

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



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Petition of San Luis Rey Homes, Inc. to Adopt, Amend, or  
Repeal a Regulation pursuant to Cal. Pub. Util. Code Sec.  
1708.5

Petition 11-07-024  
(Filed July 28, 2011)

**RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M) AND  
SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) TO THE PETITION FOR  
RULEMAKING OF SAN LUIS REY HOMES, INC.**

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August 26, 2011

**BEFORE THE PUBLIC UTILITIES COMMISSION  
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**I.  
INTRODUCTION**

In accordance with Rule 6.3 of the California Public Utility Commission’s (“Commission” or “CPUC”) Rules of Practice and Procedure (Rules), San Diego Gas & Electric Company (“SDG&E”) and Southern California Gas Company (“SoCalGas”) respond to the July 28, 2011 petition for rulemaking (Petition) submitted by San Luis Rey Homes, Inc., a California Corporation (“SLRH”). The Petition requests that the Commission initiate a rulemaking to establish rules and regulations to replace conventional submetered gas and electric meters and distribution facilities owned, operated, and maintained by the mobilehome park (MHP), with smart metering and smart grid equipment funded by ratepayers, and/or provided by SDG&E, SoCalGas, Southern California Edison Company (“SCE”), and Pacific Gas and Electric Company (“PG&E”) (collectively, the Investor-Owned Utilities or “IOUs”).<sup>1</sup>

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<sup>1</sup> Petition, at pp. 2, 6 and 8-11.

## II. RESPONSE

SDG&E and SoCalGas respond that the Petition should be denied, because the ultimate relief sought is contrary to statutory law and beyond the power of this Commission to grant. In its Petition, SLRH specifically requests that the Commission mandate that “[s]mart Meters and Smart Grid installation must be implemented in MHPs that want to maintain master meter/submetered systems”.<sup>2</sup> “[I]nfrastructure upgrades or replacement costs must be addressed for execution of a Smart Meter/Smart Grid systems comparable and correlated to the IOU systems in relation to scale and scope”.<sup>3</sup> And “[t]he Commission should clarify assignment of cost responsibility between the MHP owner and the local serving utility for system upgrades and replacements when a system has no remaining useful life or requires infrastructure investment”.<sup>4</sup>

The Petition is a thinly-veiled attempt to rewrite the California Public Utilities Code, Sections 2791-2799 and 739.5. Sections 2791 through 2799 outline the statutory process by which existing master-metered MHPs ownership and operational responsibility can be converted to the gas or electric corporation providing service in the area. Pursuant to § 2791(a), transfer is a voluntary process. Moreover, where, as here, if the submetered system is not owned or maintained by the utility, Section 2795 provides that costs related to infrastructure upgrades, replacement or transfer should not be borne by ratepayers, unless there is an equal offsetting benefit such that there is no net cost to ratepayers.<sup>5</sup>

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<sup>2</sup> Petition, at p. 9.

<sup>3</sup> *Id.*, at p. 10.

<sup>4</sup> *Id.*, at p. 11.

<sup>5</sup> *See* Decision 04-11-033.

In light of SLRH's underlying request to impose costs related to the MHP's ownership and operational responsibility for its system on the IOUs and ratepayers,<sup>6</sup> this matter raises a threshold issue that the Commission needs to resolve before it decides whether to grant the Petition. If the Commission lacks the authority under current law to grant the relief requested, a rulemaking on this topic would serve no purpose.

It would, therefore, represent a waste of this Commission's scarce resources to open a rulemaking proceeding to consider these issues or any proposed language. Given the clear state of the law, which empowers the State Legislature to enact laws by virtue of legislative jurisdiction, SDG&E and SoCalGas will address briefly below only the glaring procedural weaknesses of the Petition, and generally reserve any substantive arguments to a more appropriate time and place, if any.

### **III. STATUTORY SCOPE AND PROCEDURE APPLICABLE TO A PETITION TO OPEN A RULEMAKING UNDER SECTION 1708.5**

Public Utilities Code Section 1708.5 permits "interested persons to petition the Commission to adopt, amend, or repeal a regulation."<sup>7</sup> As a preliminary matter, it is unclear that the relief sought by the petition is within the scope of this statute. The petition is not really asking the Commission to adopt, repeal, or amend a regulation. It is in fact asking the Commission to amend one or more state statutes.

There are three basic types of law which prevail in California: Statutory Law, Judicial (or Case law), and Regulations (or Administrative Law). Statutory law is law which has been promulgated (or "enacted") by acts of legislatures. The California Legislature can pass laws for good and compelling reasons or for no reason at all. As long as the command of the statute is

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<sup>6</sup> Petition, at pp. 8-11.

<sup>7</sup> California Public Utilities Code Section 1708.5(a).

clear, constitutional and within the Legislature’s powers, it must be obeyed. Only the Legislature can amend a statute.

**VI.  
THRESHOLD ISSUE OF WHETHER THE COMMISSION HAS THE AUTHORITY TO  
GRANT THE REQUESTED RELIEF**

The Commission should first address the threshold question of whether it has the authority to grant or deny the specific relief requested. It is not necessary or appropriate to open a rulemaking proceeding to answer the preliminary question of the Commission’s jurisdictional limits or regulatory authority. The onset issue is one of ordinary statutory interpretation that can be analyzed independent of any proposed master-metered MHP Smart Meter or Smart Grid requirements and policy issues.

The Petition brings forth a number of complex issues from an ownership, operational and technology sense that the Commission would need to address if a rulemaking is opened.<sup>8</sup> But there is also another important statutory threshold issue that is not specifically identified by the Petition that the Commission would need to consider. SLRH argues that it is appropriate that the IOUs assist SLRH in funding installation of Smart Meters and Smart Grids in MHPs.<sup>9</sup> However, as provided in California Public Utilities Code, Section 739.5(d), the Legislature has stated that “[e]very master-meter customer is responsible for maintenance and repair of its submeter facilities beyond the master-meter, and nothing in this section requires an electrical or gas corporation to make repairs to or perform maintenance on the submeter system.” Pursuant to Section 739.5, a utility bills the master-meter owner/operator at a discounted rate to adjust for the

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<sup>8</sup> The Petition presents legal and factual issues as to whether a MHP, such as SLRH, that has no “tenants” because the residents have an “undivided ownership interest” in the master-metered MHP property, including the gas and electric distribution and sub-meter systems, qualifies as a master-metered mobilehome park or residential complex pursuant to California Public Utilities Code, Sections 2791-2799 and 739.5. California Public Utilities Code, Sections 2791-2799 and 739.5 speak clearly that a utility service arrangement must exist where the master-metered customer provides gas or electric service to end users that are tenants, and not where the residents have ownership and operational responsibility for the gas or electric distribution facilities.

<sup>9</sup> Petition, at pp. 8 and 10.

average costs that the utility avoids. The Commission has repeatedly been asked to interpret Section 739.5's implications for various cost aspects of the gas or electric service relationship provided by a master-meter customer to end users who are tenants or residents of a MHP.<sup>10</sup> Further, the Commission has time and again determined that Section 739.5 establishes the master-meter discount as the sole source of cost recovery for all submeter costs factored into calculation of the discount.<sup>11</sup>

Accordingly, SDG&E and SoCalGas note it would represent a waste of this Commission's scarce resources to conduct a proceeding to consider any issue concerning the master-meter discount or assistance for smart equipment upgrades of the MHP gas or electric distribution facilities beyond the master-meter, which only the Legislature can change. As well, this important threshold jurisdictional issue can be readily resolved by the Commission without assistance from parties.

**V.  
THE PETITION IS PROCEDURALLY AND SUBSTANTIVELY DEFICIENT**

SLRH's filing is procedurally and substantively deficient. Rule 6.3 requires the following:

**(Rule 6.3) Petition for Rulemaking**

(b) Form and Content. A petition must concisely state the justification for the requested relief, and if adoption or amendment of a regulation is sought, the petition must include specific proposed wording for that regulation. ...  
[emphasis added].

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<sup>10</sup> See *OII into rates, charges and practices at MHPs* (1995) D.95-02-090, 1995 Cal. PUC LEXIS 141, mod. and rhg. den. by D.95-08-056; *OII to re-examine the submeter discount for MHPs, Phase 1* (2004) D.04-04-043; *OII to re-examine the submeter discount for MHPs, Phase2* (2004) D.04-11-033.

<sup>11</sup> See e.g., *Home Owners Association of Lamplighter v. The Lamplighter Mobile Home Park* (1999) D.99-02-001, 1999 Cal. PUC LEXIS 119; *Yucaipa Mobilehome Residents' Association, et al. v. Knollwood Mobilehome Estates, Ltd.* (2004) D.04-05-056; see also *Hillsboro Properties v. Public Utilities Commission* (2003) 108 Cal.App.4th 246.

The Petition requests a Rulemaking pursuant to Rule 6.3 to formally establish requirements for Smart Meters.<sup>12</sup> Specifically, SLRH formally petitions the CPUC to issue specific rules and regulations “to replace conventional customer meters with Smart Meters.”<sup>13</sup> Since SLRH proposes adoption or amendment of a regulation, the Petition must include specific proposed wording for that regulation. All that is provided in the Petition amounts to nothing more than a mere bullet list of vague suggestions that the Commission might consider in adoption of regulations for the installation of Smart Meters and Smart Grid in MHPs.<sup>14</sup> Because of this deficiency, the Petition must be rejected.

Additionally, Rule 6.3 requires the following:

**(Rule 6.3) Petition for Rulemaking**

(b) Form and Content... “A petition that contains factual assertions must be verified. Unverified factual assertions will be given only the weight of argument.” ... [emphasis added].

SLRH’s Petition contains no verification of factual assertions that support adoption or amendment of a regulation. The only potentially verifiable assertion in the Petition, based not on an affidavit sworn or affirmed under penalty of perjury, but rather on extrinsic evidence of authenticity proved by public records, is that “SLRH is distinct from the majority of MHPs in that there are no tenants because the residents are also owners of their homes and the land upon which they are positioned... that the corporation operates as a non-profit residential.”<sup>15</sup>

Otherwise, SDG&E and SoCalGas view the vast majority of unverified assertions in the Petition

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<sup>12</sup> Petition, at p. 2.

<sup>13</sup> *Id.*

<sup>14</sup> Petition, at pp. 9-11.

<sup>15</sup> *Id.*, at p. 3; SDG&E and SoCalGas adamantly disagree with SLRH’s interpretation of California Public Utilities Code, Sections 2791-2799 and 739.5, and the assertions made pertaining to the status SLRH holds for distributing gas and electricity to certain community owners/operators/residents.

as speculative and lacking or containing false, misleading and deceptive information. This is a wholly inadequate basis on which to initiate a Rulemaking.

Furthermore, Rule 6.3 also provides:

**(Rule 6.3) Petition for Rulemaking**

(f) The Commission will not entertain a petition for rulemaking on an issue that the Commission has acted on or decided not to act on within the preceding 12 months.  
[emphasis added].

SDG&E and SoCalGas assert that SLRH's Petition to open this rulemaking is improper because under Rule 6.3(f) of the Commission's Rules, since the Commission will not entertain a new petition for rulemaking on an issue that the Commission is acting on or decided not to act on within the preceding 12 months.

The Commission made clear in the February 24, 2011 Order Instituting Rulemaking (OIR), filed to open Rulemaking (R.) 11-02-018, that it would not reconsider issues concerning the master-meter discount as the sole source of cost recovery for all submeter costs. Thus, SDG&E and SoCalGas contend that because this issue was recently considered and purposely excluded by the Commission from the scope of pending R.11-02-018, as set forth in the Assigned Commissioner's Ruling and Scoping Ruling, dated May 11, 2011, the discount rate to adjust for the average costs that the utility may incur if direct utility service were in place is impliedly considered an inappropriate task for undertaking in a parallel rulemaking proceeding. The Commission's decision to exclude consideration of differential or smart metering issues from pending R.11-02-018 was further reiterated by the Assigned Administrative Law Judge

during three separate Prehearing Conferences (PHC) held on April 15, 2011,<sup>16</sup> June 14, 2011<sup>17</sup> and August 19, 2011.<sup>18</sup>

## VI. CONCLUSION

For the reasons set forth herein, the Commission should decline to open the rulemaking requested and dismiss the Petition.

Dated in San Diego, California, this 26th day of August, 2011.

Respectfully submitted,

By:                     /s/ Allen K. Trial                      
                    Allen K. Trial

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<sup>16</sup> See PHC transcript, at pp. 38-46.

<sup>17</sup> See PHC transcript, at pp. 91-105.

<sup>18</sup> See PHC transcript, at pp. 114-115.