First Realty Co. of Boston, that the Department order the Boston Edison Company to supply the petitioner with electric energy in the form of alternating current for the use of its tenants and for resale outside its own premises.

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

This is a petition filed by Max Richmond Kargman and Marie W. Kargman, d/b/a First Realty Company of Boston, under Section 92 of Chapter 164 of the General Laws for an order requiring Boston Edison Company to furnish it with electric current. Petitioners own the premises at No. 161 Devonshire Street in downtown Boston at which location they are now furnished direct current, a part of which is used for building purposes, the balance being sold to building tenants. They ask for an order directing Edison to furnish them with alternating current. Edison has offered to do so for use at No. 161 Devonshire Street only, pursuant to the limitations specifically set forth in its effective tariff entitled "General Wholesale Rate D-1," under which such current is offered "for use on the premises specified in the agreement for service." Such offer is necessarily subject to the final determination of the validity of the proposed general restrictions placed on resale of current by the proposals on file by Edison and which are the subject of our own investigation in D.P.U. 8862.

Petitioners object to the limitation so placed on the availability of AC current in Edison's rate schedule. They have an oral contract with the owner of the premises at No. 159 Devonshire Street, the terms of which are not in evidence, under which petitioners have agreed to sell a portion of such alternating current to 159 Devonshire Street, where the landlord intends and expects to resell it, at least in part, to his tenants. At the premises at No. 159 Devonshire Street, Edison now serves the tenants direct, without resale. Petitioners claim the right to relief upon the ground that such limitations are discriminatory in that DC current is furnished to other customers of Edison for non-tenant resale, in that by reason of this limitation, petitioners are prejudiced in their competitive position as compared with such other office buildings, and in that petitioners desire to devote the profits resulting from resale to carry improvements in their property which would place them in better position in such competition for tenants.

Since this petition involves very many of the questions placed before us in D.P.U. 8862, it was heard simultaneously with that proceeding and also that in D.P.U. 8787. Motions to sever were denied by this Department in its discretion. In order to avoid unnecessary repetition, the facts found in D.P.U. 8862, decided simultaneously herewith, are hereby incorporated in the findings in the instant case and made a part hereof.

The petition is admittedly an attempt to reopen the *Perry* case, D.P.U. 7697. In its facts, it is indistinguishable. Petitioners apparently feel that the *Perry* case was erroneously decided, and wish an opportunity to place this decision before the courts. We have no desire to circumscribe this ambition, although, as we pointed out in D.P.U. 8228, an appeal was filed, though never pressed, from our original holding.

No argument or citation is presented by petitioners which was not considered in our original decision in the *Perry* case. We do not share their contempt for the authorities which sustained us in

~~our previous opinion, nor do we understand the distinctions which petitioners attempt to draw between those cases and this one. For the reasons stated in our decision in D.P.U. 7697, and in accordance with our findings in D.P.U. 8862, we will deny this petition.~~

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 3 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. 1, 2 and 3. Petitioners did not file any requests for findings or rulings in this matter.

Accordingly, after due notice, public hearing and consideration, it is hereby .

ORDERED: That the petition of Max Richmond Kargman and Marie W. Kargman, d/h/a The First Realty Co. of Boston, filed December 12, 1949, be and the same hereby is dismissed.

By order of the Department

(signed) JAMES M. CUSHING
Secretary

A true copy.

Attest:

JAMES M. CUSHING
Secretary