Item # 48
(7599)

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 8, 2008

To: The Commission
(Meeting of May 15, 2008)

From: Pamela Loomis, Deputy Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2857 (Lieber) – California Alternative Rates for Energy program.**
As amended March 25, 2008

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT WITH AMENDMENTS

SUMMARY OF BILL:

This bill aims to amend Section 739.5[1] of the Public Utilities Code to require the California Public Utilities Commission (CPUC) to grant eligibility for the California Alternative Rate for Energy (CARE) program to residential users of gas and/or electric service who reside in master-metered multiple residential complexes in which not all units are submetered. The CPUC supports this bill with amendments. Amendments are suggested to provide clarity in the bill language.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

- The CPUC supports this bill with suggested amendments. Energy Division notes however that the CPUC has always required that submetered residents of a master-metered complex such as an apartment building, a mobile home park, or other facility receive rates similar to those that would have otherwise been charged directly to them by the utility as if they were customers of record. This includes submetered residents who are eligible for the CARE discount rate, regardless of the metered status of other units in the complex. Moreover, there is nothing in PU Code Section 739.5 that prohibits a submetered customer of a multi-family complex from receiving the CARE discount, regardless of the status of other tenants in the facility.

[1] Available at http://www.leginfo.ca.gov/calaw.html

- AB 2857 proposes to add the following section to PU Code Section 739.5.

  (h) Notwithstanding any other provision of law or decision of the commission, the commission shall not deny eligibility for the California Alternative Rates for Energy (CARE) program, created pursuant to Section 739.1, for a residential user of gas or electric service who is a resident or tenant served by a master-meter customer on the basis that some residential units in the master-meter customer's multiple residential complex are not submetered.

- The CPUC finds that the language change to PU Code 739.5 proposed in AB 2857[2] is not clear and therefore will not solve the problem the bill is attempting to address.

- Residents of mobile home parks, multi-family residential complexes such as apartment buildings and other similarly situated facilities have three types of tenants: (a) tenants who receive service directly from the utility company and therefore receive their CARE discounts directly from their energy provider; (b) tenants who have submeters and therefore must receive their utility bills including CARE discounts through their landlords; and (c) tenants who are not submetered but pay rents inclusive of utility costs.

- In case of customers who fall under (c), the CPUC, in Ordering Paragraph 4 of D. 89-09-044[3], ruled:

  > *"Low-income program rates will not be available to unmetered consumers because their energy bills are bundled with their rent and there is no way to enforce a pass through of the program discount to the consumer."*

- The Energy Division believes that the findings of D. 89-09-044 still hold. Moreover, the Energy Division believes that it is not possible to provide CARE discounts to customers that have no meters or submeters because it is impossible to determine their energy usage.

- If the intention of the bill is to provide CARE eligibility to ***unsubmetered*** residents of mastermetered residential complexes who obtain their utility service through payment of a flat rate, or some other unknown utility service procurement structure other than a submetering structure, then this bill directly attempts to implement an implausible scenario directly in contradiction of D. 89-09-044.

- But if the bill is attempting to make it easier for customers who fall under category (b), namely customers who are submetered, the Energy Division supports the amendment because it believes that there might be some ambiguity in the way the

[2] Available at http://www.assembly.ca.gov/acs/acsframeset2text.htm
[3] Decision 89-09-044, Decisions of the Public Utilities Commission of the State of California, (Volume 32 CPUC 2d, 5/19/1989 - 9/29/1989), pg. 419.

utility companies are implementing PU Code Section 739.5 by denying CARE discounts to customers who reside in facilities where some of the tenants of a mobile home park, apartment building, or similarly situated facility are not submetered. Such customers, by law, should receive CARE discounts regardless of the status of other tenants in the multi-family residence, or mobile home park, or a similarly situated facility.

- To clarify this, the CPUC offers alternative language proposed below.

SUMMARY OF SUGGESTED AMENDMENTS:

- (h), The Commission shall not deny eligibility for the California Alternative Rates for Energy (CARE) program, created pursuant to Section 739.1, for a residential user of gas or electric service who is a ***submetered*** resident or tenant served by a master-meter customer on the basis that some residential units in the master-meter customer's multiple residential complex ***do not use a submetering structure to obtain and pay for their utility services.***

DIVISION ANALYSIS (Energy Division):

In 2004, a resident of Valley Breeze Mobile Home Park (Valley Breeze) in Yucaipa, CA brought a complaint to CPUC (Case 04-04-030) stating the owners of the park were not providing requisite submetering services to the park or correctly providing gas service rates and rebates to tenants from the utility (SoCalGas). In this case, the discount in question was the CARE discount, which offers 20% off a customer's utility bill if the customer's income is less than or equal to 200% of Federal Poverty Guidelines. The decision specifies that the complainant was a submetered resident, but that a flat rate payment structure (assumed to be bundled with rent) also existed for other residents of the complex.

The CPUC Decision (D.04-10-001) for this case was released on October 8, 2004, and ordered that Valley Breeze should refund to the complainant (and other affected submetered tenants) all rebates provided by SoCalGas to Valley Breeze; including those received for CARE in the three-year period prior to April 26, 2004. On January 31, 2008, the same complainant from the 2004 case against Valley Breeze contacted the Senate Select Committee on Mobile and Manufactured Homes stating SoCalGas had denied the CARE discount requests to them because they were residents of a partial, not fully submetered mobile home park[4].

The PU Code establishes that CPUC's Office of Consumer Affairs, in consultation with the county sealer's office in the complainant's county of residence, is responsible for acceptance, response, and resolution of complaints. There is no clear delineation in the PU Code, however, of the enforcement mechanism for rebates such as the CARE discount. It appears the introduction of AB 2857 is a direct result of the Senate Select Committee to address this issue.

[4] From Assembly Committee on Utilities and Commerce Hearing Bill Analysis, April 14, 2008.

Subsequent to D.04-10-001, the CPUC also improved the implementation of PU Code 739.5 through implementation of the following:

- AB 2104[5], enacted on September 29, 2006, instructed the CPUC to further improve the CARE application process for "mobilehome parks, apartment buildings, or similar residential complexes receiving electric or gas service from a master-meter customer through a submetered system" so that submetered tenants may be able to apply directly with electric and gas corporations for enrollment in, and contacted for the renewal of, their CARE rates. AB 2104 also enacted that electric and gas corporations should provide master-metered customers with a timely list of CARE-eligible tenants residing in their specific complexes, which would then be updated for any additions/removals for each billing cycle. AB 2104 set these requirements to be fulfilled by the commission by December 31, 2007.

- Decision 07-12-051[6], issued by the commission in December of 2007, provided direction for Low Income Energy Efficiency (LIEE) policy as well as guidance on renter access and implementation of AB 2104. In the Decision's Ordering Paragraph Number 6 (Page 92), each electric or gas utility is directed to file an affidavit no later than January 15, 2008, certifying each utility's compliance with the directives of AB 2104[7], which asks each utility to state that is has:

    - Developed processes whereby it directly accepts CARE application from tenants of a mobilehome park, apartment building, or similarly (situated) residential complex;

    - Developed processes whereby it directly notifies and provides renewal applications to tenants of a mobilehome park, apartment building, or similar residential complex that are existing CARE customers; and

    - Provides each master-meter customer that is subject to Section 739.5 with a list of tenants who are approved to receive discounts pursuant to the CARE program and that specifically identifies those tenants added to or deleted from CARE program eligibility since the previous billing cycle.

PROGRAM BACKGROUND:

- None.

[5] Available at http://www.assembly.ca.gov/acs/acsframeset2text.htm
[6] D.07-12-051 can be accessed at http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/77082.PDF. Please note that AB 2104 is mistakenly referenced as AB 2140 throughout this document.
[7] Each affidavit can be accessed at http://docs.cpuc.ca.gov/published/proceedings/2007all.htm, under the Ruling R0701042.

LEGISLATIVE HISTORY:

Assembly Bill 2104 (Lieber, Chapter 738, Statutes of 2006) requires the CPUC to improve the California Alternative Rates for Energy (CARE) program application process for tenants who receive electric or gas service from a master-meter customer through a sub-metered system by December 21, 2007.

FISCAL IMPACT:

None.

STATUS:

AB 2857 is currently on the Assembly Floor.

SUPPORT/OPPOSITION:

Support: Golden State Manufactured-Home owners League, Inc.

Opposition: None on file.

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Date: May 6, 2008

BILL LANGUAGE:

BILL NUMBER: AB 2857 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY MARCH 25, 2008

INTRODUCED BY Assembly Member ~~Fuentes~~
Lieber

FEBRUARY 22, 2008

~~An act to amend Section 50784 of the Health and Safety Code, relating to housing, and making an appropriation therefor.~~
An act to amend Section 739.5 of the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2857, as amended, ~~Fuentes~~ *Lieber*
. ~~Mobilehome parks: rehabilitation and repair.~~
California Alternative Rates for Energy program.
Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law requires the commission to establish a program of assistance to low-income electric and gas customers, referred to as the California Alternate Rates for Energy (CARE) program.
This bill would prohibit the commission from denying eligibility for the CARE program for a residential user of gas or electric service who is a resident or tenant served by a master-meter customer on the basis that some residential units in the master-meter customer's multiple residential complex are not submetered.

~~Existing law establishes the Mobilehome Park Purchase Fund in the State Treasury and continuously appropriates the money in the fund to the Department of Housing and Community Development for the purpose of providing loans to qualified nonprofit housing sponsors, low income mobilehome park residents, and mobilehome park resident organizations in order to reduce the monthly housing costs for low income residents to an affordable level and to finance mobilehome park conversion costs.~~
~~This bill would authorize the department to make loans from the fund to finance the costs of the repair or rehabilitation of infrastructure projects, as defined, in mobilehome parks owned by residents or operated by a nonprofit housing sponsor or local government agency. By making funds from this continuously appropriated fund available for this additional purpose, the bill would make an appropriation.~~
Vote: ~~2/3~~ *majority* . Appropriation:
~~yes~~ *no* . Fiscal committee: yes.
State-mandated local program: no.

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

SECTION 1. 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~~ *that* 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~~ *that* 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 consumer affairs branch, in addition to any other staff that the commission deems necessary to assist the complainant. In responding to the complaint, the commission shall consider the role that the office of the county sealer in the complainant's county of residence may have in helping to resolve the complaint and, where appropriate, coordinate with that office.

(h) Notwithstanding any other provision of law or decision of the commission, the commission shall not deny eligibility for the California Alternative Rates for Energy (CARE) program, created pursuant to Section 739.1, for a residential user of gas or electric service who is a resident or tenant served by a master-meter customer on the basis that some residential units in the master-meter customer's multiple residential complex are not submetered.

~~SECTION 1. Section 50784 of the Health and Safety Code is amended to read:~~

~~50784. (a) The department may make loans from the fund to (1) individual low-income residents of mobilehome parks that have converted to resident ownership, (2) resident organizations that have converted or plan to convert a mobilehome park to resident ownership, or (3) qualified nonprofit housing sponsors or local public entities that plan to acquire a mobilehome park, provided that no less than 30 percent of the spaces in the park are for occupancy by manufactured homes or mobilehomes owned by low-income residents. The purpose of providing loans pursuant to this section is to reduce the monthly housing costs for low-income residents to an affordable level.~~

~~(b) (1) Any mobilehome park purchased by a local public entity with a loan pursuant to this section shall be transferred to a nonprofit housing sponsor or resident organization that has converted, or plans to convert, the park to resident ownership no later than three years from the date of loan closing, with all obligations under the loan assumed by the nonprofit organization or resident organization.~~

~~(2) If a local public entity has made a good faith effort, but has not been able, to transfer the park by the end of the three-year period, the entity may apply to the department for an additional three year extension. Upon a determination by the department that the local public entity has made a good faith effort to transfer the park in accordance with paragraph (1), it shall have an additional three years from the expiration date of the first three-year period to consummate the transfer. The three-year extension shall only be granted once by the department for each loan to a local public entity.~~

~~(3) Where a local public entity fails to make a good faith effort to transfer the park within the first three-year period, as determined by the department, or fails to transfer the park by the expiration date of the extended three year period, it shall repay the loan in full to the department.~~

~~(c) Loans provided pursuant to this section shall be for a term of no more than 30 years and shall bear interest at a rate of 3 percent per annum.~~

~~(d) The department may establish flexible repayment terms for loans provided pursuant to this section if the terms are necessary to reduce the monthly housing costs for low-income residents to an affordable level, and do not represent an unacceptable risk to the security of the fund. Flexible repayment terms may include, but are not limited to, graduated payment schedules with negative amortization.~~

~~(e) Loans provided to low-income residents pursuant to this section shall be for the minimum amount necessary to reduce the borrower's monthly housing costs to an affordable level. All of the following shall apply to loans to finance individual interests pursuant to this section:~~

~~(1) To the extent possible, loan amounts shall not exceed 50 percent of the acquisition costs of the individual interests in the mobilehome parks. However, the loan amounts may be for up to 100 percent of the acquisition costs of the individual interests in the mobilehome parks when approved by the department.~~

~~(2) The department may grant approval to exceed 50 percent of the acquisition costs of the individual interests only where both of the following are demonstrated:~~

~~(A) That the low-income resident has made an effort to secure additional funding from other sources and these funds are not available.~~

~~(B) That the low-income resident would be unable to purchase an individual interest without a waiver of the 50 percent financing limitation.~~

~~(3) The total indebtedness of the loan provided pursuant to this section plus any senior debt upon individual interests may not exceed 100 percent of the value of the collateral securing the loan, plus the amount of costs incidentally, but directly, related to the acquisition.~~

~~(f) Loans provided to resident organizations, qualified nonprofit housing sponsors, or local public entities pursuant to this section shall be for the minimum amount necessary to reduce the monthly housing costs of low-income residents to an affordable level. All of the following shall apply to loans made to resident organizations, qualified nonprofit housing sponsors, or local public entities pursuant to this section:~~

~~(1) To the extent possible, loan amounts shall not exceed 50 percent of the conversion costs attributable to the low-income spaces. However, the loan amounts may be for up to 95 percent of the conversion costs attributable to the low-income spaces when approved by the department.~~

~~(2) The department may grant approval to exceed 50 percent of the conversion costs attributable to low-income spaces only where both of the following are demonstrated:~~

~~(A) That the applicant has made an effort to secure additional funds from other sources and these funds are not available.~~

~~(B) That the project would not be feasible as determined by the department without a waiver of the 50 percent financing limitation.~~

~~(3) The total secured debt in a superior position to the department's loan plus the department's loan shall not exceed the value of the collateral securing the loan plus the amount of costs incidentally, but directly, related to the acquisition and, if applicable, rehabilitation of the park.~~

~~(g) Funds provided pursuant to this section shall not be used to (1) assist residents who are not of low income, (2) reduce monthly~~

~~housing costs for low income residents to less than 30 percent of their monthly income, or (3) facilitate the purchase of a park by a qualified nonprofit corporation or local public entity from a public entity that had acquired the park prior to the commitment of the loan from the program.~~

~~(h) Subject to the restrictions of this subdivision, funds provided pursuant to this section may be used to finance the costs of relocating a mobilehome park to a more suitable site within the same jurisdiction if the department determines that the cost of the relocation, including any and all relocation costs to the affected households, is a more prudent expenditure of funds than the costs of needed or repetitive repairs to the existing park. Funds provided pursuant to this section shall not be used to relieve a park owner of any responsibility for covering the costs of mitigating the impacts of a park closure as may be provided for by local ordinance or pursuant to Section 65863.7 or 66427.4 of the Government Code.~~

~~(i) Subject to the restrictions of this subdivision, the department may make loans from the fund to finance the costs of the repair or rehabilitation of infrastructure projects in mobilehome parks owned by residents or operated by a nonprofit housing sponsor or local government agency. For the purposes of this subdivision "infrastructure project" includes, but is not limited to, gas, electric, water, sewer, septic, and surface drainage systems. Loans made under this subdivision shall not exceed the amount of five hundred thousand dollars ($500,000) per mobilehome park. For any one application period, only funds not utilized by the department for loans for conversion to a resident-owned mobilehome park or for acquisition by a nonprofit housing sponsor or local government agency under this chapter shall be expended for mobilehome park infrastructure projects.~~