Decision 04-05-056 May 27, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Yucaipa Mobilehome Residents' Association ("YMRA"), a California nonprofit corporation, by Len Tyler, President of YMRA, as representative of the residents of Knollwood Mobilehome Park; Edna Jenkins, a Represented Member of YMRA, an Individual and Resident of Knollwood Mobilehome Park; and Nancy L. Carlisle, a Represented Member of YMRA, an Individual and Resident of Knollwood Mobilehome Park, Complainants, vs. Knollwood Mobilehome Estates, Ltd., a California Partnership, Doing Business as Knollwood Mobilehome Estates, Defendant.	Case 01-06-008 (Filed June 4, 2001)

DECISION ALLOCATING TRENCHING COSTS

1. Summary

Yucaipa Mobilehome Residents' Association, Len Tyler, Edna Jenkins and Nancy L. Carlisle (collectively, complainants), representing residents of Knollwood Mobilehome Estates (Knollwood), initiated this complaint proceeding against Knollwood to contest certain rent increases authorized by the Yucaipa Rent Review Commission (Rent Review Commission). The complaint

was dismissed in Decision (D.) 03-01-063 on a finding that complainants' burden of proof had not been met. In considering complainants' application for rehearing, however, this Commission concluded that complainants had proved that allocation of trenching costs associated with submetered gas and electric utility system improvements is required by Pub. Util. Code § 739.5. Accordingly, in D.03-08-077, the Commission reversed D.03-01-063 on that issue and remanded for further proceedings (1) to determine the proper allocation of trenching costs and (2) to remove those trenching costs attributable to the gas and electric improvements from the $111,445 passed on to mobilehome park residents as part of a rent increase. This decision resolves the allocation issue and directs a refund and rent reduction as to those costs that are subject to the Commission's jurisdiction under § 739.5. This proceeding is closed.

2. Background

Knollwood is a 116-space mobilehome park in Yucaipa. In 1998, Knollwood gave notice to the Rent Review Commission that it planned a substantial capital improvement project at the park involving the delivery of gas, electricity and water service to individual mobilehomes. Knollwood obtained two bids for the project and then met with residents to present the proposed project and its cost. The project was approved by at least 51% of the occupied spaces in the park, as required by Yucaipa's Rent Stabilization Ordinance. A contract for construction of the project was executed in August 1998 and work began soon after. In February 1999, the City of Yucaipa issued its final inspection of the project and notice of completion.

On February 25, 1999, Knollwood applied to the Rent Review Commission for a capital improvement rent increase by which it would pass through to

residents the portion of the gas and electrical project that ran from the submeters to the coaches and all of the cost of the water system project. The administrator

of the Rent Review Commission denied the application based on this Commission's exclusive jurisdiction over the cost of utility improvements within submetered mobilehome parks. Knollwood appealed the decision to the Rent Review Commission, and a public hearing was held on June 25, 1999. At the hearing, a representative of the residents raised objections to the proposed rent increase, and Knollwood's representative presented evidence defining the water project and defining those parts of the gas and electric project that it argued were not subject to this Commission's jurisdiction under Pub. Util. Code § 739.5.[1] Based on the evidence introduced at the hearing, the Rent Review Commission adopted Resolution 99-02, passing on about half of the costs ($250,572) to residents and authorizing a rent increase of $17.40 per month per space for 20 years to recover that amount.

Certain Knollwood residents then brought an action in San Bernardino County Superior Court. The Court rejected the residents' claims, finding that costs associated with maintenance of the submetered gas and electrical system from the master meter to the submeters cannot be passed through to residents, while the costs associated with the gas and electric utility systems from the submeters to the coaches can be passed through to residents. The Court also found that Commission regulations do not apply to the water system utility in this case because water service comes from the Yucaipa Valley Water District, an independent special district. (*Jenkins v. City of Yucaipa, et al.*, Case No. SCVSS 60679, Notice of Decision, February 14, 2000.) Cross-appeals were filed by the plaintiffs in the *Jenkins* case and by Knollwood in the Fourth Appellate District,

[1] Unless otherwise noted, all statutory references are to the Public Utilities Code.

Division Two, but on September 19, 2000, the parties stipulated to a dismissal of all appeals. (*Jenkins v. City of Yucaipa, et al.*, Case No. E027449.)

On June 4, 2001, complainants initiated this complaint proceeding at the Commission against Knollwood. On November 27, 2001, the assigned Administrative Law Judge (ALJ) dismissed those portions of the complaint seeking reversal of the rent increase as to replacement of the water system and improvements to gas and electrical components between submeters and individual mobilehomes. Complainants agreed that water system costs were not subject to Commission jurisdiction, and did not challenge exclusion of costs for gas and electric components between submeters and individual mobilehomes.

On January 11, 2002, the assigned Commissioner issued a Scoping Memo setting dates for hearing and defining the issues to be decided as follows: 1) Do trenching costs include any amount solely attributable to gas and electricity in such a manner as to fall within the exclusive jurisdiction of the Commission?; 2) Were items such as pedestals and meters improperly included in costs that were passed along to residents?; 3) Were administrative costs improperly included in costs that were passed along to residents?; and 4) Are residents precluded from bringing this action because of the earlier decisions of the Rent Review Commission and the Superior Court?

At the request of the parties, and as an accommodation to complainants, the Commission twice extended the statutory deadline for resolution of this case under § 1701.2(d). A hearing was conducted on July 18, 2002. Concurrent briefs were filed on September 20, 2002, reply briefs were filed on October 4, 2002, and the case was then deemed submitted for decision.

On January 30, 2003, we issued D.03-01-063. We dismissed the complaint, concluding that we lacked jurisdiction to rule on improvements to the water

system, which is served by a district water utility, and that complainants' burden of proof was not met as to the work on gas and electric systems. On March 3, 2003, complainants filed an application for rehearing. In D.03-08-077, the Commission reversed the earlier decision as to allocation of trenching costs and remanded for further consideration of that issue.

3. Procedural History on Remand

In an ALJ Ruling dated September 5, 2003, defendant Knollwood was directed within 45 days to file and serve a pleading, with supporting declarations as necessary, either agreeing with an equal sharing of trenching costs among the three utilities or showing why an alternative allocation of trenching costs was appropriate. Complainants were directed within 45 days of receipt of defendant's pleading to respond to that pleading, with supporting declarations as necessary.

On October 20, 2003, defendant filed its response, along with two supplemental declarations. Also on that date, defendant and the Western Manufactured Housing Community Association filed a motion to consolidate this complaint case with an ongoing investigation (Order Instituting Investigation (OII) 03-03-017 and Order Instituting Rulemaking (OIR) 03-03-018) dealing with submeter discounts and allocation of costs under line extension rules.

Lead counsel for complainants at about this time became seriously ill and withdrew from the case. Complainants requested and were granted a number of extensions of time to obtain substitute counsel and to reply to defendant's response and to the motion to consolidate. On January 30, 2004, complainants filed their reply, along with a declaration and objections to the declarations of

Knollwood's declarants. Complainants' reply also opposed the motion to consolidate.

In a covering letter accompanying complainants' January 30 pleadings, counsel for complainant stated his agreement with counsel for defendant that defendant would have until March 1, 2004, to reply to complainants' pleadings. By ALJ Ruling dated February 4, 2004, the parties' agreement was approved, and defendant Knollwood was granted an additional round of comments to be filed on or before March 1, 2004. Upon receipt of those pleadings on March 1, 2004, this remand proceeding was deemed submitted for Commission decision.

4. Discussion

Section 739.5 provides that residents in submetered mobilehome parks cannot be charged more for gas and electric utility service than if the residents were directly served by the relevant gas or electric utility. Section 739.5(a) also provides for a discount to the master-meter customer, in this case Knollwood, to compensate Knollwood for the costs related to regular repair and maintenance of its submetered gas and electric utility systems. This discount is often referred to as the "submetering discount."

Recent cases interpreting § 739.5 have held that the regulation of gas and electric utility service and rates in submetered mobilehome parks is within the Commission's exclusive jurisdiction, and that owners of submetered mobilehome parks may not attempt to pass through to residents as rent increases costs related to the repair and maintenance of their submetered gas and electric utility systems. (See, e.g., *Hillsboro Properties v. Public Utilities Commission* (2003) 108 Cal.App.4th 246, 256-259; *Rainbow Disposal Co. v. Escondido Mobilehome Rent Review Bd.* (1998) 64 Cal.App.4th 1159, 1168-1169.) The rationale underlying this conclusion is that owners of submetered mobilehome parks receive a potential

double recovery if they are permitted to pass through repair and maintenance costs as rent increases, in addition to collecting the submetering discount that submetered mobilehome park owners already receive through the operation of § 739.5.

Resolution 99-02, issued by the Rent Review Commission on July 6, 1999, states that "the actual out-of-pocket costs incurred in the trenching for the replacement of the Park's natural gas, electricity and water utility systems was $111,445.00." (Rent Review Commission Resolution 99-02, p. 3, Finding 17.) The Rent Review Commission also found that the replacement of the gas and electricity submetered utility systems was "necessary to protect the health and safety of the Park, its residents or its neighbors," and that the replaced natural gas and electricity systems have useful lives of 20 years. (Rent Review Commission Resolution 99-02, p. 3, Findings 13 and 18.) Despite finding that the trenching was related to improvements to the gas, electric and water systems at Knollwood, the Rent Review Commission passed through the entire trenching cost of $111,445 to residents as part of the rent increase, and performed no allocation of the trenching costs among the gas, electric and water utility systems. Thus, the fundamental problem with the decision of the Rent Review Commission is that, on its face, it imposes rent increases on residents for costs related to submetered gas and electric utility system improvements at Knollwood.

In reviewing the decision of the Rent Review Commission, the San Bernardino County Superior Court issued a decision on February 14, 2000. In that decision, the Court acknowledged that, consistent with published Commission decisions and cases interpreting Commission decisions, "costs associated with maintaining gas and electrical systems from the main meter to

the submeters cannot be passed through to the park residents . . . ." (*Jenkins v. City of Yucaipa, et al.*, Case No. SCVSS 60679, Notice of Decision, February 14, 2000, p. 5.) This analysis correctly flows from § 739.5, which, as discussed above, provides a submetering discount to master-meter customers, like Knollwood, to cover costs associated with repair and maintenance of the submetered gas and electric systems within the mobilehome park.

However, the Court in *Jenkins* did not address the issue of allocating trenching costs among gas, electric and water system improvements. Instead, the Court found that Resolution 99-02 did not authorize an improper pass-through of gas and electric system improvement costs to Knollwood residents, and thus did not invade the Commission's jurisdiction over gas and electricity costs in submetered mobilehome parks. This determination was based on the Court's finding that Knollwood only passed through costs incurred for gas and electric system improvements between the individual submeters and the residents' mobilehome coaches, which is permissible under § 739.5, as compared to costs incurred between the master-meter and the individual submeters, which is not permissible under § 739.5.

The Commission in its remand decision in D.03-08-077 respectfully disagreed with the conclusion of both the Rent Review Commission and the San Bernardino County Superior Court that the complete pass-through of trenching costs to Knollwood residents did not result in passing through gas and electric costs incurred between the master-meter and the individual submeters.[2] As the

[2] As D.03-08-077 notes, while the Commission extends great deference to the decisions of the Yucaipa Commission and the Superior Court, the Commission cannot permit

Footnote continued on next page

California Court of Appeal has recently affirmed, this Commission has exclusive jurisdiction over gas and electricity rates in submetered mobilehome parks, and local rent boards have no jurisdiction to order rent increases that result in higher utility rates for submetered residents, as compared to directly metered mobilehome park residents. (See *Hillsboro Properties*, *supra*, 108 Cal. App. 4th 246, 257.)

The plain language of Rent Review Commission Resolution 99-02 indicates that the Rent Review Commission passed through to residents as rent increases costs associated with trenching for submetered gas and electric system improvements. Thus, notwithstanding the Superior Court's statement, Resolution 99-02 did pass through improper costs, since a portion of the trenching related to costs within the Commission's exclusive jurisdiction that the mobilehome park owner has arguably already been compensated for in the submetering discount. Nowhere in Resolution 99-02 does the Rent Review Commission state that the $111,445.00 in trenching costs can, or should, be attributed solely to water system improvements that fall outside the jurisdiction of this Commission.[3]

Because of our statutory authority and obligation thereunder, we cannot allow the Rent Review Commission or the San Bernardino County Superior

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those decisions to stand if they intrude upon the Commission's jurisdiction. (See *Pacific Tel. & Tel Co. v. Superior Court* (1963) 60 Cal.2d 426, 429.)

[3] D.03-01-063 states that there is no evidence that the Rent Review Commission's decision to treat the trenching costs as a water expense was in error. (D.03-01-063, p. 8.) However, as noted above, the Rent Review Commission never made such a determination. It simply found that the trenching costs were related to gas, electric and water system improvements, and passed through the entire trenching cost to residents.

Court (entities to which comity and deference are normally owed) to intrude upon our exclusive jurisdiction in this manner, particularly when the decision appears predicated on a mistake of fact that is readily corrected. In determining that the allocated cost of trenching for submetered gas and electric system improvements cannot be passed through to residents via rent increases, we fulfill our statutory responsibility under § 739.5 to ensure that submetered and directly-metered residents are treated alike with respect to utility costs. This in no way intrudes upon the rent control authority of the Rent Review Commission. As noted by the Court in *Hillsboro,* the Commission does not dispute the authority of local rent boards to make and enforce local ordinances and regulations, so long as such actions do not invade the Commission's jurisdiction over utility rates in submetered mobilehome parks. (*Hillsboro, supra*, 108 Cal. App. 4th at 258.)

In dismissing complainants' assertion that allocation of trenching costs is required, our earlier decision denying the complaint stated that "[w]e are aware of no law or tariff that requires allocation of trenching costs, and complainants direct us to none." (D.03-01-063, p. 8.) The earlier decision also stated that "complainants present no evidence that gas and electrical work increased the cost of trenching beyond that required for replacement of the water system." (*Id.*) In response, complainants' rehearing application cited our decision in *Florsheim Brothers v. Pacific Gas & Electric Co.*, D.98-09-058, 82 CPUC2d 153. In *Florsheim*, we stated: "Even if, as argued by PG&E, no additional trenching is required to accommodate the gas facilities, there can be no 'free riders' in the trench. As pointed out by [Utility Design Inc.], there is a value attached to occupancy of the trench, and that value is certainly not zero for gas facilities." (*Florsheim*, 82 CPUC2d at 158.)

Knollwood attempts to distinguish *Florsheim* on the grounds that *Florsheim* arises only under § 739.5 and does not involve allocation of costs related to an exempt utility service, in this case Knollwood's water system. Knollwood also suggests that the fact that the defendant in *Florsheim*, PG&E, had a practice of providing refunds for costs related to gas line extensions distinguishes *Florsheim* from the present case. This analysis is unpersuasive for three reasons. First, it presumes that the Rent Review Commission determined that the trenching costs were attributable solely to water system improvements. As noted above, the Rent Review Commission made no such finding. Second, the present case certainly arises under § 739.5, because we have a statutory responsibility to ensure that submetered residents are treated the same as directly metered residents with respect to utility service. If, as it appears from the plain language of Resolution 99-02, the Rent Review Commission passed through costs related to trenching for submetered gas and electric system improvements, we have an obligation to enforce the requirements of § 739.5. Finally, the fact that voluntary allocation (or refunds, in the case of *Florsheim*) of trenching costs among utilities is common utility industry practice undercuts Knollwood's argument that trenching costs should not be allocated. (See D.03-01-063, p. 7.) If the normal industry practice includes utilities voluntarily allocating shared trenching costs, there is no reason for complainants to bear a greater burden than the average directly metered customer, and indeed such disparate treatment arguably runs afoul of § 739.5.

Complainants' case is complicated by the fact that they failed to present the Commission with evidence or testimony as to how the trenching costs should be allocated. In a complaint case, the complainants bear the burden of proving that a violation of the Pub. Util. Code has occurred. (See § 1702.) However, this

failure of proof is mitigated by the fact that the documentary evidence critical to establishing a proper allocation of the trenching costs is primarily within Knollwood's control. In *Home Owners Association of Lamplighter v. Lamplighter Mobile Home Park*, D.99-02-001, 84 CPUC2d 727, 734, we found that the mobilehome park residents did not bear the burden of proving what portion of capital improvement costs were related to electrical service. We stated: "They [the residents] do not bear the burden of proving negatives: that some of the electrical work did not relate to tariffed service or that some of these costs may have actually related to telephone service. It is Lamplighter that bears the burden of establishing such a distinction in its own defense. This is as it should be, since it is Lamplighter that has control over all records that relate to this proceeding." (*Id.*)

In the present case, it is clear that some of the $111,445 in trenching costs must be allocated to submetered gas and electric system improvements, which are within our exclusive jurisdiction. By establishing that allocation is required, complainants have effectively shifted the burden of proof to Knollwood to demonstrate how much of the trenching costs should be allocated to water system improvements. (See *Lamplighter*, *supra*, 84 CPUC2d at 734.) Only those costs may be passed through in rent increases consistent with § 739.5.

The bottom line is that, without an allocation of the $111,445 in trenching costs, Knollwood obtains a potential double recovery. Knollwood already receives compensation via the submetering discount provided in § 739.5 for maintenance and repair of the submetered gas and electric systems. To permit Knollwood to characterize the trenching costs as related only to the water

system[4] and to pass through the entire cost to residents provides a powerful incentive for mobilehome parks to attribute as many costs and expenditures as possible to system improvements outside the Commission's jurisdiction.

5. Allocation of Trenching Costs

Knollwood in its comments on remand proposes no allocation of the costs of trenching shared by water, electricity and gas infrastructure. The park continues to argue that the Commission lacks jurisdiction to deal with trenching costs because the Commission regulates neither the mobilehome park nor the district water utility that serves the park. Those arguments miss the mark. While the Commission does not regulate the park, the Legislature in § 739.5 requires the Commission to regulate the rates charged by the park for submetered gas or electric service. By the same token, the argument that rates charged by the park for water service cannot be challenged before this Commission would have validity only if the evidence showed that the trenching at issue was exclusively dedicated to the water system. As noted, the Rent Review Commission found that the trenching served water, electricity and gas service, and Knollwood's own evidence makes clear that these utilities shared the trenching in common.

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[4] This characterization is somewhat belied by the fact that Knollwood sought a permit for electrical work before it sought a permit for water system repairs. (See D.03-01-063, p. 7.) In addition, rather than being merely incidental improvements, the Yucaipa Commission found that the gas and electric system repairs had a 20-year useful life and were necessary to protect the health and safety of the park and its residents. (See Yucaipa Commission Resolution 99-02, p. 3, Findings 13 & 18.) These are precisely the type of capital repairs and improvements that the discount provided in § 739.5 is designed to cover.

Knollwood argues that, even if the Commission has jurisdiction, the line extension rules of Southern California Edison Company and Southern California Gas Company (SoCalGas) not only permit Knollwood to recover all of the trenching costs in rents but also would have authorized an additional $35,000 in capital recovery costs through rent increases. According to Knollwood, this assertion is based on the park's calculation of costs for components of the utility systems that exceed the line extension allowances and thus are eligible for recovery through rents. The Commission in its rehearing order in D.03-08-077 found this argument unpersuasive and did not agree that line extension rules insulate a park owner from its obligation under § 739.5 for "maintenance and repair of its submeter facilities" in exchange for the submetering discount it receives from the gas and electric utilities

As Knollwood acknowledges in its motion to consolidate (discussed below) the theory that line extension rules "cap" a park owner's responsibility for costs of utility repair and maintenance is being addressed in OII/OIR, R.03-03-017/I.03-03-018. Whatever ruling emerges in that proceeding will be prospective in nature. The utility repair and maintenance costs incurred by Knollwood in 1998 and 1999 were then and are now subject to the principles of *Hillsboro Properties*, *supra,* and *Rainbow Disposal Co.*, *supra,* which preclude the owners of submetered mobilehome parks from passing through to residents as rent increases costs related to the repair and maintenance of their submetered gas and electric utility systems.

The Commission has directed that the trenching costs here be allocated among water, gas and electricity. At hearing, complainants' witness Richard Riddell, an engineer who worked for 40 years for SoCalGas, testified that utilities that shared a trench generally negotiated an arrangement for sharing costs, and

frequently split the costs between themselves on an equal basis. An equal sharing in this case would require that two-thirds of the trenching costs, or $74,296.67,[5] be removed from the rent increase on grounds that the park owner already receives compensation via the submetering discount for maintenance and repair of the submetered gas and electric systems.

Complainants point out, however, that Knollwood's own expert witness in a supplemental declaration recommends an allocation based on the imputed value of each utility, as reflected in the total costs of installation. (The expert goes on to argue that an allocation based on imputed value triggers the "caps" in the line extension rules, an argument that we have found unpersuasive.) The witness noted that costs per utility submitted to the Rent Review Commission and made part of this docket, show this breakdown: water, $58,786 or 14.5% of total costs excluding trenching; gas, $62,186 or 15.3% of total costs excluding trenching; and electricity, $285,285 or 70.2% of total costs excluding trenching. Under this method of allocation, 14.5% of the trenching costs would be attributed to water, the rates of which are not regulated by this Commission, and 85.5% of the trenching costs would be attributed to gas and electricity, the rates of which are regulated by this Commission under § 749.5. The amount to be removed from the rent increase would be $17,064 for gas and $78,281 for electricity, for a total of $95,345.

[5] The record shows that total cost of Knollwood's work on electric, gas and water lines in 1998 and 1999 was $517,732. Of this amount, the Yucaipa Commission authorized $250,572 as costs that could be passed on to residents in a rent increase. The $250,572 included $111,475 for costs of trenching. Two-thirds of the $111,475 trenching cost is $74,296.67.

The record supports an allocation that attributes the largest share of trenching costs to electricity. The electricity work was by far the most costly part of the renovations. Supplemental testimony submitted by the chief executive officer of Knollwood's parent company states that the 3-foot depth of the trenching was necessitated by the electrical lines, which were placed at the bottom of the trench. Compacted sand was placed over the electrical lines, and gas and water lines were placed at the 2-foot level, 12 inches apart. This arrangement was made so that pressure checks on the water and gas lines would be parallel and at the same depth. Since the trenches were dug at a 3-foot depth (instead of a 2-foot depth) to accommodate electrical lines, it seems clear that electrical needs drove much of the cost of trenching.

Accordingly, our order today requires that the $250,572 rent increase authorized by the Yucaipa Commission be reduced by $95,345, an amount that represents trenching costs for gas and electric facilities that may not be recovered through rents pursuant to Pub. Util. Code § 739.5. Knollwood is directed to reduce its rent increase (now at $17.40 per month for 20 years) to reflect a revised total of $155,227 for those occupants of mobilehome spaces that were subject to the increase. The revised rent increase is to be calculated in the same manner as was the increase previously in effect (*i.e.*, pro rata portion of the total approved capital expense incurred, less $95,345). Knollwood is directed to refund overpayments of the revised rent increase to all current and former residents who have been paying the $17.40 increase since 1999.[6]

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[6] *Hillsboro Properties* expressly states that the Commission does not overstep its jurisdiction by invalidating rent increases approved by local rent control boards, but only to the extent that such rent increases include unauthorized utility costs. (*See*

Footnote continued on next page

While normally interest would apply to refunds of this nature (see *Hillsboro,* D.01-08-040), we do not in our order require that Knollwood pay interest on the rent refunds. Our examination of the record persuades us that complainants, through no fault of their own, elected to postpone their filing before this Commission and found it necessary to request numerous postponements in resolving this case. It would be inequitable to require Knollwood to pay interest for lengthy periods of delay for which it was not responsible.

6. Motion to Consolidate; Motions to Strike

Knollwood and the Western Manufactured Housing Community Association moved on October 20, 2003, to consolidate this complaint case with an ongoing investigation (OII 03-03-017 and OIR 03-03-018) dealing with submeter discounts and allocation of costs under line extension rules. The motion is opposed by complainants on grounds that the costs at issue here occurred in 1998 and 1999 and should not be subject to reallocation up or down based on prospective changes in the rules, if any, that emerge in the OII/OIR proceeding. We agree. The motion to consolidate is denied.

Complainants have filed objections to portions of the supplemental testimony of Knollwood's two witnesses. We interpret the filings to be motions to strike the testimony. The objections go primarily to the qualifications of the declarants in stating certain opinions. The declarants at hearing showed broad knowledge and experience in the areas upon which they commented. The

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Hillsboro Properties, supra, 108 Cal. App. 4th at 259-60.) Just as in *Hillsboro Properties,* this decision does not impose any requirements upon the Yucaipa Rent Review Commission, but instead is directed solely at Knollwood. (*Id.*)

objections will go to the weight of the declarations, but the motions to strike are denied.

Defendant has objected to the supplemental declaration of Knollwood witness Richard Riddell. We interpret the filing to be a motion to strike the testimony. The testimony goes primarily to the qualifications of the witness in stating certain opinions. The witness at hearing showed broad knowledge and experience in industry practice. The objection will go to the weight of the declaration, but the motion to strike is denied.

In a late filing, Defendant also cites the case of *PowerAgent, Inc. v. Electronic Data Systems Corp.* (9th Cir. 2004) 358 F.3d 1187, for the proposition that a party cannot accept one forum (arbitration) and, after an unfavorable decision, seek to proceed in a different forum. Defendant argues that the same principle of estoppel applies here, since plaintiffs first sought their remedy in Superior Court and, after an unfavorable decision, filed their complaint before this Commission. The cases are distinguishable. In *PowerAgent*, no entity had been given exclusive jurisdiction by the state legislature. As discussed above, the Commission does not dispute the authority of the Rent Review Commission or the Superior Court, but the Commission cannot waive its exclusive jurisdiction to decide rate matters involving gas and electricity costs in submetered mobilehome parks. (*See Hillsboro Properties, supra,* 108 Cal.App.4th 246, 257.)

7. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure.

Knollwood and the Western Manufactured Housing Community Association (the Association) filed joint comments arguing that current line

extension rules of the gas and electric utilities preclude an allocation of trenching costs in this case. They state that in a negotiated settlement in OII/OIR, R.03-03-017/I.03-03-018, approved recently by the Commission in D.04-04-043, the parties agreed that trenching related to repair and maintenance was covered by a park owner's submetering discount, but that conduit work related to system improvements or enhancements was not covered by the discount.

As the Draft Decision points out, the rules emerging from the OII/OIR are prospective in nature. The utility repair and maintenance costs incurred by Knollwood in 1998 and 1999 were subject to the principles established in *Hillsboro Properties*, *Florsheim* and *Rainbow Disposal Co.* A park owner in the future may be able to rely on D.04-04-043 to assert that trenching costs are not part of the submetering discount, but that showing presumably would have to include evidence that no part of the trenching was related to repair and maintenance. Such a showing was not made in this case.

Knollwood and the Association in their comments assert again that the Commission is usurping the authority of the rent control board. The Draft Decision addresses that assertion at some length (see pages 8-10), concluding that the Commission does not dispute the authority of local rent boards to make and enforce local ordinances and regulations, so long as such actions do not invade the Commission's exclusive jurisdiction over utility rates in submetered mobilehome parks.

The Yucaipa Mobilehome Residents' Association supports the Draft Decision, but asks that it be amended to award attorney fees pursuant to Section 798.85 of the California Civil Code. Section 798.85 authorizes an award of attorney fees for civil court actions arising out of the provisions of the Mobilehome Residency Law, Civil Code Chapter 2.5. The complaint here did not

arise out of the provisions of the Mobilehome Residency Law, nor does the Commission have jurisdiction to enforce these Civil Code provisions. This case arises under Pub. Util. Code § 739.5. Under that statute, the Commission's jurisdiction is limited to enforcement of gas and electric service rates provided by a master-meter customer to users who are tenants of a mobilehome park or similar residential complex. There is no provision for an award of attorney fees under Pub. Util. Code § 739.5. Apart from intervenor compensation awards authorized by Pub. Util. Code §§ 1801-1812, the Commission's jurisdiction normally is limited to reparations and not general damages or attorney fees.

8. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Glen Walker is the assigned ALJ in this proceeding.

Findings of Fact

1. Knollwood is a 116-space mobilehome park in Yucaipa.

2. In 1999, Knollwood completed a substantial capital improvement project involving delivery of gas, electricity and water service to the individual mobilehomes.

3. On February 25, 1999, Knollwood applied to the Rent Review Commission for a capital improvement rent increase by which it would pass to residents certain costs of the capital improvements.

4. The costs that Knollwood proposed to pass to residents included all of the costs of the water system replacement and most of the costs of gas and electric work between individual submeters and mobilehomes.

5. Following public hearing, the Rent Review Commission adopted Resolution 99-02 authorizing $250,572 as costs that could be passed on to

residents, and approved a rent increase of $17.40 per month per space for 20 years.

6. Resolution 99-02 found that trenching costs were $111,445, and that trenching was for replacement of Knollwood's natural gas, electricity and water utility systems.

7. Resolution 99-02 passed all of the costs of trenching to residents without an allocation of trenching costs among gas, electric and water utility systems.

8. Resolution 99-02 was affirmed by the San Bernardino County Superior Court, and appeals of that decision were dismissed in the Fourth Appellate District.

9. On January 30, 2003, the Commission in D.03-01-063 dismissed the complaint in this case, concluding that the Commission lacked jurisdiction to rule on improvements to the water system, which is served by a district water utility, and that complainants' burden of proof was not met as to work on the gas and electric systems.

10. In response to an application for rehearing, the Commission in D.03-08-077 reversed D.03-01-063 as to allocation of trenching costs and remanded for further consideration of that issue.

11. On rehearing, the evidence shows that costs per utility of the capital improvement project show the following breakdown: water, $58,786 or 14.5% of total costs excluding trenching; gas, $62,186 or 15.3% of total costs excluding trenching; and electricity, $285,285 or 70.2% of total costs excluding trenching.

Conclusions of Law

1. The issues in this case are governed primarily by Pub. Util. Code § 739.5.

2. Because Knollwood receives its water from a public district not subject to the jurisdiction of this Commission, replacement of the water system at Knollwood does not come under the jurisdiction of the Commission.

3. In Resolution 99-02, the Rent Review Commission concluded that trenching costs of $111,445 were incurred for the park's natural gas, electricity and water systems.

4. Under § 739.5, some of the $111,445 in trenching costs must be allocated to submetered gas and electric system improvements, which are within the exclusive jurisdiction of this Commission.

5. It is appropriate to allocate trenching costs based on the imputed value of each utility's improvements.

6. Under an imputed value analysis, 14.5% of trenching costs are attributed to water, the rates of which are not regulated by this Commission, and 85.5% of the trenching costs are attributed to gas and electricity, the rates of which are regulated by this Commission under § 749.5.

7. Under an imputed value analysis, the trenching cost amounts to be removed from the rent increase are $17,064 for gas and $78,281 for electricity, for a total of $95,345.

8. Knollwood should be directed to remove $95,345 from the $250,572 rent increase authorized by the Rent Review Commission, reducing rents accordingly and refunding to residents their overpayments of the revised rent increase.

9. Today's order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Knollwood Mobilehome Estates (Knollwood) is directed to reduce the $250,572 rent increase authorized by the Yucaipa Rent Review Commission (Rent Review Commission) by $95,345, the amount attributable to trenching costs for gas and electric facilities that may not be recovered through rents pursuant to Pub. Util. Code § 739.5.

2. Knollwood is directed to reduce the rent increase authorized by the Rent Review Commission to $155,227, which amount excludes trenching costs that are within the sole jurisdiction of the Public Utilities Commission.

3. Within 60 days of the date of this order, Knollwood is directed to reduce its tenant rent increase of $17.40 per month for 20 years, to reflect a revised total of $155,227 for those occupants of mobilehome spaces that were subject to the increase. The revised rent increase is to be calculated in the same manner as was the increase previously in effect (*i.e.*, pro rata portion of the total capital expense approved by the Rent Review Commission, less $95,345).

4. Within 60 days of the date of this order, Knollwood is directed to refund overpayments of the revised rent increase to all current and former residents who have been paying the $17.40 since and subsequent to 1999.

5. Within 60 days of the date of this order, Knollwood is directed to send a letter to all current and former residents who are entitled to a refund explaining the amount and manner in which the refund has been calculated for each such tenant.

6. The joint motion of Knollwood and the Western Manufactured Housing Community to consolidate this complaint case with an ongoing investigation dealing with submeter discounts is denied.

7. Objections to the supplemental declarations of two Knollwood witnesses and one plaintiffs' witness are overruled.

8. Case 01-06-008 is closed.

This order is effective today.

Dated May 27, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners