

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



October 18, 2004

Agenda ID #3968
Ratesetting

TO: PARTIES OF RECORD IN RULEMAKING 03-03-017 AND
INVESTIGATION 03-03-018

This is the proposed decision of Administrative Law Judge (ALJ) O'Donnell, previously designated as the principal hearing officer in this proceeding. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Pursuant to Resolution ALJ-180, a Ratesetting Deliberative Meeting to consider this matter may be held upon the request of any Commissioner. If that occurs, the Commission will prepare and mail an agenda for the Ratesetting Deliberative Meeting 10 days before hand, and will advise the parties of this fact, and of the related ex parte communications prohibition period.

The Commission may act at the regular meeting, or it may postpone action until later. If action is postponed, the Commission will announce whether and when there will be a further prohibition on communications.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ Angela K. Minkin
Angela K. Minkin, Chief
Administrative Law Judge

ANG:avs

Decision **PROPOSED DECISION OF ALJ O'DONNELL** (Mailed 10/18/2004)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the
Commission's Own Motion to Re-Examine the
Underlying Issues Involved in the Submetering
Discount for Mobile Home Parks and to Stay
D.01-08-040.

Rulemaking 03-03-017
(Filed March 13, 2003)

Order Instituting Investigation on the
Commission's Own Motion to Re-Examine the
Underlying Issues Involved in the Submetering
Discount for Mobile Home Parks and to Stay
D.01-08-040.

Investigation 03-03-018
(Filed March 13, 2003)

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OPINION

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O P I N I O N

I. Summary

Pub. Util. Code § 739.5 requires mobile home park (MHP) owners who provide electricity and /or natural gas to their tenants through a submetered distribution system to charge their tenants at the same rate the serving utility charges for comparable service.¹ Section 739.5 also requires the serving utility to provide a discount to the MHP owner as compensation for providing such services to its tenants.² These proceedings were initiated to address matters pertaining to the discount. In Decision (D.) 04-04-043, an interim decision in these proceedings, we identified the categories of costs the electric and natural gas utilities incur when directly serving MHP tenants that are avoided by the utilities when the MHP is served through a distribution system owned and operated by the MHP owner. These categories of costs are to be used in determining the amount of the discount. We also identified the categories of costs that are either not incurred by the utility when it directly serves MHP tenants, or are not reflected in utility rates for direct service, but are incurred by MHP owners, and may be separately charged to tenants if not otherwise prohibited.

In this decision, we require the following:

1. The discount shall be set at the average cost that the utility would have incurred in providing comparable services to the tenant directly, which is avoided when the MHP is submetered.

¹ All references are to the Public Utilities Code unless otherwise indicated.

² All references to MHP owners will be to those who are master-meter customers of the utility, and provide service to their tenants through a submeter.

2. The discount shall be determined in a general rate case, biennial cost allocation proceeding, or similar proceeding where the utility's revenue requirement is set (revenue requirement proceeding). Between such proceedings, the utilities shall include a proposed revision to the discount in any utility filing proposing a revision to residential rates if the change in residential rates, or the data upon which the residential rate change is based, is sufficient to change the discount.
3. Any proposed settlement or stipulation in a revenue requirement proceeding, that includes the discount, shall specify whether and how the discount is to be adjusted between such proceedings.
4. If the calculation of the discount and how the discount is to be adjusted between such proceedings is not specified in an adopted settlement or stipulation that includes the discount, the discount shall not be revised until the next such proceeding.
5. In any proceeding where the parties propose a settlement or stipulation that includes the discount, they shall specifically demonstrate that the proposed discount complies with § 739.5.
6. The discount shall be set as an amount per space per day.
7. The discount shall be calculated using a sampling method based on a statistically valid random sample, or using a marginal cost method. The specifics of any sampling or marginal cost method shall be addressed in the revenue requirement proceeding where the discount is set.
8. Refunds shall be distributed to tenants pursuant to § 739.5(b), except that when the refunds by the utility are on a per-meter basis, the refunds to the tenants shall be on a per-submeter basis.
9. Whenever a utility issues a refund to MHP owners through a reduction in the utility bill that should be distributed to tenants, the utilities shall: (1) identify the refund amount on the bill, and (2) explain how tenant refunds are to be

- calculated. If refunds are issued to MHP owners other than through the bill, the utilities shall identify the refund as such, and explain how to calculate tenant refunds.
10. When a tenant of a submetered MHP contacts a utility concerning the bill provided to the tenant by the MHP owner for electricity and /or natural gas, the utility shall as a minimum offer to provide information on how the tenant's bill should be calculated, and on eligibility for programs for which the tenant may be eligible such as the California Alternate Rates for Energy (CARE) program. The utility shall also refer the tenant to the Commission's Consumer Affairs Branch, for resolution of complaints.
 11. In their next revenue requirement proceedings, the utilities shall provide an analysis of the costs, benefits, and feasibility of providing bill calculation services to MHP owners. The utilities shall also provide examples of the appropriate tariff language, and an estimate of the rates necessary to recover the full costs of such services from the MHP owners.
 12. 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.

II. Background

A large number of MHP owners provide electricity and /or natural gas to their tenants through a master-meter.³ In such cases, the MHP owner receives electricity and /or natural gas from the utility at a master-meter. The electricity and /or natural gas is then distributed to tenants through the MHP owner's distribution system, and a submeter located at each tenant's mobilehome. Each

³ MHP owners, as the term is used herein, are also referred to as "master-meter customers."

tenant is billed by the MHP owner for the usage recorded by the submeter. As a result, the tenant is not a customer of the utility.

Section 739.5 provides in pertinent part:

“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..., 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.”

Section 739.5 requires MHP owners to charge the same rates for electricity and natural gas that would be applicable if the utility served the tenant directly. The utilities are required to provide the electricity and natural gas to the MHP owner at a discount. The discount is intended to reimburse the MHP owner for the reasonable average cost of providing submetered service. The discount is not to exceed the average cost that the utility would have incurred in providing comparable services to the tenant directly, which is avoided when the MHP is submetered.

In Rulemaking (R.) 03-03-017 and Investigation (I.) 03-03-018, the Commission planned to answer the following questions:

1. What are the components of the cost to a utility of directly serving MHP tenants, not already identified in Decision (D.) 95-02-090 and D.95-08-056, and which of them does a utility avoid if a MHP submeters its tenants?
2. Can the Commission set a uniform statewide rate structure and method to calculate the discount, and if so what cost figures or other issues of fact in dispute can parties present to resolve them?
3. Should the Commission revise the refunds ordered in D.01-08-040?
4. What mechanism should be implemented to ensure refunds, ordered in D.01-08-040, are appropriately made to MHP tenants?
5. Should the Commission explore beyond the conclusions reached in D.95-08-056 a fair and reasonable way to mitigate the cost to MHP owners of converting existing submetered systems to directly-metered service?
6. Should the Commission revise the methods and formulas by which refunds are currently paid to tenants by MHP owners?

The first question was addressed in Decision (D.) 04-04-043, in Phase 1 of this proceeding.

Decision 01-08-040 was issued in Case (C.) 00-01-017, a complaint by MHP tenants alleging that the MHP owner violated § 739.5(a). The Commission found that the tenants' allegation was correct, and ordered refunds. At the time this proceeding was initiated, the issue of the refunds remained outstanding, and C.00-01-017 was consolidated with this proceeding. Subsequently, the parties in C.00-01-017 resolved the remaining issues among themselves, and asked the Commission to close the proceeding. By D.04-06-007, C.00-01-017 was

deconsolidated from this proceeding, and closed. Therefore, the third and fourth questions have been resolved by the parties to C.00-01-017.

We will first address threshold issues, and then address the remaining questions that are rewritten and organized as follows:

1. Should the Commission adopt a uniform statewide rate structure for the discount?
2. Should the Commission adopt a uniform statewide method to calculate the discount?
3. Are there fair and reasonable ways to mitigate the cost to MHP owners of converting existing submetered systems to directly-metered service?
4. Should the Commission revise the methods and formulas by which refunds are currently paid to submetered tenants by MHP owners?

Hearings were held on June 7 and 8, 2004. The matter was submitted on July 22, 2004.

III. Threshold Issues

1. The Adequacy of MHP Owner Records

A significant threshold issue is the adequacy of MHP owner records. In this proceeding, the parties have agreed that 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.⁴ The record supports, and nothing in the record contradicts, this assertion. Therefore, we

⁴ The costs include, but are not limited to, depreciation, return on investment, operating costs, and maintenance costs. Many of these costs cannot be determined without records of existing plant such as initial installation costs, repairs, replacements and upgrades, condition, maintenance, etc. Merely having records of expenditures for recent years would not be sufficient.

adopt this conclusion, which is important in determining how the discount will be established.

2. Setting the Discount at the Cap

The discount is required to be set at the MHP owner's reasonable average cost of providing submetered service. However, the discount may not exceed the average cost that the utility would have incurred in providing comparable services to the tenant directly, which is avoided when the MHP is submetered. This is referred to as the cap.

The active parties have agreed that, since the lack of adequate MHP owner records makes it impossible to determine the MHP owners' costs, the discount should be set at the cap.⁵ We agree that the lack of adequate MHP owner records prohibits determination of the MHP owner's costs. Therefore, setting the discount at the cap is the only means available to ensure that the MHP owner receives an appropriate discount. In addition, since the cap is based on the costs avoided by the utility, the ratepayers and utility stockholders are not adversely affected by doing so. Given the inadequacy of MHP owner records, and the fact that our practice has been to set the discount at the cap, we will continue to do so.

3. Uniform Statewide Discount

None of the active parties recommend that the Commission adopt a uniform statewide discount. The utilities' costs of providing service vary from utility to utility. As a result, rates also vary among utilities. Since the discount is

⁵ The active parties are Pacific Gas and Electric Company, Southern California Edison Company, the Sempra Utilities (San Diego Gas and Electric Company, and Southern California Gas Company), The Utility Reform Network, the Latino Issues Forum, and the Western Manufactured Housing Community Association.

a cost-based rate, it too will vary among utilities. Since § 739.5 requires that the discount not exceed the costs the utility avoids due to the tenant being served by the MHP owner through a submeter, the only way to have a uniform statewide discount that does not exceed avoided utility costs would be to set it based on the costs of the utility with the lowest cost of service. However, this would mean that MHP owners in other utilities' service territories may receive a lower discount than is reasonable. For the above reasons, a uniform statewide discount will not be adopted.

4. Where the Discount Should be Set

A utility's revenue requirement is set in a revenue requirement proceeding. In these proceedings, the Commission determines the utility's costs of providing service. Much of this cost information is the same information that is needed to set the discount. If the discount were set in separate proceedings, the cost information would have to be developed separately. Since it is more efficient to set the discount in those proceedings that already address the costs of providing service, and no party has made a different proposal, we will do so. While the active parties agree that the discount should be set in a revenue requirement proceeding, they do not agree on whether or where the discount should be adjusted between such proceedings.

Outside of a revenue requirement proceeding, Pacific Gas and Electric Company (PG&E) proposes that the discount be changed whenever there is a change in residential rates that is significant enough to change the discount due to recalculation of the diversity benefit adjustment.⁶ Southern California Edison

⁶ The diversity benefit adjustment reduces the discount paid to the MHP owner to account for the fact that while the MHP owner receives a full baseline allowance for

Footnote continued on next page

Company (SCE) believes the discount should only be revised in proceedings where the costs on which the discount is based are set. The Utility Reform Network (TURN) and the Sempra Utilities (Sempra) recommend that the discount be changed whenever there is a change in residential rates that is significant enough to change the discount. The Western Manufactured Housing Community Association (WMA) proposes that the discount be revised by advice letter every two years.

Utility rates are based on costs, and are changed more often than just in the cost-based proceedings. Regardless of the method chosen to calculate the discount, the discount is calculated based, at least in part, on data that is used to calculate residential rates. Therefore, the utility should include a proposed revision to the discount in any utility filing proposing a revision to residential rates if the change in the residential rates, or the data upon which the residential rate change is based, is sufficient to change the discount.⁷

If the parties propose a settlement or stipulation that includes the discount, the settlement or stipulation should specify whether and how the discount is to be adjusted between such proceedings. If the calculation of the discount is not specified in the settlement or stipulation, and it is adopted, the Commission may not have sufficient information to determine whether a change

each space, some tenants use less than the baseline allowance, and some spaces may be vacant.

⁷ The intent is not to reopen the discount every time residential rates are changed. Rather, it is to revise the discount only if the changes in the residential rates, or the data on which the residential rate changes were calculated, are sufficient to change the discount. The methodology utilized to calculate the discount would be the methodology adopted in the previous revenue requirement proceeding.

to the discount is warranted between proceedings. In that case, the discount shall not be revised until the next revenue requirement proceeding.

5. Settlements

There is the possibility that the proceeding that sets the discount will be resolved in whole or in part by a settlement or stipulation. However, the adoption of a settlement does not avoid the requirement that § 739.5 be satisfied. In any settlement or stipulation, the burden is on the moving parties to demonstrate that the settlement or stipulation is, among other things, consistent with law. No active party disputes this; however, SCE believes that it would be inefficient to require parties proposing a settlement or stipulation to demonstrate compliance with § 739.5. Instead, it proposes that such a specific demonstration be done only if the settlement or stipulation is opposed. In contrast, TURN recommends that parties proposing a settlement or stipulation be required to specifically demonstrate that the recommended discount complies with § 739.5.

In order for the Commission to adopt a settlement, it must be reasonable in light of the whole record, consistent with law, and in the public interest. In proposing a settlement or stipulation that sets the discount, the moving parties must determine that this is the case. As a result, it should be relatively simple for them to demonstrate that these requirements have been met. Therefore, we will require that any stipulation or settlement that sets the discount must specifically demonstrate that it complies with § 739.5.

IV. Should the Commission Adopt a Uniform Statewide Rate Structure for the Discount?

The parties agree that there are no differences in utility rate design methodology (fixed charges, minimum bill, etc.), billing practices or other differences among utilities that preclude the use of a uniform statewide rate structure for the discount. We see no reason to disagree.

PG&E and Sempra take no position on whether a uniform statewide rate structure for the discount should be adopted. However, if one is adopted, they recommend a uniform amount per space per day. SCE believes that there is no need to adopt a uniform statewide rate structure for the discount. However, it too recommends that if one is adopted, it should be a uniform amount per space per day. TURN recommends that a uniform amount per space per day should be adopted for PG&E, SCE, SDG&E, and So Cal Gas. For the smaller utilities, it recommends they retain their current rate structures. WMA recommends that a uniform amount per space per day should be adopted for all utilities. The Latino Issues Forum (LIF) takes no position on this issue.

The discounts for the major utilities are set in amounts equivalent to a fixed amount per space per day. The smaller utilities discounts generally amount to a uniform amount per space per month. A fixed amount per space per month is easily converted to a fixed amount per space per day. As a result, there is no reason not to require the discount to be structured as a uniform amount per space per day. Therefore, we will require that the discount be set as a uniform amount per space per day.

V. Should the Commission Adopt a Uniform Statewide Method to Calculate the Discount?

PG&E takes no position on whether there should be a uniform statewide method of calculating the discount. Its current discount is based on the sampling method, and it wishes to continue to be allowed to use it. SCE believes there should not be a uniform statewide method of calculating the discount, and wishes to be allowed to use a marginal cost method. Sempra believes there should be a uniform statewide method of calculating the discount, and it should be a marginal cost method. TURN recommends that the sampling method should be adopted as the uniform statewide method of calculating the discount.

WMA recommends that a marginal cost method be adopted as the uniform statewide method of calculating the discount.⁸ LIF took no position on this issue.

There are two general methods for calculating the discount. One method is the sampling method. Under this method, the utility estimates the costs of the facilities that are necessary to directly serve tenants of a MHP from a survey of a sample of the directly-metered MHPs it serves. The facilities-related costs are then calculated, and other costs are added in order to determine the discount. The other method is the marginal cost method where the discount is calculated based on residential marginal costs.⁹

No party proposed a specific formula for calculating the discount. The record is not sufficient to allow adoption of a specific formula even if we were inclined to do so. The sampling method, to be valid, would require the use of a survey of a statistically valid random sample of the utility's directly-served MHPs. To the extent that any of the plant or non-plant related costs rely on data not limited to the sample, such as operations and maintenance costs, the resulting discount will be an approximation.¹⁰ The marginal cost method relies on residential marginal costs, rather than marginal costs associated only with MHPs. Therefore, it too is an approximation. Arguably, the sampling method, if

⁸ The marginal cost method proposed by Sempra and WMA is different from the one SCE wishes to use.

⁹ When referring to the marginal cost method, we are referring to methods based on marginal costs in general, rather than a particular marginal cost method.

¹⁰ The operations and, maintenance costs used in PG&E and SCE's current discounts, which were calculated based on sampling methods, were not based on data limited to MHPs.

based on a survey of a statistically valid random sample of directly-served MHPs, would more closely approximate the costs on which the discount should be based. However, it is likely to be more costly than the marginal cost method because of the costs of performing the survey.

SCE asserts that the results of the two methods are very similar in practice because in either method 40-48% of the costs on which the discount is based are operations and maintenance costs that are estimated by the utilities on a basis that is not limited to MHPs. In addition, much of the equipment used to provide service, such as the final line transformer, service drop and meter, is the same for directly-metered MHP and residential service. SCE also asserts, and PG&E and Sempra agree, that the difference in the discounts calculated by the two methods is well within the uncertainty of the sampling method.

Section 739.5(a) requires the Commission to set the discount at a level that covers the “reasonable average costs to master-meter customers” of providing submetered service. The intent is that the discount be set based on the average costs of the MHP owner to provide submetered service. Although the term “average costs” is not defined, it is reasonable to assume that it means that a single discount rate is to be set for the utility based on an average of the costs incurred by the MHP owners it serves, rather than a separate discount for each MHP owner based on each individual MHP owner’s costs. However, as discussed above, the discount will be set at the cap because such a calculation cannot be performed.

Section 739.5 (a) requires that the discount “not exceed the average cost that the corporation would have incurred in providing comparable services directly to the users of the service.” This cap is required to be set at the average cost that the utility would have incurred in providing comparable services

directly to the users of the service. Section 739.5 applies to a limited set of residential users: tenants of submeter MHPs, in this case.¹¹ It does not apply to the general body of ratepayers. It is reasonable to assume that “comparable services” refers to services provided to directly served MHP customers of the utility, as opposed to residential ratepayers as a whole. As a result, the discount must be determined based on the average cost the utility incurs in directly serving MHP customers that is avoided by the utility when the tenant is served through a submeter. The sampling method, if based on a statistically valid random sample, would satisfy § 739.5(a). However, § 739.5(a) does not specify how the discount is to be calculated. Therefore, the discount could be calculated using a marginal cost method based on the costs to serve residential customers as a whole, if it is determined that those costs are approximately the same as those incurred in directly serving MHP tenants.

Nothing in the record suggests that the facilities used to directly serve MHP customers are materially different from those used to serve other residential customers. Utility residential customers range from being close together in large cities to widely-separated in rural areas. In contrast, MHP tenants tend to be located close together within the MHP. It is reasonable to expect that a proportion of any difference in the utility distribution facilities used to directly serve MHP tenants and residential customers as a whole is related, at least in part, to the difference in the length of the distribution cables and conduits for electricity, and distribution mains for gas. This, in turn, would likely affect costs related to those facilities, and possibly the cost of reading meters, among

¹¹ Section 739.5 applies to MHPs, apartment buildings, and similar residential complexes that are served through a master-meter.

other things. There may also be other reasons why the costs would be different, and the costs to serve residential customers as a whole could be different from the costs to directly serve MHP tenants. However, the question is whether this theoretical difference is significant. As discussed above, SCE, PG&E and Sempra state that a discount calculated using a marginal cost method would be within the range of uncertainty of a discount calculated using a sampling method. No party disputes this assertion. As a result, we see no reason not to allow the use of a marginal cost method for calculating the discount. Regardless of whether the sampling method or a marginal cost method is used, the cost to be estimated remains the average cost that the utility would have incurred in providing comparable services to the MHP tenant directly, which is avoided when the MHP is submetered, as identified in Attachments A and B to D.04-04-043. Costs other than those specified in D.04-04-043 may not be included.

As previously noted, the record is not sufficient to adopt a specific formula for calculating the discount. In addition, the record demonstrates that there are at least two general methods to calculate the discount that comply with § 739.5. Therefore, we will allow the discount to be calculated using a sampling method based on a statistically valid random sample, or using a marginal cost method. We note that there are disagreements among the parties as to the specifics of particular marginal cost methods. We also note that rate design and allocation methodologies vary over time, and are not uniform across utilities. As a result, we do not specify a particular marginal cost method herein. The specifics of any sampling or marginal cost method to be used to calculate the discount should be addressed in the revenue requirement proceeding where the discount is set.

VI. Are there Fair and Reasonable Ways to Mitigate the Cost to MHP Owners of Converting Existing Submetered Systems to Directly-Metered Service?

In considering whether there are fair and reasonable ways to mitigate the cost to MHP owners of converting existing submetered systems to directly-metered service, the adequacy of past discounts is relevant. However, due to the inadequacy of MHP owners' records, we cannot determine the MHP owners' costs of owning and operating the submetering system. Therefore, we cannot directly compare the costs incurred to the discounts paid in order to determine whether the MHP owners have been adequately reimbursed.

There is sufficient evidence to show that conversion of submetered systems to directly-metered systems is likely to be costly. This is due to the fact that submetered systems may not have been built to the same standards used by the utilities. In addition, they may lack sufficient construction or maintenance records to determine their condition, or may need significant repair, replacement, or upgrading to make them acceptable for transfer as specified in § 2794. If a submetered system is acceptable for transfer, it is not likely that it would be costly for the MHP owner to transfer it to the utility, and there is no issue. However, if costly repairs, replacements, or upgrades are necessary, then the issue is who should pay. Arguably the MHP owner should pay because the MHP owner would benefit from being relieved of responsibility for the operation, maintenance and replacement of the submetered system. In addition, the MHP owner has received the discount to cover such costs. If the utility were to take over the system, and bear such conversion costs, the costs would have to be borne by the ratepayers or the stockholders.

The submetered system was not previously owned or maintained by the utility. There is no significant potential for increased revenues because of such a

transfer because the utility already provides the same amount of electricity or natural gas to the MHP owner at the master-meter as would subsequently be provided directly as a result of the transfer. The fact that the utility would no longer have to pay the discount is offset by the costs, related to providing service directly, that were previously provided by the MHP owner. As a result, there is no apparent benefit to the stockholders resulting from the transfer; thus there is no apparent reason they should bear any of the costs. That leaves the ratepayers. There is nothing in the record that indicates that the general body of ratepayers would benefit from such transfers.

Notwithstanding the above discussion, transfers of master-metered MHP systems to the utility are governed by §§ 2791-2799. The following portions of those sections are relevant to this issue.

Section 2791(b) provides that “Costs, including both costs related to transfer procedures and costs related to construction, related to the transfer of ownership process, whether or not resulting in a transfer of ownership to the serving gas or electric corporation, shall not be passed through to the park or community residents.” It also provides that “Costs related to the transfer of ownership process, whether or not resulting in a transfer of ownership to the serving gas or electric corporation, shall not be passed through to the gas or electric corporation, except as otherwise provided in this chapter.” In other words, costs related to a transfer of ownership of the master-metered system to the utility cannot be charged to the MHP tenants. Costs may not be charged to the utility except as otherwise specified.

Section 2794(a) provides that:

“ (a) 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.”
- (b) As used in this section, “customary expected load” means the anticipated level of service demanded by the dwelling units in the park or community. The park or community owner shall not be responsible for betterments or improvements to the gas or electric corporation’s distribution system facilities or operations that do not benefit the park or community.”

- (c) Satisfaction of the criteria shall not require any particular system architecture or replacement of used and useful equipment, plant, or facilities, except as needed to comply with subdivision (a). Equipment, facilities, or plant that are part of the existing gas or electric system shall be considered compatible unless their presence in the system would cause substantial increase in the frequency or duration of outages in the case of failure or emergency, or they have no remaining useful life. Pursuant to subdivision (c) of Section 2793, equipment, facilities, or plant that require special training for the gas or electric corporation's employees, or require the gas or electric corporation to maintain inventories of nonstandard equipment may be considered compatible, but their presence may be reflected in the appraised value or the cost imposed on the park or community owner.”

This section provides specific requirements that the MHP distribution system must meet in order to complete the transfer.

Section 2795 provides that “The park or community owner and the gas or electric corporation shall develop a cost for the transfer of the gas or electric system that reflects the factors in Section 2793, indemnity and liability issues, and any other factors as the parties may mutually agree upon, and to which the gas or electric corporation's ratepayers are indifferent. The parties may agree on a schedule for phasing in facilities to meet expected load increases and betterments, and the costs associated with those activities.” This section requires ratepayer indifference to the transfer. In other words, costs related to the transfer should not be borne by ratepayers, unless there is an equal offsetting benefit such that there is no net cost to ratepayers.

Section 2797 provides that “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 community gas or electric systems.” This section allows costs incurred by the utility subsequent to the transfer to be included in rates.

The net effect of the above sections is that the costs incurred to make a MHP distribution system acceptable for transfer to the utility must not be borne by the utility or the MHP tenants, and the general body of ratepayers must be rendered indifferent. Therefore, the costs may only be charged to ratepayers if there is an offsetting benefit such that they are indifferent. Otherwise, the costs must be borne by the MHP owner.

We note however, that this issue was not fully developed in this proceeding, and the parties have requested that it be further developed in a separate proceeding as discussed below.

1. Motion to Establish a Separate Proceeding

On January 16, 2004, the active parties filed a motion seeking to establish a separate proceeding to address 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. The parties contend that the issue would be complex and wide-ranging, and involve questions that would require significant discovery, hearings and briefing. Therefore, they recommend that, in order to complete this proceeding in a timely manner, a separate proceeding be established. Addressing this matter further at this time would extend this proceeding substantially. As a result, we will not consider this issue further in this proceeding, and we deny the motion at this time. We will

consider a new proceeding to address this issue only as staffing and resources allow.

VII. Should the Commission Revise the Methods and Formulas by Which Refunds are Currently Paid to Submetered Tenants by MHP Owners?

Section 739.5(a) requires that tenants be charged at the same rate that would apply if the tenant were receiving service directly from the utility.

Section 739.5(b) provides that every master-meter customer who “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.” This means that rebates are to be distributed only to current tenants based on their use during the last billing period.

The term “rebate” is not defined in the Public Utilities Code. However, it is commonly defined as a return of a portion of rates previously paid. In order for a MHP owner to do the calculation required by § 739.5 (b), the MHP owner must know the amount of the refund. Therefore, the rebate must be identified as such on the utility bill. As a result, for these limited purposes we will define “rebate” as a refund identified as such on the bill the MHP owner receives from the utility.

Rate reductions, even if for a limited period of time, if they are incorporated in rates, and not separately identified on the MHP owner’s bill, are to be passed through to tenants pursuant to § 739.5 (a) which requires the tenant to be charged the same rates as the utility charges.

When rebates are distributed to utility customers based on the previous month's usage, the MHP owner's use of § 739.5(b) seems straight-forward and reasonable. However, there may be times when a refund provided by the utility is based on usage over multiple billing periods, or is on a per-meter basis. In this case, application of § 739.5(b) would appear to conflict with § 739.5(a) because the resulting tenant's bill may not be the same as if the tenant were served directly by the utility.

PG&E makes no recommendation on this matter, but notes the contradiction between § 739.5(a), and § 739.5(b). SCE also points out the contradiction. However, it notes that the California Supreme Court found that § 453.5 allowed the Commission to reimburse residential customers based on current usage where records of prior usage may not be available.¹² Therefore, SCE believes that § 739.5(a) and § 739.5(b) may be harmonized by recognizing that usage records for tenants of submetered MHPs may not be available. SCE says that § 739.5(b) should apply only to one-time refunds that are not already part of the utility's tariffs. Sempra believes that refunds calculated on the previous month's usage will be substantially the same as if they were calculated based on another more complex method, with one exception. In addition, Sempra believes that basing the refunds on § 739.5(b) correctly balances administrative ease and accuracy. The exception is when refunds are on a per-meter basis. In this case, Sempra believes they should be distributed to tenants

¹² *California Manufacturers Association et al., petitioners, v. Public Utilities Commission et al.*, 24 Cal. 3rd 836, 1979 Cal. LEXIS 287, states that "The statute expressly provides that those 'small residential customers,' as to whom records of prior use may be difficult to retrieve, may be reimbursed on the basis of current usage. (§ 453.5, *supra*.)"

on a per-submeter basis. Sempra also recommends that in the case of special refund programs, the treatment of tenants should be addressed in the proceeding in which they were authorized. WMA recommends that one-time refunds be distributed according to § 739.5(b). To the extent that a refund is the result of a tariff change, WMA recommends that it be treated according to the approved tariff. WMA is primarily seeking certainty as to how refunds are to be made. TURN and LIF did not address how refunds are to be calculated.

Section 453.5 provides that whenever the Commission orders the utility to pay refunds, the utility is required “to pay refunds to all current utility customers, and, when practicable, to prior customers,” in proportion to the amount originally paid for the utility service involved, or in proportion to the amount of service actually received. However, § 453.5 also says that nothing in §453.5 prevents the Commission from authorizing refunds to residential customers to be based on current usage. As noted by SCE, the California Supreme Court determined that § 453.5 allows the Commission to reimburse residential customers based on current usage where records of prior usage may not be available. As a result, we believe that it is reasonable to assume that § 739.5(b) had a similar intent. Therefore, refunds should be distributed to tenants pursuant to § 739.5(b), with one exception. Where the refunds by the utility are on a per-meter basis, records of prior use are irrelevant. In that case, since following § 739.5(b) would violate § 739.5(a), the refunds to the tenants should be on a per-submeter basis.

In order to ensure that refunds are properly distributed to tenants, whenever a utility issues a refund to MHP owners through a reduction in the utility bill that should be distributed to tenants, the utilities will be required to: (1) identify the refund amount on the bill, and (2) explain how tenant refunds are

to be calculated. If refunds are issued to MHP owners other than through the bill, the utilities will be required to identify the refund as such, and explain how to calculate tenant refunds.

The parties appear to agree that calculating bills, including the calculation of refunds to tenants, as well as the application of rate discounts, such as the California Alternate Rates for Energy (CARE) program, can be difficult for the MHP owner, and may lead to billing errors and disputes with tenants. This, in turn, led to recommendations by LIF, TURN, and WMA regarding billing and meter reading, and related matters.

1. LIF Recommendations

LIF contends that a substantial number of eligible submetered MHP tenants are not receiving the full benefits of the CARE program. LIF believes this is due to inadequate notice being given to tenants by the MHP owners, and errors in the MHP owners' billing of tenants. It proposes that the Commission should: (1) send quarterly notices to MHP owners reminding them of their responsibilities with respect to discounts and refunds, including the CARE program, (2) make periodic random visits to master-metered MHPs to determine the owners' compliance, (3) require the utilities to assist tenants regarding related questions and complaints, and (4) encourage WMA to frequently provide its members with current information regarding discounts and refunds.

LIF's first two recommendations would have an impact on the Commission's staffing and resources. Decisions regarding the utilization of the Commission's staff and resources are made by the Commission's management considering all of the other demands placed on those same staff and resources. Therefore, these recommendations are beyond the scope of this proceeding, and

will not be addressed further herein. However, by this decision, the Commission's management is made aware of these recommendations.

As to LIF's third recommendation, the utilities have no information on MHP tenants who are not utility customers. When a utility is contacted by a submetered MHP tenant, especially with regard to billing, there is very little information it can provide. In addition, when a MHP owner and tenant have a dispute, the utility has no authority to resolve it. However, we would certainly expect the utility to provide information on how it calculates its bills, since the MHP owner is required to calculate tenant bills in the same manner, and on eligibility for programs such as CARE. Such information should be provided as a matter of course. The Commission has the authority to resolve disputes between MHP owners and tenants regarding the owner's compliance with § 739.5. Therefore, other than providing the above information, the utility should refer such tenant inquiries to the Commission's Consumer Affairs Branch, as is currently the case.

Regarding LIF's fourth recommendation, we certainly encourage WMA to provide its members with current information regarding discounts and refunds. However, since WMA is not a utility, a MHP owner, or subject to the Commission's jurisdiction, we cannot require it to do so.

2. TURN Recommendations

TURN recommends that the Commission spot-check submetered MHPs every time the Commission orders a major rebate to ensure that they are being properly implemented. It also recommends that the utilities should modify their master-meter tariffs to include language that explains: (1) how rebates are to be distributed to tenants pursuant to § 739.5 (b), (2) under what circumstances the tenant can file an expedited complaint with the Commission if the MHP owner

fails to distribute the rebate, and (3) that the MHP owner can be penalized by the Commission for failure to distribute the rebate.

TURN's first recommendation could have an impact on the Commission's staffing and resources. Decisions regarding the utilization of the Commission's staff and resources are made by the Commission's management considering all of the other demands placed on those same staff and resources. Therefore, this recommendation is beyond the scope of this proceeding, and will not be addressed further herein. However, by this decision, the Commission's management is made aware of this recommendation.

As to the recommendation regarding tariffs, we believe that it would be more useful, whenever a refund is issued, for the utility to provide the MHP owner with an explanation of how tenant refunds are to be calculated. In this way, the MHP owner gets the information when it is needed, and the tenant is more likely to receive the correct refund. Since this is reasonable and aligns the interests of both parties, we will impose this requirement on the utilities as discussed above. Regarding other proposed modifications to the utilities' tariffs, such proposals are best raised in the utilities' revenue requirement proceedings where the merits of specific tariff language appropriate to each utility can be considered.

3. WMA Recommendations

WMA acknowledges that there have been problems with the delivery of discounts and refunds. It recommends that the problems could be solved by making the utilities responsible for meter reading and billing, instead of the MHP owners. Specifically, WMA recommends that all MHP owners be required to have meter reading and billing performed by the utility, and that the discount would be reduced by the utility's avoided costs for meter reading and billing.

WMA envisions that as the MHP owners' submeters are replaced by utility-owned meters, the customers would become utility customers. LIF and TURN support the recommendation that meter reading and billing services be provided by the utilities as one means of addressing their concerns.

PG&E recommends that if the Commission wishes to consider having the utilities take over the meter reading and billing functions for MHP owners, it should be the subject of a separate proceeding where the matter can be more fully considered. SCE and Sempra oppose WMA's recommendation because it is contrary to §739.5, and would have significant implementation costs. SCE and Sempra further argue that, since under WMA's recommendation the tenants would eventually become utility customers, the requirements of §§ 2791-2799 would be violated, and the tenants would be confused as to who is responsible for providing service and addressing complaints.

Section 739.5(a) specifies that: "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..." Therefore, for a MHP owner to be eligible to receive the discount, it must receive service from the utility at a master-meter, and it must provide submetered service to its tenants. Section 739.5 (d) provides that: "Every master-meter customer is responsible for maintenance and repair of its submeter facilities beyond the master meter..." Since the MHP owner is responsible for its submeter facilities, it is responsible for the submeter itself. Section 739.5 (e) provides that: "Every master-meter customer shall provide an itemized billing of charges for electricity or gas, or both, to each individual user..." It also provides that: "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.” This means that the MHP owner must bill its tenants for their electricity and gas use. Given the above provisions of § 739.5, we find that in order to be considered a master-meter customer entitled to the discount, the MHP owner must own and operate a sub-metered system, including the submeters, and must bill its tenants for their use. Therefore, WMA’s proposal that the utilities take over responsibility for meter reading and billing, and that the tenants become customers of the utility would violate § 739.5, and will not be adopted.

A possible option that would not violate § 739.5 would be for the utilities to offer bill calculation services. Under this option, the MHP owner would read the meters, and send the data to the utility. The utility would calculate the bills, and possibly print them for the MHP owner. The MHP owner would then send bills to the tenants and be responsible for collection. Under such an option, the tenants would not become utility customers, and the MHP owner would continue to provide the services required by § 739.5. Additional options may also be possible that do not violate § 739.5.

The utilities are far more knowledgeable about how to calculate utility bills than the MHP owners. Therefore, having the utilities offer bill calculation services to MHP owners should be considered as a possible way to ensure that tenants are correctly billed, and receive any discounts or refunds to which they are entitled. To do this, it will be necessary to consider the costs and benefits, as well as any other relevant matters. Therefore, we will require the utilities to provide an analysis, in their next revenue requirement proceedings, of the costs, benefits, and feasibility of providing bill calculation services. The utilities will also be required to provide examples of the appropriate tariff language, and an

estimate of the rates necessary to recover the full costs of the services from the MHP owners. With this information, the matter can be fully considered in those proceedings.

VIII. Comments on Proposed Decision

The proposed decision in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d)(1), and Rule 77.1-77.5 of the Commission's Rules of Practice and Procedure. Comments and reply comments were filed by _____ on ____.

IX. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Jeffrey P. O'Donnell is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Section 739.5 (a) requires MHP owners to charge their tenants at the same rate the serving utility charges for comparable service, and requires the serving utility to provide a discount to the MHP owner as compensation for providing submetered services to its tenants.

2. In D.04-04-043, the Commission identified the categories of costs the electric and natural gas utilities incur when directly serving MHP tenants that are avoided by the utilities when the MHP is served through a distribution system owned and operated by the MHP owner. These categories of costs are to be used in determining the amount of the discount.

3. In D.04-04-043, the Commission identified the categories of costs that are either not incurred by the utility when it directly serves MHP tenants, or are not reflected in utility rates for direct service, but are incurred by MHP owners, and may be separately charged to tenants if not otherwise prohibited.

4. The submetered tenant is not a customer of the utility that serves the MHP owner.

5. The discount is intended to reimburse the MHP owner for the reasonable average cost of providing submetered service, and is not to exceed the average cost that the utility would have incurred in providing comparable services to the tenant directly, which is avoided when the MHP is submetered.

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.

7. Since the cap is based on the costs avoided by the utility, the ratepayers and utility stockholders would not be adversely affected by setting the discount at the cap.

8. Since the utilities' costs of providing service vary from utility to utility, the rates also vary among utilities.

9. Since the discount is a cost-based rate, it will vary among utilities.

10. Since § 739.5 requires that the discount not exceed the costs the utility avoids due to the tenant being served by the MHP owner through a submeter, the only way to have a uniform statewide discount that does not exceed avoided utility costs would be to set it based on the costs of the utility with the lowest cost of service.

11. Basing the discount on the costs of the utility with the lowest cost of service would mean that MHP owners in other utilities' service territories may receive a lower discount than is reasonable.

12. In a revenue requirement proceeding, the Commission determines the utility's revenue requirement and costs of providing service.

13. Much of the cost information determined in a revenue requirement proceeding is the same information that is needed to set the discount.

14. If the discount were set in proceedings other than a revenue requirement proceeding, the cost information would have to be developed separately.

15. It is more efficient to set the discount in those proceedings that already address the costs of providing service.

16. Utility rates are based on costs, and are changed more often than just in revenue requirement proceedings.

17. Regardless of the method chosen to calculate the discount, the discount is calculated based, at least in part, on data that is used to calculate residential rates.

18. If the calculation of the discount is not specified in a settlement or stipulation that includes the discount, and it is adopted, the Commission may not have sufficient information to determine whether a change to the discount is warranted until the next revenue requirement proceeding.

19. The adoption of a settlement does not avoid the requirement that § 739.5 be satisfied.

20. In any settlement or stipulation, the burden is on the moving parties to demonstrate that the settlement or stipulation is, among other things, consistent with law.

21. There are no differences in utility rate design methodology, billing practices or other differences among utilities that preclude the use of a uniform statewide rate structure for the discount.

22. The discounts for the major utilities are set in amounts equivalent to a fixed amount per space per day.

23. The smaller utilities discounts generally amount to a uniform amount per space per month.

24. A fixed amount per space per month is easily converted to a fixed amount per space per day.

25. There are two general methods for calculating the discount: the sampling method, and the marginal cost method.

26. Under the sampling method, the utility estimates the costs of the facilities that are necessary to directly serve tenants of a MHP from a survey of a sample of the directly-metered MHPs it serves. The facilities-related costs are then calculated, and other costs are added in order to determine the discount.

27. Under the marginal cost method, the discount is calculated based on residential marginal costs.

28. The sampling method, to be valid, would require the use of a survey of a statistically valid random sample of the utility's directly-served MHPs.

29. To the extent that any of the plant or non-plant related costs, used in connection with the sampling method, rely on data not limited to the sample, such as operations and maintenance costs, the resulting discount will be an approximation.

30. The marginal cost method relies on residential marginal costs, rather than marginal costs associated only with MHPs, and is an approximation.

31. The sampling method is likely to be more costly than the marginal cost method because of the costs of performing the survey.

32. The cap is required to be set at the average cost that the utility would have incurred in providing comparable services directly to the users of the service.

33. Section 739.5 applies to a limited set of residential users; tenants of master-metered MHPs, in this case, and does not apply to the general body of ratepayers.

34. The sampling method, if based on a statistically valid random sample, would satisfy § 739.5(a).

35. Section 739.5(a) does not specify how the discount is to be calculated.

36. Nothing in the record suggests that the facilities used to directly serve MHP customers are materially different from those used to serve other residential customers.

37. Utility residential customers range from being close together in large cities to widely-separated in rural areas.

38. MHP tenants tend to be located close together within the MHP.

39. A proportion of any difference in the utility distribution facilities used to directly serve MHP tenants and residential customers as a whole is related, at least in part, to the difference in the length of the distribution cables and conduits for electricity, and distribution mains for gas, which would likely affect costs related to those facilities, and possibly the cost of reading meters, among other things. There may also be other reasons why the costs would be different.

40. The costs to serve residential customers as a whole could be different from the costs to directly serve MHP tenants.

41. A discount calculated using a marginal cost method would be within the range of uncertainty of a discount calculated using a sampling method.

42. Regardless of whether a sampling method or a marginal cost method is used to calculate the discount, the cost to be estimated remains the average cost that the utility would have incurred in providing comparable services to the

MHP tenant directly, which is avoided when the MHP is submetered, as identified in D.04-04-043.

43. Costs other than those specified in D.04-04-043 may not be included in calculating the discount.

44. Rate design and allocation methodologies vary over time, and are not uniform across utilities.

45. There is sufficient evidence to show that conversion of submetered systems to directly served systems is likely to be costly due to the fact that submetered systems may: (1) not have been built to the same standards used by the utilities, (2) lack sufficient construction or maintenance records to determine their condition, or (3) need significant repair, replacement, or upgrading to make them acceptable for transfer as specified in § 2794.

46. If a submetered system is acceptable for transfer, it is not likely that it would be costly for the MHP owner to transfer it to the utility.

47. If the submetered system is transferred to the utility, the MHP owner would benefit from being relieved of responsibility for the operation, maintenance and replacement of the submetered system.

48. The MHP owner has received the discount.

49. If the utility were to take over the submetered system, and bear the conversion costs, the costs would have to be borne by the ratepayers and / or the stockholders.

50. The submetered system was not previously owned or maintained by the utility.

51. There is no significant potential for increased utility revenues because of such a transfer because the utility already provides the same amount of

electricity or natural gas to the MHP owner at the master-meter as would subsequently be provided directly as a result of the transfer.

52. The fact that the utility would no longer have to pay the discount is offset by the costs, related to providing service directly, that were previously provided by the MHP owner.

53. Since there is no apparent benefit to the stockholders resulting from the transfer, there is no apparent reason why they should bear any of the costs.

54. There is nothing in the record that indicates that the general body of ratepayers would benefit from such transfers.

55. Transfers of master-metered MHP systems to the utility are governed by §§ 2791-2799.

56. 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 was not fully developed in this proceeding.

57. On January 16, 2004, the active parties filed a motion seeking to establish a separate proceeding to address 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.

58. The term "rebate" is not defined in the Public Utilities Code.

59. Since the MHP owner will have to know the amount of the refund in order to do the calculation required by § 739.5 (b), and that it must be returned to tenants, the refund must be identified as such on the bill from the utility.

60. Rate reductions, even if for a limited period of time, if they are incorporated in rates, and not separately identified on the MHP owner's bill, are to be passed through to tenants pursuant to § 739.5 (a) which requires the tenant to be charged the same rates as the utility charges.

61. When a refund provided by the utility is based on usage over multiple billing periods, or is on a per-meter basis, application of § 739.5 (b) would conflict with § 739.5 (a) because the resulting tenant's bill may not be the same as if the tenant were served directly by the utility.

62. Section 453.5 provides that whenever the Commission orders the utility to pay refunds, the utility is required "to pay refunds to all current utility customers, and, when practicable, to prior customers," in proportion to the amount originally paid for the utility service involved, or in proportion to the amount of service actually received.

63. Nothing in § 453.5 prevents the Commission from authorizing refunds to residential customers to be based on current usage.

64. The California Supreme Court determined that § 453.5 allows the Commission to reimburse residential customers based on current usage where records of prior usage may not be available.

65. Calculating bills, including the calculation of refunds to tenants, as well as the application of rate discounts, such as the CARE program, can be difficult for the MHP owner, and may lead to billing errors and disputes with tenants.

66. Because the utilities have no information on MHP tenants who are not utility customers, when a utility is contacted by a submetered MHP tenant, especially with regard to billing, there is very little information it can provide.

67. When a MHP owner and tenant have a dispute, the utility has no authority to resolve it.

68. The Commission has the authority to resolve disputes between MHP owners and tenants regarding the owner's compliance with § 739.5.

69. WMA is not a utility, not a MHP owner, and not subject to the Commission's jurisdiction.

70. If, whenever a refund is issued, the utility were to include an explanation of how tenant refunds should be calculated, the MHP owner would get the information when it is needed, and the tenant would be more likely to receive the correct refund.

71. The utilities are far more knowledgeable about how to calculate utility bills than MHP owners.

Conclusions of Law

1. Since the lack of adequate MHP owner records makes it impossible to determine the MHP owners' costs, the discount should be set at the cap.

2. A uniform statewide discount should not be adopted.

3. The discount should be set in a revenue requirement proceeding.

4. The utility should include a proposed revision to the discount in any utility filing proposing a revision to residential rates if the change in residential rates, or the data upon which the residential rate change is based, is sufficient to change the discount.

5. If, in a revenue requirement proceeding, the parties propose a settlement or stipulation that includes the discount, the settlement or stipulation should specify whether and how the discount is to be adjusted between such proceedings.

6. If the calculation of the discount is not specified in the settlement or stipulation that includes the discount, and it is adopted, the discount should not be revised until the next revenue requirement proceeding.

7. The Commission should require that any stipulation or settlement that sets the discount must specifically demonstrate that it complies with § 739.5.

8. The Commission should require that the discount be set as a uniform amount per space per day.

9. The intent of § 739.5(a) is that the discount be set based on the average costs of the MHP owner to provide submetered service.

10. The term “average costs” means that a single discount rate is to be set for the utility based on an average of the costs incurred by the MHP owners it serves, rather than a separate discount for each MHP owner based on each individual MHP owner’s costs.

11. The term “comparable services” refers to services provided to directly-served MHP customers of the utility, as opposed to residential ratepayers as a whole.

12. The discount must be determined based on the average cost the utility incurs in directly serving MHP customers that is avoided by the utility when the tenant is served through a submeter.

13. The discount can be calculated using a marginal cost method based on the costs to serve residential customers as a whole, if it is determined that the costs are approximately the same as those incurred in directly serving MHP tenants.

14. The use of a marginal cost method should be allowed for calculating the discount.

15. The Commission should allow the discount to be calculated using a sampling method based on a statistically valid random sample, or using a marginal cost method.

16. The specifics of any sampling or marginal cost method to be used to calculate the discount should be addressed in the revenue requirement proceeding where the discount is set.

17. Section 2791(b) provides that costs related to a transfer of ownership of the submetered system to the utility cannot be charged to the MHP tenants, and costs may not be charged to the utility except as otherwise specified.

18. Section 2794(a) provides specific requirements that the MHP distribution system must meet in order to complete the transfer.

19. Section 2795 provides that costs related to the transfer should not be borne by ratepayers, unless there is an equal offsetting benefit such that there is no net cost to ratepayers.

20. Section 2797 allows costs incurred by the utility subsequent to the transfer to be included in rates.

21. Costs incurred to make a MHP distribution system acceptable for transfer to the utility may not be borne by the utility or the MHP tenants, and the costs may only be charged to ratepayers if there is an offsetting benefit such that they are indifferent. Otherwise, the costs must be borne by the MHP owner.

22. Because addressing 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 further, at this time, would extend this proceeding substantially, the Commission should not consider it further in this proceeding.

23. The motion 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, should be denied.

24. Section 739.5 (b) provides that rebates are to be distributed only to current tenants based on their use during the last billing period.

25. Refund should be identified as such on the bill the MHP owner receives from the utility.

26. It is reasonable to assume that § 739.5 (b) had an intent similar to that of § 453.5.

27. Where the refunds by the utility are on a per-meter basis, following § 739.5(b) would violate § 739.5(a).

28. Refunds should be distributed to tenants pursuant to § 739.5(b) except where the refunds by the utility are on a per-meter basis.

29. Where the refunds by the utility are on a per-meter basis, the refunds to the tenants should be on a per-submeter basis.

30. In order to ensure that refunds are properly distributed to tenants, whenever a utility issues a refund to MHP owners through a reduction in the utility bill that should be distributed to tenants, the utilities should be required to: (1) identify the refund amount on the bill, and (2) explain how tenant refunds are to be calculated. If refunds are issued to MHP owners other than through the bill, the utilities should be required to identify the refund as such, and explain how to calculate tenant refunds.

31. When a MHP tenant contacts the utility regarding the tenant's bill from the MHP owner, the utility should provide information on how it calculates its bills, and on eligibility for programs such as CARE, and should refer tenant inquiries regarding compliance with § 739.5 to the Commission's Consumer Affairs Branch.

32. Section 739.5 (d) provides that every MHP owner is responsible for maintenance and repair of its submeter facilities beyond the master-meter, including the submeter.

33. Section 739.5 (e) requires the MHP owner to bill its tenants for their electricity and gas use.

34. In order to be considered a master-meter customer entitled to the discount, the MHP owner must own and operate a submetered system, including the submeters, and must bill its tenants for their use.

35. WMA's proposal that the utilities take over responsibility for meter reading and billing, and that the tenants become customers of the utility would violate §739.5, and should not be adopted.

36. Utility provision of bill calculation services to the MHP owner would not be a violation of § 739.5 because the tenants would not be utility customers, the MHP owner would continue to be responsible to the tenants for meter reading and billing, and other services specified in § 739.5.

37. The utilities should be required to provide, in their next revenue requirement proceedings, (1) an analysis of the costs, benefits, and feasibility of providing bill calculation services, (2) examples of the appropriate tariff language, and (3) an estimate of the rates necessary to recover the full costs of the services from the MHP owners.

O R D E R

IT IS ORDERED that:

1. The discount provided to mobilehome park (MHP) owners pursuant to Pub. Util. Code § 739.5(a) shall be set at the average cost that the electric or natural gas utility (utility) would have incurred in providing comparable services to the tenant directly, which is avoided when the MHP is submetered.

2. The discount shall be determined in a general rate case, biennial cost allocation proceeding, or similar proceeding (revenue requirement proceeding) where the utility's revenue requirement is set. Between such proceedings, the utilities shall include a proposed revision to the discount in any utility filing proposing a revision to residential rates if the change in residential rates, or the data upon which the residential rate change is based, is sufficient to change the discount, except as provided in Ordering Paragraph 4 below.

3. If, in a revenue requirement proceeding, the parties propose a settlement or stipulation that includes the discount, the settlement or stipulation shall specify whether and how the discount is to be adjusted between such proceedings.

4. If, in any revenue requirement proceeding, the calculation of the discount and how the discount is to be adjusted between such proceedings is not specified in a settlement or stipulation that includes the discount, and the settlement or stipulation is adopted by the Commission, the discount shall not be revised until the next such proceeding.

5. In any revenue requirement proceeding, where the parties propose a settlement or stipulation that includes the discount, they shall specifically demonstrate that the proposed discount complies with § 739.5.

6. The discount shall be set as an amount per space per day.

7. The discount shall be calculated using a sampling method based on a statistically valid random sample of the MHPs in the utility's service area whose tenants are directly served by the utility, or using a marginal cost method. The specifics of any sampling or marginal cost method shall be addressed in the revenue requirement proceeding where the discount is set.

8. Refunds provided to the MHP owner by the utility shall be distributed to tenants pursuant to § 739.5(b), except that when the refunds by the utility are on a per-meter basis, the refunds to the tenants shall be on a per-submeter basis.

9. Whenever a utility issues a refund to MHP owners through a reduction in the utility bill that should be distributed to tenants, the utilities shall: (1) identify the refund amount on the bill, and (2) explain how tenant refunds are to be calculated. If refunds are issued to MHP owners other than through the bill, the

utilities shall identify the refund as such, and explain how to calculate tenant refunds.

10. When a tenant of a submetered MHP contacts a utility concerning a bill provided to the tenant by the MHP owner for electricity and / or natural gas, the utility shall as a minimum offer to provide information on how the tenant's bill should be calculated, and on eligibility for programs for which the tenant may be eligible such as the California Alternate Rates for Energy program. The utility shall also refer the tenant to the Commission's Consumer Affairs Branch, for resolution of complaints.

11. In their next revenue requirement proceedings, the electric and natural gas utilities shall provide an analysis of the costs, benefits, and feasibility of providing bill calculation services to MHP owners. The utilities shall also provide examples of the appropriate tariff language, and an estimate of the rates necessary to recover the full costs of such services from the MHP owners.

12. 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.

13. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.