Decision 04-10-040 October 28, 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)

ORDER DENYING REHEARING OF DECISION (D.) 04-05-056

I. INTRODUCTION

Western Manufactured Housing Community Association ("WMA") and Knollwood Mobilehome Estates, Ltd. ("Knollwood") jointly seek rehearing of D.04-05-056, which directed Knollwood to remove $95,345 in trenching costs from the rent increase authorized by the Yucaipa Rent Review Commission ("Yucaipa Commission") because these costs were directly related to gas and

electric submetered system improvements for which Knollwood had already been compensated via the submetering discount provided by Public Utilities Code Section 739.5.[1]

II. FACTUAL AND PROCEDURAL HISTORY

Yucaipa Mobilehome Residents' Association, Len Tyler, Edna Jenkins and Nancy L. Carlisle (collectively, "complainants"), representing residents of Knollwood, initiated this complaint proceeding against Knollwood to contest certain rent increases authorized by the Yucaipa Commission. Knollwood is a 116-space mobilehome park in Yucaipa. In 1998, Knollwood gave notice to the Yucaipa 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 the project was approved by a majority of the occupied spaces in the park. A contract for construction of the project was executed in August 1998 and work began soon thereafter. 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 Yucaipa Commission for a capital improvement rent increase by which it would pass through to the tenants 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 Yucaipa 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 Yucaipa Commission, and a public hearing was held on June 25, 1999. At the hearing, a representative of the tenants 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

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

to this Commission's jurisdiction under Section 739.5. Based on the evidence introduced at the hearing, the Yucaipa Commission adopted Resolution 99-02, authorizing a rent increase of $17.40 per month per space for 20 years.

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 tenants, 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, 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. At the request of the parties, we twice extended the statutory deadline for resolution of this case under Section 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 publicly owned water district, and that complainants' burden of proof was not met as to the work on gas and electric systems.

Complainants filed an application for rehearing of D.03-01-063. In D.03-08-077, we granted rehearing and remanded for further proceedings to

determine the proper allocation of trenching costs for gas and electric submetered utility systems, and to remove those trenching costs attributable to the gas and electric improvements from the $111,445 passed on to mobilehome residents as part of the rent increase authorized by the Yucaipa Commission.

On rehearing, Knollwood was directed to serve a pleading, with appropriate supporting declarations, either agreeing with an equal sharing of trenching costs among the water, gas and electric improvements, or showing why an alternative allocation of trenching costs was appropriate. However, the comments filed by Knollwood proposed no allocation of the costs of trenching shared by water, gas and electricity infrastructure. Knollwood continued to argue that the Commission lacked jurisdiction to deal with trenching costs because the Commission regulates neither the mobilehome park nor the district water utility that serves the park. Knollwood further argued that the relevant line extension rules permit Knollwood to recover all of the trenching costs in rents and to recover an additional $35,000 in capital recovery costs through rent increases. In response, complainants argued that the trenching costs should be allocated according to the imputed value of each utility, as reflected in the total costs of installation. Complainants cited the testimony of Knollwood's own expert witness in support of this allocation method.

On June 2, 2004, we issued D.04-05-056. The Decision adopted the allocation methodology advocated by complainants, and directed Knollwood to remove $95,345 in trenching costs ($17,064 for gas and $78,281 for electricity) from the rent increase authorized by the Yucaipa Commission. The Decision directed Knollwood to reduce residents' rents accordingly and to refund to residents their overpayments of the revised rent increase.

On June 23, 2004, WMA and Knollwood (collectively, "applicants") jointly filed a timely application for rehearing of D.04-05-056.

III. DISCUSSION

In their rehearing application, applicants challenge D.04-05-056 on the following grounds: 1) the Decision incorrectly finds that the rules issued by the Commission in D.04-04-043 are prospective in nature; and 2) the Decision erred in that there was no showing that the trenching was related solely to submetered system enhancements. While at first glance these issues seem separate and distinct from one another, the two arguments are interrelated. Essentially, applicants claim that a recent Commission decision (D.04-04-043) issued in Phase I of OII 03-03-017/OIR 03-03-018, which was decided *after* D.03-08-077 (the rehearing decision requiring allocation of trenching costs), but *before* D.04-05-056 (the decision that is the subject of applicants' current rehearing application) must be applied retroactively. The result of this retroactive application of D.04-04-043, according to applicants, is that allocation of trenching costs, as required by D.03-08-077, is no longer permissible due to the nature of the particular trenching costs at issue in this proceeding.

In issuing D.04-04-043 on April 26, 2004, we approved a joint recommendation between several gas and electric utilities, WMA and The Utility Reform Network as to the Phase I issues in OII 03-03-017/OIR 03-03-018 ("OII/OIR"). Phase I of the OII/OIR was designed to identify the categories of costs the electric and gas utilities incur when directly serving mobilehome park ("MHP") tenants that are avoided by the utilities when the MHP is served through a distribution system owned by the MHP owner. These costs are referred to as "avoided costs" because, in the case of submetered MHPs, the costs are incurred by the MHP owner, not by the relevant utilities. MHP owners are compensated for these avoided costs through the submetering discount provided in Section 739.5(a), and as a result may not seek compensation for these costs from MHP tenants in the form of rent increases. Utility-related costs that are incurred by submetered MHP owners but are not compensated via the submetering discount may be separately charged to MHP tenants if not otherwise prohibited. In D.04-

04-043, we determined that trenching costs related to maintenance and repair of the submetered gas and electric systems constitute avoided costs,[2] whereas trenching costs associated with underground service reinforcements and expansion of submetered distribution and services do not constitute avoided costs. (See Attachments A & B to D.04-04-043.)

Applicants argue that D.04-04-043 should be applied retroactively to the trenching costs incurred by Knollwood in 1998-99. (Rehearing App., p. 2.) Applicants clearly expect that a retroactive application of D.04-04-043 would require the Commission to grant rehearing of D.04-05-056 to reverse the trenching allocation because the trenching costs at issue, in applicants' view, are not avoided costs according to D.04-04-043.

The problem with the theory articulated by applicants is that nothing in D.04-04-043 either explicitly or implicitly indicates that it was intended to apply retroactively to costs incurred by a MHP owner several years before the issuance of D.04-04-043. Indeed, because Commission decisions generally apply on a prospective basis, any contemplated retroactive application of a proposed Commission decision would have been made explicit and would have been the subject of comments and briefing by the parties. This did not occur with D.04-04-043. Applicants suggest that the parties "operated under the basic presupposition" that D.04-04-043 was merely a statement of existing Commission policy, and that therefore it should apply to costs incurred before the issuance of D.04-04-043. (Rehearing App., p. 2.) Whatever "presuppositions" the parties may have been operating under are entirely immaterial. The fact remains that nothing in D.04-04-043 indicates that it was intended to apply retroactively, and if the parties believed that D.04-04-043 was unclear on this point, they could have filed an application for rehearing, or petition to modify, D.04-04-043. In the alternative, the parties

[2] As to gas submetered system improvements, D.04-04-043 determined that capital expenditures for replacement and improvement of the distribution system and services, including maintenance-related trenching costs, constitute avoided costs. (See Attachment B to D.04-04-043.)

could have presented the Commission with a joint recommendation in Phase I of the OII/OIR that specifically stated that the resulting decision was intended to apply retroactively. They did not do so.

The retroactive application of D.04-04-043 proposed by applicants would have far-reaching implications for numerous Commission proceedings involving utility-related MHP costs incurred prior to the issuance of D.04-04-043. For example, in D.04-06-007, issued on June 10, 2004, the Commission officially closed proceeding C.00-01-017, which involved utility-related MHP costs incurred prior to the issuance of D.04-04-043. According to applicants' logic, the parties to C.00-01-017 could have insisted upon a reallocation of these utility-related MHP costs based on a retroactive application of D.04-04-043. This was not the intended effect or application of D.04-04-043.

Finally, applicants argue that the trenching costs were improperly allocated in D.04-05-056. According to applicants, the trenching costs at issue related solely to gas and electric system "improvements" and did not include any trenching costs for repair and maintenance of the submetered gas and electric systems. (Rehearing App., p. 3.) Applicants cite to several instances in which the Commission, in this proceeding, has referred to the trenching costs as being related to "improvements," and assert that such "improvements" are not avoided costs, are not included in the submetering discount contained in Section 739.5, and as such are properly passed through to tenants as rent increases. This argument misses the mark because it assumes that D.04-04-043 will be applied retroactively. However, as discussed above, retroactive application of D.04-04-043 was neither expressed nor intended by the Commission. Prior to the issuance of D.04-04-043, existing Commission precedent clearly established that owners of submetered MHPs may not pass through to tenants as rent increases costs related to improvements (including repair and maintenance) to 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.) As such, applicants' argument that trenching costs were improperly allocated in D.04-05-056 lacks merit.

IV. CONCLUSION

Rehearing is denied because no legal error has been demonstrated.

IT IS THEREFORE ORDERED THAT:

1. Rehearing of D.04-05-056 is denied.
2. This proceeding is closed.

This order is effective today.

Dated October 28, 2004, at San Francisco, California.

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