

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** April 20, 2004

**To:** The Commission  
(Meeting of April 22, 2004)

**From:** Carlos Machado  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **SB 1163 (Dunn) Utilities**  
As Amended March 26, 2004

**Legislative Subcommittee Recommendation:** Support if amended.

**Summary:** This bill would require the Commission's Consumer Affairs Bureau to handle billing complaints from mobilehome park tenants who receive submetering utility services from park owners and enhance specified civil remedies for mobilehome park tenants.

**Digest:** Existing law defines a "public utility" as *inter alia*: "When any person or corporation performs any service for, or delivers any commodity to, any person, private corporation, municipality, or other political subdivision of the state, that in turn either directly or indirectly, mediately or immediately, performs that service for, or delivers that commodity to, the public or any portion thereof, that person or corporation is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part." (P.U. Code §216(c)) (emphasis added).

Existing law mandates the Commission to require a master-meter customer (the owner or management of the residential complex) to charge tenants at the same rate that would otherwise be applicable to the tenant had he/she been receiving utility service directly from the electrical corporation and requires master-meter customers to pass along to their tenants a proportional share of rebates received from a corporate utility. (P.U. Code §739.5(a), (b))

Existing law requires every master-meter customer to provide to its tenants an itemized billing of charges for utility service "generally in accordance with the form and content of bills of the corporation to its residential customers", including opening and closing readings for the meter, and the identification of all rates and qualities attributable to each block in the applicable rate structure. (P.U. Code §739.5(e))

Existing law, the “Mobilehome Residency Law” (MLR), Civil Code §798 et seq., provides a private right of action to mobilehome park residents, subject to specified conditions and remedies, for failing to abide by specified requirements, including a requirement that park owners who provide master-meter and submeter utility service to separately state individual residents’ charges and conspicuously post utility rate schedules. (Civil Code §798.38)

This bill would require the Commission to accept and respond to complaints concerning gas or electric service provided by a master-meter customer to tenants of a residential complex, through the Consumer Affairs Branch, and using any other staff necessary to assist the complainant.

This bill would amend the MRL to enhance the duties of park owners operating master-meters to state separate charges generally in accordance with the form and content of bills of the utility serving the park owner. This bill would further amend the MRL to require mobilehome park management to provide to tenants the name and contact information for the park’s agent or company that prepares its utility billing.

**Analysis:** Senator Joe Dunn, the author of this bill, is also chair of the Senate Select Committee on Mobile and Manufactured Homes. The committee held a hearing in 2001 on mobilehome park utility and billing problems. The hearing report concludes:

Complaints to the Public Utilities Commission (PUC) about rates, billing practices, pass through of utility rebates, and other issues related to master-meter parks, have been met with the admonition that the PUC has no jurisdiction over mobilehome park utility issues. In a few cases, where county weights and measures has been willing to take on the role of investigating billing statements and practices, and problems are found that a district attorney may be willing to look at, the case may go to court, ultimately requiring a park to adhere to the code requirements. Likewise, Civil Code provisions relating to park utilities, such as posting of rates, are enforceable only in court. But court action as a remedy can be slow and is often costly for the complaining resident.

The argument that the PUC has no direct relationship with master-meter parks or that park residents have no customer relationship with the public utilities regulated by the PUC, and therefore there is no link for PUC enforcement of master-meter park utility issues, is flawed. Although PUC Code provisions relating to submetering of water clearly exempts parks from PUC jurisdiction, there is no such specific exemption for submetering of electric and gas under PUC [sic] Section 739.5.<sup>1</sup>

The author contends this bill is necessary to address numerous billing issues encountered by tenants, especially those at mobilehome parks, including:

- Service rate discounts are not passed along to tenants.

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<sup>1</sup> *Transcript and Report of Hearings on Mobilehome Park Utility and Billing Problems*, Senate Select Committee on Mobile and Manufactured Homes, April 12, 2001, p. 78.

- Special rate program benefits, such as the CARE discount, are not passed on to tenants.
- Fees levied by the owner for meter reading and billing agent services.

This bill is intended to explicitly require the Commission to take tenant complaints regarding master-meter utility service and billing. (This bill would also enhance civil remedies against park owners relative to master-meter service. This analysis only addresses the portions related to PUC). It is the author's belief that the Commission should handle these complaints. However, the author asserts that the Commission has refused to accept some of these cases because it lacks oversight authority over master-meter customers.<sup>2</sup> In background material for the bill, the author states:

CPUC representatives contacted about examples of some of the above complaints have contended that the CPUC does not have authority to oversee master-meter billing practices or take complaints from residents about, or to require parks to adhere to, utility billing practices required by the code. They say the CPUC can only require the serving utility to request the parks to comply with the code. In most cases where park residents have submitted CPUC complaint forms on these issues, they have been rejected with the admonition that the complainant needs to seek legal redress.<sup>3</sup>

The bill would specifically require the Commission to accept and respond to complaints related to the billing and service requirements of P.U. Code §739.5. The Commission already has extensive jurisdiction over master-meter customers and their rates. For example, P.U. Code §739.5(a) provides that the Commission shall require master-meter customers to charge each tenant the same rate which would be applicable if the tenant were receiving gas or electricity, or both, directly from the gas or electrical corporation. Moreover, state law authorizes the Commission to order reparations if it finds that a public utility has charged an unreasonable, excessive, or discriminatory amount to a complainant (P.U. Code §734).<sup>4</sup>

However, the Commission's jurisdiction to apply these remedies may be limited by the Dedication Doctrine, a judicially created limitation on Commission jurisdiction that conditions public utility status on the dedication of utility property to the public use.<sup>5</sup> P.U. Code §216(c) provides that any entity receiving utility service that, in turn, mediates the service to all or a portion of the public is a public utility. However, the

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<sup>2</sup> *Id.*, at p. 171.

<sup>3</sup> Background Sheet, Senate Bill SB 1163 (Dunn) as introduced February 2, 2004: Master-Meter Mobilehome Park Utilities.

<sup>4</sup> Existing law does appear to provide for monetary and criminal penalties against master-meter customers who violate state laws relating to public utilities, or violate any part of any Commission order, decision, rule, direction, demand, or requirement. Specifically, for each violation existing law authorizes a penalty of \$500 to \$20,000 (P.U. Code §2111), and a misdemeanor, punishable by a fine not exceeding \$1,000, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment (P.U. Code §2112). These statutes are enforced via actions filed in superior court.

<sup>5</sup> See *Thayer v. California Development Co.*, 164 Cal. 117(1912), and *Story v. Richardson*, 186 Cal. 162 (1921).

Dedication Doctrine limits this provision.<sup>6</sup> “Dedication” occurs if an entity has “held [itself] out, expressly or impliedly, as engaged in the business of supplying [a service or commodity] to the public as a class, not necessarily to all of the public.”<sup>7</sup> Therefore, if a mobilehome park offering master-meter electric or gas service were determined not to have dedicated that service to any portion of the “general public”, the mobilehome park might arguably not be a public utility, subject to the jurisdiction of the Commission. This is an unlikely interpretation, in light of recent case law confirming broad Commission jurisdiction in this area.<sup>8</sup> However, it would be preferable if the Legislature addressed the question specifically.

In the last few years the Commission’s Division of Communications and Public Information Division (CPID) has responded to informal complaints from tenants by contacting the park owner, on behalf of the tenant, and reminding them of the requirements of P.U. Code §739.5. In an effort to resolve these complaints, CPID informs park owners of their responsibilities related to safety, maintenance and repair of submeter facilities, rates charged to tenants, public notices and billing. CPID also informs park owners that the Commission has the authority to enforce Section 739.5 and to conduct investigations on matters where there have been allegations of violations or failures to comply with relevant laws and rules. According to CPID, these efforts result in many of these informal complaints being amicably resolved.

Staff has suggested that there is a need to clarify the Commission’s jurisdictions over mobilehome parks and its authority to impose appropriate remedies for mobilehome park tenants.

### **Recommended Amendments:**

The following amendments are necessary to enable the Commission to provide the level of regulatory oversight needed to address and resolve tenant complaints:

Added to P.U. Code §739.5, as new subdivisions:

(h) Notwithstanding the provisions of Sections 216, 218 & 222, the commission shall have the authority to investigate suspected violations of this Section consistent with its authority to investigate other violations of this Division.

(i) Solely for the purposes of enforcing the provisions of this Section, master metered customers are subject to the jurisdiction of the commission and may be penalized, fined and otherwise disciplined consistent with existing commission procedures. The commission shall develop rules for accepting, compiling and

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6 *Richfield Oil Corp. v. Public Utilities Com.*, 54 Cal. 2d 419, 428 (1960); See also *Id.* at 432 (“In view of the history of the [Public Utilities] act and the substantial reliance on its consistent interpretation and application by this court and the commission for more than 40 years, ... it must be concluded that the Legislature by its repeated reenactment of the definitions of public utilities without change has accepted and adopted dedication as an implicit limitation on their terms.”)

7 *Van Hoosear v. Railroad Commission*, 184 Cal. 553, 554 (1920).

8 See *Hillsboro Properties v. Public Utilities Com.*, 108 Cal.App.4th 246 (2003).

resolving tenant complaints of master metered customers including the power to accept impound payments for utility services.

### **Fiscal Impact**

The implementation of this bill would require the PUC to add at least three new staff positions. The Consumer Protection and Safety Division (CPSD) estimates a need for additional staff resources equaling one-half of a Public Utility Regulatory Analyst (PURA II) position to lead investigations, and one-half of a Financial Examiner III position to audit billing records. The CPID estimates the need for two new representative positions in its Consumer Affairs Branch. The Legal Division might also require a fraction of a Public Utilities Counsel III position to manage the increase in related legal matters. The total cost estimate for these positions is approximately \$266,000.

This bill may also have an impact the ALJ Division. A preliminary quantification of the increased workload would be an additional 1/4 to 1/2 PY for an ALJ II position. Mid-range, incremental fiscal impact is approximately \$24,600 - \$49,200, not including overhead or benefits.

### **LEGISLATIVE HISTORY**

Sen. E., U. & C: 5-1 (do pass, re-refer to Asm Appr.) (4/13/04)

Sen. Housing & C.D.: 6-2 (do pass as amended) (3/25/04)

### **SUPPORT/OPPOSITION**

Support: California Mobilehome Resource and Action Association, Golden State Mobilehome Owners League, Inc.

Opposition: California Mobilehome Parkowners Alliance, Western Manufactured Housing Communities Association

### **LEGISLATIVE STAFF CONTACT**

Carlos Machado, Deputy Legislative Director CPUC-OGA [cm2@cpuc.ca.gov](mailto:cm2@cpuc.ca.gov)  
(916) 327-1417

Alan LoFaso, Legislative Director CPUC-OGA [alo@cpuc.ca.gov](mailto:alo@cpuc.ca.gov)  
(916) 327-7788

**Date:** April 20, 2004

**BILL LANGUAGE:**

BILL NUMBER: SB 1163 AMENDED  
BILL TEXT

AMENDED IN SENATE MARCH 26, 2004

INTRODUCED BY Senator Dunn

FEBRUARY 2, 2004

An act to amend Section 798.38 of the Civil Code and Section 739.5 of the Public Utilities Code, relating to utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1163, as amended, Dunn. Utilities.

(1) The existing Mobilehome Residency Law requires the management of a mobilehome park, when the management provides master-meter and submeter service of utilities to a homeowner, to separately state the cost of the charges for the period along with the opening and closing readings of the meter.

This bill would require that the statements described above be generally in accordance with the form and content of the bills that the utility, which serves the master-meter of the park, provides to its residential customers. The bill would also require the management to make specified disclosures if a ~~third party~~

*3rd party* billing agent prepares utility billing for the park.

(2) Existing law requires that, when gas or electric service is provided by a master-meter customer to users who are tenants of a mobilehome park, apartment building, or similar residential complex, the master-meter customer charge each user at the same rate which would be applicable if the user were receiving gas or electricity directly from the gas or electric company. Existing law creates further requirements for master-meter customers and for the corporations which provide service to them.

This bill would require the Public Utilities Commission to accept and respond to complaints concerning the requirements described above through the ~~office of the public advisor~~ *consumer affairs branch*, in addition to any other staff that the commission deems necessary to assist the complainant.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 798.38 of the Civil Code is amended to read:

798.38. (a) Where the management provides both master-meter and submeter service of utilities to a homeowner, for each billing period the cost of the charges for the period shall be separately stated along with the opening and closing readings for his or her meter, generally in accordance with the form and content of the bills that the utility, which serves the master-meter of the park, provides to

its residential customers. The management shall post in a conspicuous place, the prevailing residential utilities rate schedule as published by the serving utility.

(b) If a third-party billing agent or company prepares utility billing for the park, the management shall disclose on each resident's billing, the name, address, and telephone number of the billing agent or company.

SEC. 2. Section 739.5 of the Public Utilities Code is amended to read:

739.5. (a) The commission shall require that, whenever gas or electric service, or both, is provided by a master-meter customer to users who are tenants of a mobilehome park, apartment building, or similar residential complex, the master-meter customer shall charge each user of the service at the same rate which would be applicable if the user were receiving gas or electricity, or both, directly from the gas or electrical corporation. The commission shall require the corporation furnishing service to the master-meter customer to establish uniform rates for master-meter service at a level which will provide a sufficient differential to cover the reasonable average costs to master-meter customers of providing submeter service, except that these costs shall not exceed the average cost that the corporation would have incurred in providing comparable services directly to the users of the service.

(b) Every master-meter customer of a gas or electrical corporation subject to subdivision (a) who, on or after January 1, 1978, receives any rebate from the corporation shall distribute to, or credit to the account of, each current user served by the master-meter customer that portion of the rebate which the amount of gas or electricity, or both, consumed by the user during the last billing period bears to the total amount furnished by the corporation to the master-meter customer during that period.

(c) An electrical or gas corporation furnishing service to a master-meter customer shall furnish to each user of the service within a submetered system every public safety customer service which it provides beyond the meter to its other residential customers. The corporation shall furnish a list of those services to the master-meter customer who shall post the list in a conspicuous place accessible to all users. Every corporation shall provide these public safety customer services to each user of electrical or gas service under a submetered system without additional charge unless the corporation has included the average cost of these services in the rate differential provided to the master-meter customer on January 1, 1984, in which case the commission shall deduct the average cost of providing these public safety customer services when approving rate differentials for master-meter customers.

(d) Every 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.

(e) Every master-meter customer shall provide an itemized billing of charges for electricity or gas, or both, to each individual user generally in accordance with the form and content of bills of the corporation to its residential customers, including, but not limited to, the opening and closing readings for the meter, and the identification of all rates and quantities attributable to each block in the applicable rate structure. The master-meter customer shall also post, in a conspicuous place, the applicable prevailing residential gas or electrical rate schedule, as published by the corporation.

(f) The commission shall require that every electrical and gas

corporation shall notify each master-meter customer of its responsibilities to its users under this section.

(g) The commission shall accept and respond to complaints concerning the requirements of this section through the ~~office of the public advisor~~ *consumer affairs branch*, in addition to any other staff that the commission deems necessary to assist the complainant.