

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



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Petition of the Western Manufactured Housing
Communities Association to Adopt, Amend, or
Repeal a Regulation Pursuant to Cal. Pub. Util.
Code § 1708.5

Petition 10-08-016
(Filed August 20, 2010)

**RESPONSE OF THE UTILITY REFORM NETWORK
TO THE PETITION OF THE WESTERN MANUFACTURED
HOUSING COMMUNITIES ASSOCIATION**

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TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. THE COMMISSION SHOULD OPEN A RULEMAKING INTENDED TO ENCOURAGE THE TRANSFER OF MASTER METERED UTILITY SERVICE IN MOBILEHOME PARKS TO DIRECT UTILITY SERVICE. 3

III. WHEN DRAFTING AN ORDER INSTITUTING RULEMAKING, THE COMMISSION SHOULD BE MINDFUL OF WMA’S MISREPRESENTATIONS OF FACTUAL AND LEGAL ISSUES TO ENSURE THAT THE OIR OFFERS AN UNBIASED AND ACCURATE PRESENTATION OF THE ISSUES TO BE EXAMINED BY THE COMMISSION. 7

A. WMA erroneously describes the purpose of the master meter rate discount. 7

B. WMA erroneously asserts that rates would not be impacted or would be reduced as a result of system transfers. 11

C. WMA erroneously suggests that the utility stands to benefit from guaranteed recovery of all costs associated with transfer..... 14

D. WMA misleadingly describes some of the benefits to MHP owners and residents from transfer..... 15

IV. THE SCOPE OF WMA’S RECOMMENDED RULEMAKING SHOULD BE EXPANDED TO INCLUDE POLICIES AND PROCEDURES INTENDED TO ENCOURAGE THE TRANSFER OF SYSTEMS IN PARKS WHERE RESIDENTS ARE ENDURING HEATH AND SAFETY RISKS OR OTHER SIGNIFICANT LIMITATIONS IN SERVICE..... 17

V. CONCLUSION 22

**RESPONSE OF THE UTILITY REFORM NETWORK
TO THE PETITION OF THE WESTERN MANUFACTURED
HOUSING COMMUNITIES ASSOCIATION**

I. Introduction

On August 20, 2010, the Western Manufactured Housing Community Association (WMA) filed the instant Petition to Adopt, Amend, or Repeal a Regulation Pursuant to California Public Utilities Code § 1708.5. Pursuant to Rule 6.3(d) of the Commission’s Rules of Practice and Procedure, The Utility Reform Network (TURN) submits this response to WMA’s petition.

WMA petitions the Commission to commence a rulemaking proceeding in order to adopt rules and regulations intended to encourage an increased number of transfers of master metered / submetered mobilehome park utility systems to direct utility service by the local investor-owned utility, under the statutory framework set forth in California Public Utilities Code (PU Code) §§ 2791-2799. As WMA explains, only a “handful of parks have completed that process since passage of the legislation,” which took effect on January 1, 1997.¹ WMA proposes that the scope of the rulemaking it seeks encompass the following:

- (1) the establishment of a standard transfer agreement as a basis for expedited Commission approval of transfers pursuant to PU Code § 2798;²
- (2) the adoption of the procedural steps of the expedited approval process for transfers utilizing the standard transfer agreement;³

¹ WMA Petition, p. 8.

² WMA Petition, p. 1. PU Code § 2798 provides as follows:

The commission shall adopt a standard form of agreement for transfer of gas and electric distribution facilities in mobilehome parks and manufactured housing communities that shall be the basis for expedited approval of the transfers. The contract shall be based on this chapter, the regulations of the commission, and on gas or electric corporation rules and regulations, as approved by the commission.

³ WMA Petition, p. 2.

(3) the adoption of eligibility standards (elsewhere referred to as “upgrade and replacement standards”) for systems subject to transfers pursuant to § 2794(a)⁴ and as articulated by the Commission in *Harbor City*, D.09-02-030;⁵ and

(4) the clarification of cost sharing requirements between mobilehome park owners and utility ratepayers for converting existing master-metered systems to directly metered service as specified in § 2791 et seq. (elsewhere referred to as “the assignment of cost responsibility between the MHP owner and the local service utility for system upgrades and replacements when a system has no remaining useful life or requires infrastructure investment to meet the requirements of § 2794(a)”), and the adoption of measures for mitigating such costs if warranted.⁶

As discussed below, TURN supports WMA’s request for a rulemaking to consider changes to existing rules and regulations for the purpose of encouraging transfer of

⁴ PU Code § 2794. (a) provides as follows:

A gas or electric system shall be considered acceptable for transfer if it is in compliance with the following criteria:

(1) It is capable of providing the end users a safe and reliable source of gas or electric service.

(2) It meets the commission's general orders, is compatible, and, in the case of new construction, meets the gas or electric corporation's design and construction standards insofar as they are related to safety and reliability. The parties may waive these requirements by mutual agreement and, where necessary, with commission approval. The deviations as are agreed upon may be reflected in the purchase price.

(3) It is capable of serving the customary expected load in the park or community determined in accordance with a site-specific study, studies of comparable parks or communities, industry standards, and the gas or electric corporation's rules as approved by the commission.

⁵ WMA Petition, p. 2; *see also* p. 16.

⁶ WMA Petition, p. 2; *see also* p. 16. WMA also refers to Finding of Facts 22-23 and Ordering Paragraph 13 in D.04-11-033, as modified by D.05-04-031. TURN believes that WMA intended to refer to Conclusions of Law 22-23, as these Findings of Fact address unrelated issues.

Also, on page 8, WMA errantly asserts that the Commission “ordered” the initiation of a rulemaking “to fulfill the mandates of PU Code Section 2798 and establish cost mitigation measures” in D.04-011-033. This is incorrect. In D.04-11-033, as modified by D.05-04-031, the Commission’s Ordering Paragraph 13 merely provides: “The motion, filed by the active parties on January 16, 2004, to establish a new proceeding to consider the issue of whether there are fair and reasonable ways to mitigate the cost to MHP owners of converting existing submetered systems to directly-metered service, is denied. This issue is reserved for consideration in a future proceeding.” (D.05-06-031, Ordering Paragraph 3, modifying Ordering Paragraph 13 of D.04-011-033.). For the same reason, WMA is incorrect in asserting that the Commission *ordered* in D.05-06-031, Ordering Paragraph 3, that the Commission will determine how MHP owners can mitigate the costs of transfers. (WMA, p. 16.).

master metered mobilehome park (MHP) utility service to direct service by the local utility. However, TURN strongly disagrees with a number of factual or legal assertions offered by WMA in support of its requested relief. To clarify the record – or at least to demonstrate the contested nature of these assertions – TURN addresses some of these issues below. Finally, TURN recommends that the scope of the new rulemaking extend beyond that proposed by WMA to include policies and procedures intended to encourage the transfer of systems in MHPs where residents are enduring health and safety risks or other significant limitations in utility service.

II. The Commission Should Open a Rulemaking Intended to Encourage The Transfer of Master Metered Utility Service in Mobilehome Parks to Direct Utility Service.

In a master-metered MHP, the park owner is the customer of record of the serving gas or electric utility; the residents are not utility customers. The park residents receive gas or electric service, measured by submeters, from the park owner, who owns and operates the utility system that delivers gas or electrical service from the master-meter to the park residents. The park owner receives a utility rate discount (the “master meter rate discount” or “master meter discount”), paid for by other utility ratepayers⁷, pursuant to PU Code § 739.5, which is intended to compensate park owners for the costs of owning, operating, maintaining and replacing the submetering system. This discount, or rate differential, includes a factor for investment-related expenses for all initial and ongoing capital upgrade costs, including depreciation of the average installed cost of the

⁷ D.89907, 1979 Cal. PUC LEXIS 92, *18-19 (“We assume the Legislature was aware in passing Senate Bill No. 1747 [codified as § 739.5] that there would be a shift in utility revenue between certain classes of customers. The differential we adopt in this proceeding will result in smaller utility bills for PG&E master meter distributors (increasing their return for submetering activity), and other PG&E ratepayers will eventually have to contribute more through higher rates to cover this transfer of revenue.”)

equivalent distribution system which the utility has installed in its directly metered parks, return on investment, income taxes on the return, and property (ad valorem) taxes.⁸

Because the discount is calculated based on the utility's average costs, the discount may not necessarily correspond with park owners' actual spending in any given year.

Nonetheless, the "discount is based on a typical ratemaking life of about 30 years. Thus, mobile home park owners, on average, are compensated over time for system replacements and upgrades."⁹ MHP owners may not recover through any other means those costs included in the differential, the costs of owning, operating, and maintaining their gas or electric submetered system, including the cost of system replacement.¹⁰

Over a number of years, TURN has received complaints from MHP residents who allege that some MHP owners have allowed their utility systems to seriously deteriorate or have failed to make needed upgrades, despite receiving the rate differential for many years. TURN has also received complaints from MHP residents in parks whose owners did not pass to their tenants utility rebates or discounts, contrary to the requirements of PU Code §§ 739.5(a) and (b) and D.04-11-033. To the extent that this is the case, the tenants living in these MHPs receive substandard utility service, relative to the service they would receive if the utility owned and operated the utility systems within the park.

⁸ D.95-02-090, 58 CPUC2d 709, 1995 Cal. PUC LEXIS 141, *27; *see also* D.97-11-033, 76 CPUC2d 528, 1997 Cal. PUC LEXIS 1021, *13-14 ("The amount of the credit is developed consistent with our regulatory ratesetting rules, and includes a just and reasonable recovery for maintenance and operations expenses, depreciation (or, a return of capital), and a return on equity (or, profit).").

⁹ D.95-02-090, 58 CPUC2d 709, 1995 Cal. PUC LEXIS 141, Finding of Fact 4.

¹⁰ D.95-02-090, Ordering Paragraph 4, 1995 Cal. PUC LEXIS 141, *39, 58 CPUC2d 709; reh'g denied D.95-08-056; pet. for writ of review denied *Western Mobilehome Parkowners Assoc. v. PUC* (1996) S048893. *See also* D.04-04-043 (identifying all of the categories of costs that are included in the master meter discount received by MHP owners who provide submetered electric or gas service to the park tenants, as well as those costs related to providing electric or natural gas service that are not covered by the discount, and thus that the MHP owner could pass through to tenants, subject to the oversight of local rent control boards where applicable).

Any such disparity is unacceptable. As TURN sees it, all California consumers, whether receiving direct utility service or submetered utility service, deserve safe, adequate and reliable gas and electric service and the same consumer protections. Likewise, the Commission, in carrying out its duties to implement PU Code § 739.5, has repeatedly maintained that § 739.5 obligates it to ensure that submetered tenants receive the same utility service as their directly metered counterparts.¹¹ In *Greening v. Johnson*, the California Court of Appeals agreed, holding that PU Code §§ 739.5(a) and (b) “reflect a legislative intent that mobilehome park residents be treated the same as individual purchasers of utility services, to the extent reasonably feasible.”¹²

Given TURN’s understanding of inadequate and/or unsafe utility service in some submetered MHPs, TURN fully supports WMA’s request for a rulemaking proceeding intended to increase the number of transfers of master metered mobilehome park utility systems to direct utility service. TURN shares WMA’s goal of facilitating the transfer of gas and electric systems, owned and operated by the owners of master-metered mobilehome parks, to the serving gas or electric utility company. TURN believes that the residents of these parks and communities would be better served as direct customers of the utility company, even considering the imperfections of that service. Accordingly, we support modifications to the rules and regulations pertaining to the transfer framework to

¹¹ See, i.e. D.03-08-077, 2001 Cal. PUC LEXIS 1237, *13-14 (“Second, the present case certainly arises under Section 739.5, because we have a statutory responsibility to ensure that submetered tenants are treated the same as directly-metered tenants with respect to utility service.”); *Homeowners Ass’n of Lamplighter v. Lamplighter Mobile Home Park*, D.99-02-001, 1999 Cal. PUC LEXIS 119, *8 (“Section 739.5 serves to ensure that submeter customers are indifferent as to who charges them for their electric service. To assume that an electric customer’s legal rights are restricted simply because it receives service through a submeter would undermine that indifference.”); D.95-08-056, 61 CPUC2d 225, 1995 Cal. PUC LEXIS 661, *6-7 (“In enacting this statute, the Legislature intended that the tenants be indifferent whether they received utility services under a submetered system or directly from the utility, and thus, the intent was to limit the recovery of costs related to the submetered system to what is provided in the statute.”).

¹² (1997) 53 Cal. App. 4th 1223, 1232.

encourage utility ownership of and operational responsibility for the gas and electric distribution systems within mobilehome parks, so long as those modifications are equitable to utility ratepayers, who have always paid for the master meter rate discount received by master-meter customers. In fact, TURN hopes that all mobilehome park residents will one day be served directly by the resident gas and electric utility, rather than as submetered tenants of a master-metered mobilehome park owner.

By indicating TURN's support for the rulemaking proposed by WMA, TURN does not intend to take a position on the merits of WMA's proposed *resolution* of certain issues it suggests should be included in the new rulemaking. For instance, WMA proposes several rules that would resolve the issue of clarifying cost responsibilities of ratepayers vs. MHP owners, including the following:

Specifically, if a system no longer had remaining useful life at the time of a transfer, the host utility should bear the cost of upgrade or replacement needed to extend the system's life necessary to provide direct service on a going forward basis. An MHP owner would receive no compensation for the transfer of the system, but would also be relieved of making investments for which there is no opportunity for recovery through future revenues.¹³

TURN does not address this proposal here. Similarly, TURN does not respond to WMA's reasoning in support of this particular policy rule.¹⁴ If the Commission opens a rulemaking proceeding, TURN will at that time present our proposals to address the issues within the scope and respond to the proposals of other parties.

¹³ WMA Petition, p. 14.

¹⁴ WMA Petition, pp. 12-15.

III. When Drafting an Order Instituting Rulemaking, The Commission Should Be Mindful of WMA’s Misrepresentations of Factual and Legal Issues to Ensure that the OIR Offers an Unbiased and Accurate Presentation of the Issues to Be Examined by the Commission.

While TURN agrees with WMA that the Commission should open a rulemaking to encourage transfers of MHP submetered service to direct utility service, TURN disagrees with many assertions made by WMA in support of its petition. To clarify the record, or to at least indicate the contested nature of many of WMA’s purported facts, TURN discusses several such issues below.

A. WMA erroneously describes the purpose of the master meter rate discount.

First, WMA suggests that WMA owners are unfairly burdened by the cost of distribution system upgrades or replacements in that may be necessary in their parks.¹⁵

WMA explains:

The CPUC never prospectively pays for utility investments. Those investments are always recovered after the expenditure of the funds. The differential is calculated in exactly the same manner. The differential pays for the investments that the MHP owner has already made and does not cover, in any way, future costs. Therefore, the discounts that have been paid out have gone to 1) return on and of past investment and 2) maintenance and billing. As these systems are generally more than 40 years old, no amount of maintenance will keep them in service in perpetuity.¹⁶

WMA’s assertions are erroneous in several regards.

First, ratepayers pay prospectively for utility capital investments, which are put into rates on a forecast basis, and only later trued-up for actual investments for the purpose of adjusting rate base. WMA is wrong that utility investments are only

¹⁵ WMA Petition, pp. 4-5.

¹⁶ WMA Petition, p. 5.

recovered after the actual expenditure of funds. However, WMA is correct that ratepayers receive an accounting for funds actually invested by the utility, with rate adjustments as appropriate according to customary ratemaking practices. In contrast, ratepayers never receive any accounting from MHP owners about their actual investments – past or present – despite paying for infrastructure investments through the master meter rate discount.

Moreover, WMA confuses the purpose of the master meter rate discount. The Commission has on several occasions discussed the purpose of the master meter discount that is provided, pursuant to PU Code Section 739.5, to master meter customers who provide submetered gas or electric utility service to their tenants. It is well established that the master-meter discount is intended to compensate MHP owners for the costs of owning, operating, maintaining and replacing the submetering system. In D.95-02-090 (*Rates, Charges and Practices of Electric and Gas Utilities Providing Services to Master-metered Mobile Home Parks*), the Commission explained that the discount includes

a factor for investment-related expenses for all initial **and ongoing capital upgrade costs**. Also included in the discount are depreciation of the average installed cost of the equivalent distribution system which the utility has installed in its directly metered parks, return on investment, income taxes on the return, and property (ad valorem) taxes.¹⁷

Because the discount is calculated based on the utility's average costs, the discount may not necessarily correspond with park owners' actual spending in any given year.

¹⁷ D.95-02-090, 58 CPUC2d 709, 1995 Cal. PUC LEXIS 141, *27 (emphasis added); reh'g denied D.95-08-056; pet. for writ of review denied *Western Mobilehome Parkowners Assoc. v. PUC* (1996) S048893. See also D.97-11-033, 76 CPUC2d 528, 1997 Cal. PUC LEXIS 1021, *13-14 ("The amount of the credit is developed consistent with our regulatory ratesetting rules, and includes a just and reasonable recovery for maintenance and operations expenses, depreciation (or, a return of capital), and a return on equity (or, profit).").

Nonetheless, the “discount is based on a typical ratemaking life of about 30 years. **Thus, mobile home park owners, on average, are compensated over time for system replacements and upgrades.**”¹⁸

Also in D.95-02-090, the Commission concluded that Section 739.5 expressly limits park owners’ recovery of costs of owning, operating, maintaining and replacing submetered systems to the amount derived from the submetering discount. The Commission ordered the utilities to file advice letters with the following tariff language:

Condition for Receiving Submeter Rate Discount

The master-meter/submeter rate discount provided herein prohibits further recovery by mobile home park owners for the costs of owning, operating, and maintaining their gas/electric submetered system. This prohibition also includes the cost of the replacement of the submetered gas/electric system.¹⁹

Accordingly, the utilities have included this restriction on the costs that a MHP master meter customer may collect from tenants in their tariffs. For example, PG&E’s Electric Schedule ET (Mobilehome Park Service) includes the following special condition for service:

9. SUBMETER RATE DISCOUNT: The master-meter/submeter rate discount provided herein prohibits further recovery by mobilehome park owners for the costs of owning, operating and maintaining their electric submetered system. This prohibition also includes the cost of the replacement of the submetered electric system. This provision was authorized in Ordering Paragraph No. 4 of CPUC Decision 95-02-090 dated February 22, 1995.

Since the issuance of D.95-02-090, the Commission has issued a number of decisions finding that MHP owners unlawfully passed through to their tenants costs associated with

¹⁸ D.95-02-090, 58 CPUC2d 709, 1995 Cal. PUC LEXIS 141, Finding of Fact 4 (emphasis added).

¹⁹ D.95-02-090, Ordering Paragraph 4, 1995 Cal. PUC LEXIS 141, *39, 58 CPUC2d 709; reh’g denied D.95-08-056; pet. for writ of review denied *Western Mobilehome Parkowners Assoc. v. PUC* (1996) S048893.

utility submetering that are included in the discount.²⁰

More recently, in D.04-04-043, the Commission identified all of the categories of costs that are included in the master meter discount received by MHP owners who provide submetered electric or gas service to the park tenants. The Commission likewise identified costs related to providing electric or natural gas service that are not covered by the discount, and thus that the submetered MHP owner could pass through to tenants, subject to the oversight of local rent control boards where applicable. As explained in D.04-04-043, the following costs are included in the master meter discount:²¹

- ◆ Operations and maintenance expenses including, but not limited to, meter reading, billing, maintenance, and repair of the distribution system and service facilities, including distribution and service trenching, distribution and service conduit, distribution and service substructures, and distribution protective structures maintenance, where appropriate, as defined in the applicable utility tariffs, e.g., Electric Rules 15 and 16.
- ◆ Administrative and general expenses.
- ◆ Uncollectibles.
- ◆ Unaccounted for loss of electrical energy.
- ◆ **Capital Investment Costs: Utility cost portion of initial and subsequent capital investment, including capital expenditures for replacement, and improvement of the distribution system and service facilities.**
- ◆ This may include, but is not limited to:

²⁰ See *i.e.*, *Hambly v. Hillsboro Properties and the City of Novato*, D.01-08-040, 2001 Cal. PUC LEXIS 497, Ordering Paragraphs 3, 4, (ordering defendant mobilehome park to refund excess rents paid by submetered tenants with interest at the prime three-month commercial paper rate); reh'g den. D.02-01-043, 2002 Cal. PUC LEXIS 59; aff'd *Hillsboro Properties v. PUC* (2003) 108 Cal. App. 4th 246, 133 Cal. Rptr. 2d 343; *Homeowners Ass'n of Lamplighter v. Lamplighter Mobile Home Park*, D.99-02-001, 1999 Cal. PUC LEXIS 119, Ordering Paragraphs 1, 6-7 (ordering defendant mobilehome park to refund excessive rent with interest; to examine its practices at any other master-meter parks under its ownership or control and take appropriate remedial action if unlawful surcharges have been levied on tenants; and to submit a report to the Energy Division indicating what measures it has taken to implement this decision).

²¹ D.04-04-043, Attachment A, pp. 2-3 (emphasis added).

- Capital investment for maintenance-related trenching, conduit (maintenance), transformers, poles, service lines, service drops, and meters as specified in the applicable utility tariffs.
- ◆ Capital investment-related cost components include:
 - depreciation,
 - return on investment (rate base)
 - taxes related to capital investment (including property taxes).
- ◆ Other taxes (not related to capital investments) associated with operations and maintenance, as well as meter reading and billing, that are the utility’s responsibility under the applicable tariffs, e.g., Electric Rules 15 and 16.

These costs may not be separately charged to MHP tenants by the MHP owner.²² The list of costs not included in the discount can also be found in D.04-04-043, Attachment A.

B. WMA erroneously asserts that rates would not be impacted or would be reduced as a result of system transfers.

WMA explains that transfers should not impact rates or should reduce rates, “given economies of scale and the consequent increase in customer base.”²³ WMA reasons that rates should be reduced because “transfers would allow the utilities to spread their fixed metering and billing costs to a wider base of customers, in excess of 440,000 added gas and electric customers, thus decreasing overall rates.”²⁴

WMA is mistaken for several reasons. First, WMA may not be aware that the utilities’ fixed meter-reading costs should greatly decline if not disappear after full AMI implementation, making this point at least partially moot. More importantly, while WMA is correct that eliminating the master meter discount could impact rates by changing the way utility costs are collected from ratepayers, WMA’s conclusion that

²² D.04-04-043, Attachment A, p. 2.

²³ WMA Petition, p. 3.

²⁴ WMA Petition, p. 3.

rates should be lower, as a general matter, is incorrect.

The residential class could theoretically enjoy a minor rate decrease because the fixed metering and billing costs (associated with formerly submetered end users, which have been paid only by residential customers through the master meter rate discount), would now be spread to all customers, rather than collected only from the residential class. On the other hand, with an increase in the number of residential customers, the residential class would be assigned a larger allocation of these costs, putting upward pressure on rates. Each time the Commission considers how to allocate the utility's costs to the various customer classes – i.e., residential, commercial, industrial, agricultural, etc. – the Commission considers the costs to serve each class, which is determined in part by the number of customers in each class. When the utility takes over a MHP submetered system and acquires the MHP residents as customers, the number of residential customers will increase. As a result, the residential class will receive a larger allocation of the utility's costs, which have to be collected in rates. And since the usage by the residential class won't necessarily increase (recall that the same MHP residents have always been using energy, but they were counted as one residential master-meter customer), these costs will be spread over the same usage, which puts upward pressure on rates. As a result, residential customers may end up worse off as a result of the utility's acquisition of MHP residents as customers, though it is hard to say with certainty without more data from the utilities. In any case, WMA's purported rate decrease from "economies of scale" is overly simplistic and misleading.

In support of the notion that rates should not be impacted by the costs of transfer, WMA explains, "If the Commission has set the discount correctly, retention of the

differential by the directly serving utility should adequately fund the costs of transfer,” ... because the discount “will cover the costs of upgrades and replacements since it will no longer need to reimburse the mobilehome parks owners for providing master metered service.”

WMA appears to be confused about the fact that the utility will not receive additional revenues following transfer due to elimination of the master meter discount. Ratepayers will pay the same costs either way. Residential customers have always paid for the submeter discount received by the MHP owners, so the utility has never been without these revenues. At the same time, the utility would receive the same revenues if the submeter discount were eliminated. This is because the submeter discount has been set by the Commission as equal to the utility’s average costs of serving MHP residents that are avoided when the MHP is submetered (i.e., meter reading, billing, and maintaining, replacing and upgrading certain distribution system infrastructure within the park). When the MHP is no longer submetered, the utility now incurs these same costs to serve the park residents, which will be collected from all ratepayers.

Furthermore, WMA’s hypothesis only makes sense if the park owner has actually made the infrastructure investments which the master meter rate discount was intended to cover, as discussed above in Section III.A. If the MHP owner has not invested the master meter rate discount as intended on an ongoing, as-needed basis, and repairs or upgrades are now needed as a condition for transfer, pursuant to PU Code §§ 2791-2799, then someone must pay for these costs. If any of these costs are assigned to ratepayers, then ratepayers will pay more once the utility takes over a MHP submeter system. Ratepayers will continue to pay for the costs previously included in the master meter rate discount

(as discussed above; these costs do not disappear), plus for the investments that should have been funded from the discount but were not, and thus must be paid for going forward.

Finally, if the submetered system has value warranting compensation by the utility to the MHP owner, ratepayers will additionally pay these new costs.

While there are many unknowns in this equation, what is known is that one cannot assert that rates will go down as a result of transfer, or even stay the same. Even so, TURN emphasizes our support for policy changes intended to encourage transfers, despite our understanding that ratepayers will likely bear some degree of increased costs, for the reasons discussed in Section II above. We also note that legislative action may be required to effectuate some changes that nonetheless warrant consideration.

C. WMA erroneously suggests that the utility stands to benefit from guaranteed recovery of all costs associated with transfer.²⁵

WMA argues that utilities would benefit from transfers because utilities “are guaranteed recovery of any costs to acquire, improve, upgrade, operate and maintain transferred mobilehome park gas and electric systems in their revenue requirements. See Section 2797.”²⁶ WMA overstates the matter.

PU Code § 2797 provides, “The commission shall permit the gas or electric corporation to recover in its revenue requirement and rates all costs to acquire, improve, upgrade, operate, and maintain transferred mobilehome park or manufactured housing

²⁵ WMA also argues that utilities would benefit because “[t]ransfers would allow the utilities to add the systems to their existing rate base and allow them to earn a return on investment.” (WMA Petition, p. 3.) TURN agrees with WMA.

²⁶ WMA Petition, p. 3.

community gas or electric systems.” However, this section must be read in conjunction with other sections of the PU Code, which require that all charges demanded of ratepayers be just and reasonable. As the Commission explained in D.06-05-016 (SCE’s 2006 GRC):

Public Utilities Code § 451 provides, in part, that “all charges demanded or received by any public utility ... shall be just and reasonable.” Section 454 provides, “Except as provided in § 455, no public utility shall change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified.” Where a utility fails to demonstrate that its proposed revenue requirements are just and reasonable, the Commission has the authority to protect ratepayers by disallowing expenditures that the Commission finds unreasonable.²⁷

Accordingly, it would be more accurate to state that the utility will recover all costs deemed just and reasonable by the Commission. Imprudently incurred costs should not be recovered from ratepayers. Section 2797 does not provide a blank check for utilities.

D. WMA misleadingly describes some of the benefits to MHP owners and residents from transfer.

WMA ascribes certain benefits to MHP owners and residents from transfers.²⁸

WMA explains, for example, “Providing electric and gas service has become increasingly expensive and complex given the plethora of program changes and billing determinants.”²⁹ TURN agrees with WMA’s suggestion that residents would benefit from having bills calculated by the utility rather than the MHP owner, since the utility is uniquely well-equipped to understand and accurately apply its own tariffs. However,

²⁷ D.06-05-016, p. 7. See also D.00-02-046, p. 32 (citing *Pacific Telephone and Telegraph Company v. Public Utilities Commission* (1950) 34 Cal.2d 822, 826; *Pacific Telephone and Telegraph Company v. Public Utilities Commission* (1965) 62 Cal.2d 634, 647; *City and County of San Francisco v. Public Utilities Commission* (1971) 6 Cal.3d 119, 126).

²⁸ WMA Petition, p. 4.

²⁹ WMA Petition, p. 4.

WMA seems to ignore the fact that PG&E and SCE have offered a bill calculation service to MHP owners for several years. MHP owners providing submetered electric and gas service to park tenants may elect to have the utility provide bill calculation services to assist them in determining their submetered tenant's utility charges.³⁰

WMA also mentions the benefit to park owners of avoiding the adverse impacts of the Diversity Benefit Adjustment.³¹ The purpose of the diversity benefit adjustment is to adjust the master-metered customer's bill to recognize that a benefit is realized by a master-metered customer who had more sales billed at the lower tiered rates and less at higher tiered rates than were actually used by its submetered customers. The master meter discount received by the MHP owner is set by determining the utility's avoided costs of service and reducing that amount by the diversity benefit adjustment (as well as by the basic charge adjustment, where applicable). The amount of the diversity benefit adjustment implicates equity to ratepayers, who seek to avoid a "windfall" going to MHP owners from applying the tiered rate structure to aggregated usage across the park, as well as to MHP owners, and has been a contested issue in many rate design proceedings where rates for master meter customers are set.³²

While TURN does not agree with WMA's characterization of the diversity benefit adjustment as "adversely impacting" MHP owners, TURN fully agrees that transfers to

³⁰ See PG&E Electric Rate Schedule ET, Gas Rate Schedule GT, effective Nov. 1, 2007; SCE Rate Schedule DMS-2, effective June 1, 2006.

³¹ WMA Petition, p. 4.

³² This "windfall" concern is not just hypothetical. In anticipation of deregulation, residential rates were frozen in 1996. In response to the energy crisis in May 2001 the Commission altered residential rates from the two inverted tier rate design to a five-tier inverted rate design. This change in rate design provided MHPs with windfall revenues, neither anticipated nor intended by the Commission, because the diversity adjustment factor was based on two inverted tiers (i.e., the rate freeze). MHPs received this windfall over the course of four to five years until the Commission finally adopted a diversity adjustment mechanism for each utility that was based on the same number of tiers as applied to then-current residential rates.

direct utility service avoids the risks to ratepayers and MHP owners associated with the level of the adjustment.

IV. The Scope of WMA’s Recommended Rulemaking Should Be Expanded to Include Policies and Procedures Intended to Encourage the Transfer of Systems in Parks Where Residents Are Enduring Health and Safety Risks or Other Significant Limitations in Service.

If the Commission were to limit itself to considering only the issues proposed by WMA, the Commission would miss a very important opportunity to ensure improvement in the quality of utility services received by tenants living in MHPs with submetered utility systems that are no longer safely or adequately serving the load in the park. WMA would have the Commission focus only on reducing the hurdle faced by MHP owners inclined to transfer submetered utility service to the serving utility. However, TURN is not aware of any evidence demonstrating that the park owners interested in transfer include all of those park owners who have not invested the master meter rate discount according to its intended purpose, or who otherwise have not adequately maintained or updated the utility infrastructure within the park.³³ As a result, focusing only on the issues recommended by WMA would leave the Commission without any way of knowing whether the MHP tenants receiving the worst quality utility services would likely benefit from the new rules and regulations under consideration in a new rulemaking.

TURN recommends that the Commission include consideration of the health, safety and convenience of submetered MHP tenants among the issues to be addressed in a new rulemaking. Specifically, TURN recommends that the Commission identify the

³³ MWA asserts that the “universal preference of the member owners is to have the submetered residents directly served by the investor owned utility,” (WMA Petition, p. 4) and TURN hopes this to be true. But TURN does not know whether non-WMA member park owners feel the same way, or whether WMA’s members are 100% in support of transfer, including those equally with utility systems in good, fair, and poor condition.

MHPs with unsafe or inadequate utility systems, with input from MHP resident associations (such as Golden State Manufactured-Home Owners League); the Commission’s Consumer Affairs Branch, which accepts complaints from submetered MHP residents; the Commission’s Utilities Safety and Reliability Branch (USRB), which enforces Federal Pipeline Safety Regulations through audits of jurisdictional MHP systems; and other state agencies with jurisdiction over aspects of MHP master meter utility service, including the California Department of Housing and Community Development and the California Department of Consumer Affairs, Division of Weights and Measures. These parks should be prioritized for transfer, as a matter of policy.³⁴

Related, the Commission should consider requiring all submetered MHP park owners to place the portion of the rate discount intended for infrastructure-related (physical equipment) costs into an escrow or trust account, or simply a separate bank account, as a condition for receiving the discount, to increase transparency in the expenditure of these funds. Currently, the Commission does nothing to encourage park owners to devote the rate discount to the purposes for which it was intended, and park owners have tended not to maintain records sufficient to determine how much they have spent to maintain and upgrade their utility systems.³⁵

In the alternative, the Commission could place this requirement on those parks

³⁴ See Assembly Bill 1108 (Fuentes), as amended Aug. 20, 2010, Sec. 1(c): “*As part of the investigation or proceeding required pursuant to subdivision (a), the commission, in consultation with the Department of Housing and Community Development, shall develop a system, including protocols, standards, or criteria, for any inspections that may be necessary to define, find, determine, or prioritize unsafe or substandard systems, as determined by the commission in consultation with the Department of Housing and Community Development, that should be transferred to a gas or electrical corporation. When developing this system, the commission shall consider safety or other complaint records to establish priorities for any necessary inspections.*”

³⁵ See D.04-11-033, Finding of Fact 6 (“MHP owner records are not sufficient to determine the MHP owner’s costs to provide submetered services, or to determine whether the discount adequately reimburses them.”).

identified as high priority for transfer because of the condition of the submetered utility systems. Limiting this requirement to parks identified as inadequately maintaining or providing improvements to their submetered systems would avoid the issues the Commission expressed concern about the last time it considered this proposal. In R.03-03-017 / I.03-03-018, TURN made a similar recommendation, which was rejected by the Commission in D.04-11-033. The Commission explained,

There is some information in the record to indicate that some MHPs would likely require significant investments to make them suitable for transfer to the serving utility. However, there is not sufficient information in the record to demonstrate that there are surpluses in discount revenues for infrastructure improvements, or that MHP owners as a whole are not adequately maintaining or providing improvements to their submetered systems. Therefore, there is no need to impose such a requirement at this time.³⁶

Requiring these master meter customers to abide by the requirement of a separate accounting would encourage the proper expenditure of the funds intended for infrastructure improvement, or at least encourage the park owner to seek to transfer responsibility for the provision of utility service to park tenants to the serving utility.³⁷ In the latter case, the funds in escrow could be used to offset some of the costs associated

³⁶ D.04-11-033, p. 31.

³⁷ It is also worth noting that such a policy would encourage park owners to invest in maintaining their submetered systems and provide tenants with safe and reliable utility services, more comparable to the service provided to MHP tenants who are directly served by the utility. Park owners currently lack the same incentives that utilities have to make regular investments in maintenance and replacement of their submetered systems. Utilities have a substantial incentive to make capital investments to maintain their distribution systems in directly metered mobile home parks. Not only do they earn a rate of return on all capital spending, but they must meet the Commission's electric and natural gas safety and reliability standards. The Commission also requires the utilities to maintain balancing accounts for capital investments on infrastructure, ensuring through true-ups that ratepayers do not pay for plant investments that do not occur. In contrast, MHP park owners have an incentive to under-spend on capital improvements, despite being credited for theoretically making the same kinds of investments the utility would. Park owners have not been required to account for their submetering system investments and, as a practical matter, have not needed to maintain their systems to comply with the same safety and reliability standards governing the utilities' systems. Consequently, park owners have been capable of profiting unduly from the discount while allowing their systems to deteriorate.

with bringing the submetered systems into conformance with the standards required for transfer pursuant to 2794(a) and as articulated by the Commission in *Harbor City*, D.09-02-030. Moreover, encouraging the transfer of systems in parks identified for prioritization (by the process TURN recommends above), would be consistent with the objective of improving utility service received by MHP tenants living with the worst conditions.

Finally, TURN recommends that the Commission include within the scope of a new rulemaking whether there are other ways to encourage the transfer of MHP service in parks identified for prioritization, and the costs and benefits to utility ratepayers, MHP residents, and MHP owners of various options. Of note, AB 1108 (Fuentes) would, if adopted, require the Commission to explore one such option:

SECTION 1. Section 2800 is added to the Public Utilities Code, to read:

2800. (a) By July 1, 2011, the commission shall open an investigation or other appropriate proceeding to evaluate and report to the Legislature when the owner of a mobilehome park or manufactured housing community that provides master-metered gas or electric service to its residents should be required to transfer responsibility for gas or electric service to the gas or electrical corporation providing service in the area in which the park or community is located, along with those plant, facilities, and interests in real property that the commission, in consultation with the gas or electrical corporation, determines are necessary, convenient, or cost effective to provide service.

(b) The commission shall include in the report developed pursuant to subdivision (a) a recommended phase-in schedule for potential transfers, the estimated costs and benefits to the gas or electrical corporations for the transfer of responsibility, the potential costs or benefits to the residents currently served by the master-metered systems, and the potential benefits or costs to ratepayers.

(c) As part of the investigation or proceeding required pursuant to subdivision (a), the commission, in consultation with the Department of Housing and Community Development, shall develop a system, including protocols, standards, or criteria, for any

inspections that may be necessary to define, find, determine, or prioritize unsafe or substandard systems, as determined by the commission in consultation with the Department of Housing and Community Development, that should be transferred to a gas or electrical corporation. When developing this system, the commission shall consider safety or other complaint records to establish priorities for any necessary inspections.

(d) This section shall not be interpreted to require physical inspections of gas or electric systems. To the extent feasible, the commission shall rely on existing data or information from sources such as a state or local agency, a gas or electrical corporation, or an owner of mobilehome park or manufactured housing community to prepare the report required pursuant to subdivision (a). Upon request by the commission or Department of Housing and Community Development, an owner of mobilehome park or manufactured housing community shall submit information on the location or type of its gas or electric system or any other reasonable information deemed necessary to prepare the report.

(e) The report shall balance the goal of providing residents of mobilehome parks and manufactured housing communities with gas and electric service that is as safe and reliable as that which the commission requires gas and electrical corporations to supply to residential customers and the requirement of fairness to the gas or electrical corporation's ratepayers, who have already reimbursed the master-meter customer for maintenance costs, operating costs, return on investment, and depreciation, as well as other costs associated with providing master-metered electric and gas service, through the rate differential afforded master-meter customers pursuant to Section 739.5.³⁸

Accordingly, TURN respectfully requests that the Commission add the following three issues to the scope of a new rulemaking:

- (1) Are there master metered MHPs with unsafe or inadequate utility systems that should be prioritized for transfer, and if so, which parks should be placed on this “priority list”?
- (2) Should MHP owners, or at least those with parks on the priority list, be required to place that portion of the master meter rate discount intended to cover infrastructure costs in a separate account (i.e., maintained by the

³⁸ AB 1108 (Fuentes), as amended Aug. 20, 2010.

MHP owner but enabling a separate accounting for expenditures), as a condition of receiving the discount?

(3) Are there other ways to encourage the transfer of utility service in parks on the priority list which are fair to utility ratepayers?

V. Conclusion

For the foregoing reasons, TURN recommends that the Commission grant WMA's petition. The Commission should issue an Order Instituting Rulemaking to explore ways to increase the number of MHPs which transfer the provision of utility service to the local utility, while balancing the goals of providing safe and reliable utility service to MHP residents and maintaining fairness to utility ratepayers, who have already funded the master meter discount for many years.

Date: September 20, 2010

Respectfully submitted,

By: _____/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that I have on this day served a true copy of the foregoing

**RESPONSE OF THE UTILITY REFORM NETWORK
TO THE PETITION OF THE WESTERN MANUFACTURED
HOUSING COMMUNITIES ASSOCIATION**

on all parties who were served with a copy of the above captioned petition (including each party of record of the service list in R.03-03-017, I.03-03-018, C.00-01-017, and C.07-01-007), and on each party named in the official service list for proceeding **P.10-08-016** by electronic service, and by U.S. Mail to those parties who have not provided an electronic address.

Copies were also sent via USPS to the assigned Administrative Law Judges and Commissioner.

In addition, copies were served by electronic service, and by U.S. Mail to the following:

California Department of Consumer Affairs
Division of Weights and Measures
Sacramento, CA 95814

Lynn Jacobs, Director
Department of Housing and Community Development
1800 Third Street
Sacramento, CA 95811-6942

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1220 N Street
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Golden State Manufactured-Home Owners League (GSMOL)
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Executed this 20th day of September 2010 at San Francisco, California.

/S/ Larry Wong
Larry Wong

**Service List for P.10-08-016, R.03-03-017, I.03-03-018, C.00-01-017 and
C.07-01-007**

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