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Decision 05-05-026 May 26, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of National Submetering and Utility Allocation Association Pursuant to Public Utilities Code Section 1708.5 to Adopt, Amend, or Repeal Regulations Governing the Provision of Submetered Gas and Electric Service found in Decisions 88651 and 93586.	Petition 04-08-038 (Filed August 26, 2004)

OPINION DENYING PETITION FOR RULEMAKING

Summary

This decision denies the request to open a rulemaking governing the provision of submetered gas and electric service, finding that opening a rulemaking is unnecessary to accomplish the relief sought. Instead, this decision defines "new installations" in the existing Master Meter / Submetering Tariffs to allow residential customers served under a utility Master Meter Tariff to convert to the existing Master Meter / Submetering Tariff if the building for which service is sought was constructed prior to the Master Meter / Submetering Tariff being closed.

Terms

The utilities have two types of master meter tariffs—one for customers who do not submeter tenants, the second for those who do submeter tenants. For simplicity, the first type (without submetering) will be referred to as the

Master Meter Tariff, the second type (with submetering) will be referred to as the Master Meter/Submetering Tariff.

When a multi-unit building (or facility) owner (or operator) takes service under either the Master Meter Tariff or the Master Meter/Submetering Tariff, the building (or facility) owner (or operator) is the utility customer of record, not the individual tenant. When the building (or facility) owner (or operator) does not submeter the tenants, in other words, takes service under the Master Meter Tariff, the master meter customer is prohibited by utility tariff rules from separately charging its tenants for energy usage; instead energy charges must be bundled in rent. When the building (or facility) owner (or operator) does submeter its tenants by taking service under the Master Meter/Submeter Tariff, the master meter customer may not charge rates to the submetered tenant in excess of the rates that would otherwise be charged by the utility, consistent with Pub. Util. Code § 739.5.[1]

Relief Requested

On August 26, 2004, the National Submetering and Utility Allocation Association (Association) filed this petition for rulemaking requesting that the Commission open a rulemaking to consider rule changes to permit owners of existing master-metered multi-unit residential buildings to submeter electricity and natural gas service to individual tenants. Although the petition was filed as a petition for rulemaking, the Association noted that were it not for the age of the decisions for which it was seeking clarification, it would have filed a petition for modification.

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

The petition identifies two types of buildings that could fall into this category, multi-unit residential buildings constructed before December 1981 and buildings constructed at any point in time for a commercial purpose that have since been converted into a multi-unit residential purpose. The petition also requests that the Commission consider allowing building owners / operators to submeter service to non-residential customers but does not pursue this second request in significant detail. Because of the lack of development of this issue by petitioner, we deny the request to open a rulemaking on the commercial property issue and focus solely on the issue of submetering as it relates to existing multi-unit residential buildings.[2]

Chronology

A short chronology of the events leading to this petition is useful to provide the context for why this petition was filed. On April 4, 1978, the Commission issued Decision (D.) 88651, which required utilities to individually meter living units in newly constructed multi-unit residential buildings. Following that decision, the utilities closed their Master Meter Tariffs to new installations.[3] The term new installation is not defined in either D.88651 or the

[2] On March 17, 2005, the Building Owners and Managers Associations of San Francisco and California (collectively, BOMA) filed a petition to intervene to address solely the question of allowing submetering in commercial buildings. Because of the requirement to act upon a petition for rulemaking within six months of filing, and the lack of development of this aspect of the petition, we deny the petition to intervene but invite BOMA, or any other interested party, to file a petition for rulemaking, if it so desires, to pursue this topic. In such case, the party should identify the rules that it seeks to change, and specific language to implement the changes it seeks.

[3] In some cases, utilities specified it was closed to new construction; in other cases, the tariff simply states it is closed to new installations. (See for example Southern

Footnote continued on next page

Master Meter Tariff, but D.88651 clearly applied only to newly constructed buildings. (See OPs 2 and 3.)

On October 6, 1981, D.93586 affirmed D.88651 with respect to multi-unit residential buildings, stating:

> The issue of master-meter/submetering of apartment houses was not specifically addressed in this proceeding primarily due to the fact that utilities do not install distribution facilities within the apartment houses. The electrical wiring and/or gas [*71] fuel piping from the utility's service point to the individual apartments is installed, owned, and maintained by the apartment house owner irrespective of whether the apartments are individually metered by the utility or are master-metered/submetered by the apartment house owner. D.88651, supra, provided for separate metering by the utility for gas and electric service to multi-unit residential structures and no petitions or protests were received on these restrictions. Consequently, the order that follows will reinstate the restrictions for multi-unit residential structures. (1981 Cal. PUC LEXIS 262, *71; 6 CPUC2d 767.)

In December 1981, following adoption of D.93586, most utilities closed their Master Meter/Submeter Tariffs to **new** installations. Again, new installation was not defined in the tariffs. Section 780.5 required individual metering in multi-unit residential buildings who received building permits after July 1, 1982.

The Association filed the instant petition for rulemaking stating it sought to modify specific tariff requirements adopted in D.88651 and D.93586 related to provision of submetered gas and electric service in existing buildings in August 2004. On September 30, 2004, the Assigned Administrative Law Judge (ALJ)

California Gas Company Schedule, GM, Special Condition 5 as compared to Southwest Gas Corporation Schedule GS-20/GN-20, Applicability.)

issued a ruling directing the Association to provide additional service of its petition on other service lists and asking several questions. On October 26, 2004, responses to the Petition and the ALJ Ruling were filed; replies were filed on November 5, 2004.

Because full service of the Petition did not occur until October 6, 2004, we did not begin receiving comments on the petition until two months after it was filed. Therefore, we did not meet the statutory requirement under § 1708.5 to resolve the petition within six months of filing. However, the draft decision was mailed for review and comment just slightly more than six months after the date full service was effected. In order to allow public review and comment pursuant to § 311(g), we extend the six-month period for consideration of the petition, consistent with § 1708.5(b)(2).

Discussion

There is an existing stock of residential buildings that receive master meter service that are not submetered. Based on data submitted in response to the ALJ Ruling, there are approximately 32,000 master meter electric customers, made up of approximately 156,000 living units. There are approximately 118,000 master meter gas customers, made up of approximately 1,498,000 living units. These figures appear to include mobile home parks, which are governed by other tariff provisions and would not be affected by the Petition. This stock of current Master Meter Tariff customers would be one of the primary beneficiaries of the petition. According to petitioner, some utilities have defined "new installation" as any customer not served under the Master Meter/Submeter Tariff at time of closure. Other utilities define "new installation" as a building constructed after the time the tariff was closed. Thus, it appears that some utilities have allowed Master Meter Tariff customers whose buildings existed prior to December 1981

to switch to Master Meter/Submeter Tariff service, while some have strictly interpreted "new installation" to preclude that switch.

The other potential beneficiary described by the petition is buildings of any vintage that were not originally constructed for residential purposes that have since been converted to residential usage. The utilities did not provide estimates of the number of buildings that were not originally constructed for residential use that have since been converted to residential usage. According to the petitioner, some utilities have allowed these converted customers to take service under the Master Meter/Submeter Tariff, but other utilities have retained the customer on its original commercial tariff.

This lack of consistent treatment is troubling, especially when overlaid on the context within which the tariffs were closed to new installations. For example, D.88651 found that:

> "***Metering or submetering*** of individual residential units of multi-unit complexes encourages conservation of energy. All ***new construction*** of such type should be required to be ***individually metered*** where gas service is to be used directly by each individual unit. A sufficient period should be provided before such a requirement becomes effective to enable owners and builders to revise building plans to provide for ***individual metering or submetering*** of gas and electric service. …" (FOF 10, emphasis added.)

In addition, OP 5 required "All respondent electric and gas utilities shall immediately initiate an extensive program or expand upon existing programs to encourage the ***separate metering*** of units in ***existing*** multi-unit residential facilities now served only through a master meter. …" (Emphasis added.) However, Ordering Paragraph (OP) 3 requires "Each respondent electric utility shall within ten days of the effective date of this order file necessary revisions to

its rules and regulations to provide for ***separate metering by the utility*** for electric service to each unit in ***new*** multi-unit residential facilities, except when a commitment for other than separate metering of electric service for each residential unit is required." (Emphasis added.) Nowhere does D.88651 address that separate metering **by the utility** is preferable in existing master meter multi-unit residential facilities.

There is some imprecision in the language used in D.88651. OP 3 requires "separate metering by the utility" for new construction, whereas OP 5 requires only "separate metering" for existing multi-unit residential buildings, and Finding of Fact (FOF) 10 refers to "individual metering or submetering." FOF 10 clearly distinguishes between individual metering and submetering. It is not clear whether "separate metering", without reference to the utility, could include both "individual metering and submetering" or was intended to mean only "separate metering by the utility."

Following adoption of D.88651 in 1978, most utilities closed their Master Meter Tariffs, a logical outcome of the directive that multi-unit residential new construction be separately metered **by the utility**. Because of this directive, all new construction was to be individually metered by the utility, eliminating the need for the Master Meter Tariff, except for those customers already served under the Master Meter Tariff. D.90062 modified D.88651 to also provide for submetering or utility metering in new multi-unit residential facilities.

It was not until December 1981, following issuance of D.93586, that the utilities closed their Master Meter/Submeter Tariffs to **new installations**. Nothing in D.93586 required closing these tariffs to pre-existing multi-unit residential buildings. In fact OPs 2 and 3 requiring separate utility metering are explicitly limited to new multi-unit residential structures. However, in filing

tariffs, many utilities utilized the term "new installations" rather than new construction and it appears that at least some utilities have interpreted new installations to not just include new construction, but also to encompass pre-existing multi-unit residential facilities.

If a new installation is defined as any customer who was not previously served on the tariff then no customer, whether or not their building existed before the tariff was closed, could be added to the tariff. On the other hand, if new installation is defined as a customer whose building was constructed after the tariff was closed, then owners of buildings that were constructed prior to the 1981 tariff closure would still be eligible to enroll in the Master Meter/Submeter Tariff. Based on a review of the language of the decisions at issue, it is our belief that the Commission understood the difficulty of converting an existing building to separate utility metering and only intended for master metering submetering to be eliminated in multi-unit residential facilities constructed after 1981.

We are faced here with the need to clarification of a tariff where the same words appear to have been interpreted differently by different utilities. Nothing in a current rule, tariff or decision needs to change, rather how the utilities interpret the same words must be reconciled.

It appears that the simplest way to resolve these issues for buildings originally constructed for a residential purpose is to make no change to any decision or tariff, but simply state that for purposes of the utilities' Master Meter/Submetering Tariffs, new installation should be interpreted to mean a customer whose multi-unit residential building for which service is sought was constructed after the date the tariff was closed. A customer whose building was constructed prior to the date the Master Meter/Submeter tariff was closed and

was served as a master meter customer would be eligible to convert from its Master Meter Tariff to the Master Meter/Submeter tariff.

The one exception to the need to modify tariffs is for Pacific Gas and Electric Company (PG&E) who modified its tariffs, effective May 18, 2004, to explicitly prohibit additional submeters to an existing master metered location. Advice Letter (AL) 2533-G/2491-E was approved without resolution and by this decision we rescind that modification and direct PG&E to file an Advice Letter to remove the language added to Schedule ES, ESL, GS, and GSL by AL 2533-G/2491-E. The fact that PG&E added language to its tariffs in 2004 to prohibit submeters being added to existing master metered locations confirms that the term "new installation" was subject to interpretation consistent with the meaning of new installation described herein. SCE identifies D.88-09-025 as the decision which supports its interpretation that to be served on the Master Meter/Submeter Tariff, the multifamily accommodation "must have had submeters installed prior to December 7, 1981." (D.88-09-025, Cal. PUC LEXIS 609* 18.) SCE is correct that the dicta of D.88-09-025 reads as SCE says.

Finding of Fact 11 of the same decision says "D.93586 closed the [Master Meter/Submetering] rate schedules to new installations in December 1981 and singled out mobile home parks as the only type of multifamily service that should have the option of installing electric submetered service to tenants." (Emphasis added.) When we look to the language of D.93586 though, it clearly states, in OPs 4 and 5, that the special allowance for submetering by mobile home parks was with respect to NEW residential mobile home parks. No modification was made to the language of D.88651 with respect to existing multi-unit residential structures. D.88651 clearly did not close the Master Meter/Submetering Tariffs (as those remained open without restrictions until

three years later) and in fact D.88651, in FOF 11, makes clear that the utilities should have been providing "detailed information concerning the advantages of individual metering or submetering so that owners and landlords are encouraged to voluntarily install such metering…" (emphasis added). Therefore, although D.88-09-025 does include in dicta the language SCE claims, a review of the historical decisions relied upon by D.88-09-025 undermines SCE's claim that the Commission intended to close the Master Meter/Submetering Tariff to existing Master Meter customers.

Although we do not believe that any tariff change is required to allow for the clarification we make today to the term new installation, the utilities may file revised tariffs to formalize this interpretation if they so desire.

For buildings that were originally constructed for a non-residential purpose that have since converted to residential use, we have less clear guidance from the historical documents. However, it is clear that if a building was originally constructed for a non-residential purpose, the requirements for individual metering of living units would not have been applicable to the building when it was constructed. In its comments on the Draft Decision, SDG&E points out that the language of § 780.5 provides that the Commission "shall require every residential unit in an apartment house or similar multi-unit residential structure,…for which a building permit has been obtained on or after July 1, 1982…to be individually metered for electrical and gas service…." SDG&E argues that any buildings originally constructed for a non-residential purpose that we have converted to residential use must have converted to residential use and have been served as a Master Meter customer prior to December 1981 to be served under the Master Meter/Submeter Tariff or the building will violate § 780.5.

The statute uses the term "individually metered" but does not specify whether that individual metering must be by the utility. D.93586, on the other hand, specifies that new multi-unit residential structures require separate metering by the utility. It is clear that any NEW multi-unit residential building for which a building permit was obtained on or after July 1, 1982, must have been separately metered by the utility for it to be consistent with both § 780.5 and D.93586. However, D.93586 does not address converted buildings, and the statute does not define whether individually metered means by the utility or through submetering. As described above, a review of the language in D.88651 is imprecise. Taken together, it makes sense to interpret § 780.5 in light of D.93586, and clarify that any building converted to a residential use, for which a building permit was obtained on or after July 1, 1982, must be separately metered by the utility.[4] That leaves a smaller set of converted buildings that might be eligible to convert from their prior tariff to the Master Meter/Submeter Tariff, those who converted without the need for a building permit or those conversions that occurred before December 1981 when the Master Meter/Submeter Tariff was closed to new installations, but who did not pursue submetering at that time. Clearly such converted buildings must also abide by the requirements of § 739.5.

[4] For building that converted from a non-residential use to a residential purpose, one assumes that the utilities worked with the building developer to provide utility service to the building. Given that the utilities have interpreted § 780.5 and D.93586 to have required separate metering by the utility in all residential settings, the utilities should have advised customers converting buildings from a non-residential to residential use of the requirement for separate utility metering for residential units.

This approach to allowing customers to convert to the Master Meter / Submeter Tariff appears most consistent with the historical decisions about submetering, and furthers our policy objectives more effectively than not allowing multi-unit residential facilities to convert to the existing Master Meter / Submeter Tariff. We are not persuaded by the arguments of PG&E and SCE that allowing submetering is somehow detrimental to a customer's ability to better manage its energy usage. PG&E's response stated "Allowing the submetering of existing buildings diminishes the utility's ability to provide individuals with direct price signals, because submetered customers are not provided rate and metering options similar to those of the utility." (PG&E September 23, 2004 Response.) PG&E argues that individual metering by the utility provides a better signal than submetering. While individual metering is certainly preferred in new construction, PG&E's response downplays the fact that tenants of a Master Meter Tariff customer receive **no price signals** because master meter customers are prohibited from separately charging energy costs but instead must bundle those costs in rent charges under PG&E's Tariff Rule 18. In addition, § 739.5 requires that when submetering is provided by a master meter customer, the master meter customer is obligated to provide service to its tenants at the same rate otherwise offered by the utility were the utility providing service to the tenant. In essence, PG&E compares submetering to individual metering by a utility in stating its preference against submetering when the more accurate comparison is between no price signal (in an existing master meter situation) and submetering. It is our conclusion that tenants of multi-unit residential buildings who are not submetered have substantially less ability to manage their energy usage than those who are submetered, and therefore submetering would be preferred to send accurate price signals.

SCE and TURN also argue that if a customer is submetered, the building owner will lose incentive to install energy efficient appliances because such improvements will benefit the submetered tenant not the building operator. However, this incentive is no different for submetered buildings and for buildings that are separately metered by the utility, yet both TURN and SCE advocate separate metering by the utility.

Another reason that several parties give for why existing master meter customers should not be allowed to offer submetering is the level of complaints that they anticipate will arise with additional submetering. They also raise jurisdictional concerns about the Commission's ability to effectively resolve complaints about submetered bills. Based on data submitted in response to the ALJ Ruling, there are approximately 2,700 master meter / submeter electric customers, made up of approximately 162,000 living units. Based on the same data, there are approximately 2,300 master meter / submeter gas customers, made up of approximately 178,000 living units.[5]

The Commission's Consumer Affairs Branch provided the ALJ with statistics regarding submetered billing complaints it handled between January 2001 and January 2004, which indicated that there were 81 complaints about submetered bills received that were attributable to customers in either PG&E, San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE) or Southern California Gas Company (SoCalGas) service territories over that time period. It is possible that some of these complaints

[5] These figures exclude customers / units for PG&E because it did not include information about its number of Master Meter / Submeter Tariff customers / units in its filing.

were related to mobile home parks rather than multi-unit residential structures, but the data does not allow us to determine that with certainty.

Even assuming that all of the billing complaints were related to submetered multi-unit residential facilities other than mobile home parks, 81 complaints over a three year period for 340,000 living units is not particularly high. This rate averages to 27 complaints per year. Based on the utility data on the electric side, the maximum number of additional living units that could be submetered is approximately 155,000, which proportionately means that we would expect an additional 12 complaints per year if the statistics over the 2001-2004 time period holds true. Based on the utility data on the gas side, the maximum number of additional living units that could be submetered is approximately 1,498,000, which proportionately means that we would expect an additional 119 complaints per year if the statistics over the 2001-2004 time period hold true. These projections assume that every Master Meter Tariff customer chooses to submeter its tenants, which at least near term is a fairly unlikely proposition. Therefore, although we agree that additional complaints might occur when tenants who have never been exposed to energy price signals first receive submeters and receive an energy bill, we do not find that this prospect imposes such a burden on the Commission, the utilities, and other entities to forgo the benefits of having customers receive energy price signals. In addition, revisions to § 739.5 made during the last legislative session provide clear authority for the Commission to accept and respond to complaints under § 739.5 and continues the requirement that Master Meter/Submeter customers be alerted to their responsibilities under § 739.5 by the utilities.

The California Department of Food and Agriculture, Division of Measurement Standards (Division of Measurement Standards) points out that it

and local county weights and measures offices are responsible for regulating measuring devices, including submeters, by testing for accuracy, evaluating suitability of devices for installation and use, and reviewing billing, pricing, and metering complaints. The figures described above do not reflect complaints received by other entities than the Commission. The Division of Measurement Standards is concerned that with the installation of additional submeters, state and local governments responsible for these regulations would be unable to shoulder the financial costs of the additional workload required to effectively regulate additional submeters. The need for access to evaluate and test submeters by state and local county weights and measures offices, and the need for submetering installations to adhere to safety and local building codes and ordinances means that submeters cannot just be placed anywhere in a building. For example, Southwest Gas Corporation (Southwest Gas) points out that "(u)nder federal pipeline safety standards and local building codes and ordinances, natural gas metering equipment must be installed with adequate positive ventilation" eliminating interior closets or utility rooms as possible locations for submeters. (Southwest Gas Corporation Response, October 27, 2004, p. 2.)

Both The Utility Reform Network (TURN) and Hunt Power attached the electric submetering guidelines adopted by the Texas Public Utility Commission for apartments, condominiums, and mobile home parks. Section 25.142(e) of the Texas Rules Applicable to Electric Service Providers provides common sense requirements for submeter location and testing that should be followed by building owners and managers that pursue new electric submetering as a result of this decision. (The complete text of the guidelines is available online at http://www.puc.state.tx.us/rules/subrules/electric/25.142/25.142.pdf.) In

addition, Section 8.4 of PG&E's "greenbook" (http://www.pge.com/docs/pdfs/customer service/new construction services/greenbook/service requirements/08.pdf) provides useful guidance for locating meters at residential buildings that should be followed to the extent possible in new submetering locations.

It is clear that the current impetus to submeter is stronger for electric service nationally than is submetering for natural gas. In part, this is because of the safety concerns identified by Southwest Gas. In addition, more emphasis has been placed recently on concerns about peak electricity demand and customer ability to reduce peak usage than has been directed at natural gas usage. Nevertheless, since building managers who choose to install submeters would need to follow the relevant federal pipeline safety standards and local building codes and ordinances, just like any other entity that works with natural gas facilities, we do not see that the safety concerns necessarily present any additional impediment to installation of submeters than any other work with natural gas facilities would. Therefore, even though no other states have adopted model guidelines that we are aware of for the location and testing of natural gas submeters, like they have for electric submeters, the existing building codes, ordinances, and federal standards establish reasonable limitations on the location of natural gas submeters that must be followed.

More troubling to us from a public interest standpoint is the prospect of multi-unit residential building owners retaining their existing rents, which include an allocation to cover energy costs, and then incrementally charging tenants for energy usage based on submetering the energy usage. In fact, this situation is prohibited under § 739.5 because it would allow the Master Meter/Submeter customer to charge tenants more than the utility would for

energy. Therefore, to the extent that an existing Master Meter customer converts to the Master Meter/Submeter tariff, that customer should concurrently revise its rent downward to remove energy related charges. For those customers who make this conversion that are subject to the jurisdiction of local rent control boards, they should move promptly to submit revised rent charges for approval to the relevant authorities that reflect the removal of energy costs, consistent with § 739.5.

The Association concurs wit the Draft Decision's finding with respect to removal of the energy allocation from rent in a rent control situation, but both the Association and Hunt Power take issue with that requirement for market based rents. However, to the extent that any lease includes the provision of utilities as part of the rental agreement, once a landlord begins to charge separately for energy services as a result of submetering its tenants, it must remove from the rent due to an allocation for energy costs. This requirement does not limit a landlord's ability to establish an appropriate market rate for rent, upon termination of the existing lease.

To ensure that tenants know of this requirement, we require the utility to notify any Master Meter customer that applies to convert to the Master Meter/Submeter Tariff that the customer, in addition to posting the relevant utility tariffed rates, consistent with § 739.5(e), post a notice that any tenant whose lease includes utilities is entitled to removal of energy costs upon receipt of a submetered bill from the Master Meter/Submeter customer.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed by the Association,

PG&E, SCE, SDG&E, TURN, Hunt Power, Western Manufactured Housing Community Association, and Division of Measurement Standards. Reply Comments were filed by SCE, TURN, PG&E, Hunt Power, and the Association. Modifications were made throughout the decision to clarify or further explain the outcomes in the decision. We do separately address in this section a legal argument raised by SCE and TURN about the Draft Decision's compliance with § 1708.5.

Because this petition is more like a petition to modify or for clarification that was filed as a petition for rulemaking as a result of the age of the decisions for which clarification was sought, it does not fit neatly into the petition for rulemaking framework. We denied the petition, not because there were any legal impediments to granting the petition but because no changes to existing rules or decisions were required to accomplish the relief sought. SCE and TURN argue that because hearings were held, that were the basis of D.93586, § 1708.5 requires that a hearing must be held to modify provisions to tariffs that were filed after D.93586 was issued. However, D.93586 focused solely on new mobile home park construction, simply reinstating the restrictions on submetering for new multi-unit residential structures that had been adopted in D.88651, which were stayed by D.89196. Therefore, no hearings are necessary to dispose of the petition.

In addition, the ALJ issued a Ruling in the Petition stating the possibility that we would rule on the merits of the petition without opening a rulemaking and provided parties the opportunity to comment on all of the issues addressed therein. Thus, the process provided the requisite notice and opportunity to comment required by § 1708.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Michelle Cooke is the assigned ALJ in this proceeding.

Findings of Fact

1. Following adoption of D.93586, most utilities closed their Master Meter / Submeter Tariffs to new installations.

2. There are approximately 32,000 master meter electric customers, made up of approximately 156,000 living units.

3. There are approximately 118,000 master meter gas customers, made up of approximately 1,498,000 living units.

4. Ordering Paragraphs 2 and 3 of D.93586 explicitly limited separate utility metering requirements to new multi-unit residential structures.

5. Some utilities have interpreted "new installation" to not just include new construction, but also to encompass pre-existing multi-unit residential facilities.

6. Tenants of a Master Meter Tariff customer receive no price signals because master meter customers are prohibited from separately charging for energy costs but instead must bundle those costs in rent charges under utility Tariff Rules.

7. Section 739.5 requires that when submetering is provided by a master meter customer, the master meter customer is obligated to provide service to its tenants at a rate not to exceed the rate otherwise offered by the utility were the utility providing service to the tenant.

8. There were 81 complaints with the Commission's Consumer Affairs Branch about submetered bills received that were attributable to customers in either PG&E, SDG&E, SCE, or SoCalGas service territories over the January 2001 to January 2004 time period.

9. Based on the maximum number of additional electric living units that could be submetered of 155,000, we would expect an additional 12 complaints per year if the statistics over the 2001-2004 time period holds true.

10. Based on the maximum number of additional natural gas living units that could be submetered of 1,498,000, we would expect an additional 119 complaints per year if the statistics over the 2001-2004 time period holds true.

11. Additional complaints might occur when tenants who have never been exposed to energy prices first receive submeters and receive an energy bill.

12. The current impetus to submeter is stronger for electric service nationally than is submetering for natural gas.

13. Building managers who choose to install natural gas submeters must follow the relevant federal pipeline safety standards and local building codes and ordinances, just like any other entity that works with natural gas facilities.

Conclusions of Law

1. A master meter customer may not charge rates to a submetered tenant in excess of the rates that would otherwise be charged by the utility, consistent with Pub. Util. Code § 739.5.

2. Nothing in D.93586 appears to have required closing the Master Meter/Submeter Tariffs to pre-existing multi-unit residential buildings.

3. The Commission understood the difficulty of converting an existing building to separate utility metering and only intended for the submetering option to be eliminated for multi-unit residential facilities constructred after 1981 in D.93586.

4. "New installation" means a customer whose multi-unit residential building was constructed after the date the Master Meter/Submeter Tariff was closed.

5. A customer whose building was constructed prior to the date the Master Meter / Submeter Tariff was closed and was served as a master meter customer is eligible to convert from its Master Meter Tariff to the Master Meter / Submeter tariff.

6. Buildings originally constructed for a non-residential purpose that subsequently converted to residential use before December 1981 or without the need for a building permit on or after July 1, 1982 should be eligible to convert from their prior tariff to the existing Master Meter / Submeter Tariff.

7. Tenants of multi-unit residential buildings who are not submetered have substantially less ability to manage their energy usage than those who are submetered, and therefore submetering would be preferred to send accurate price signals.

8. The prospect of additional complaints does not impose such a burden on the Commission, the utilities, and other entities to forgo the benefits of having customers receive energy price signals.

9. The Texas Rules Applicable to Electric Service Providers and PG&E's greenbook provide common sense requirements for submeter location and testing that should be followed by building owners and managers that pursue new electric submetering as a result of this decision.

10. The existing building codes, ordinances, and federal standards establish reasonable limitations on the locations of natural gas submeters that must be followed by building owners and managers that pursue new natural gas submetering as a result of this decision.

11. Retaining existing rents, which include an allocation to cover energy costs, and then incrementally charging tenants for energy usage based on submetering the energy usage is prohibited under § 739.5 because it would allow the Master

Meter/Submeter customer to charge tenants more than the utility would for energy.

12. To the extent that an existing Master Meter Tariff customer converts to the Master Meter/Submeter tariff, that customer should concurrently revise its rent that includes the provision of utilities downward to remove energy related charges for the duration of the lease.

13. The petition to intervene by BOMA should be denied.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company shall file an Advice Letter to remove the language added to Schedule ES, ESL, GS, and GSL by Advice Letter 2533-G/2491-E.

2. A customer whose building was constructed prior to the date the Master Meter/Submeter Tariff was closed and was served as a master meter customer shall be eligible to convert from its Master Meter Tariff to the Master Meter/Submeter tariff.

3. Buildings originally constructed for a non-residential purpose that subsequently converted to residential use before December 1981 or without the need for a building permit on or after July 1, 1982 shall be eligible to convert from their prior tariff to the existing Master Meter/Submeter Tariff.

4. Although not required, electric and natural gas utilities may file revised Master Meter/Submetering Tariffs to formalize the interpretation of who may convert to the tariff as set forth in Ordering Paragraphs 2 and 3.

5. The Texas Rules Applicable to Electric Service Providers and PG&E's greenbook provide common sense requirements for submeter location and

testing that shall be followed by building owners and managers that pursue new electric submetering as a result of this decision.

6. The existing building codes, ordinances, and federal standards establish reasonable limitations on the locations of natural gas submeters that shall be followed by building owners and managers that pursue new natural gas submetering as a result of this decision.

7. To the extent that an existing Master Meter Tariff customer converts to the Master Meter / Submeter tariff, that customer shall concurrently revise its rent that includes the provision of utilities downward to remove energy related charges for the duration of the lease consistent with Pub. Util. Code § 739.5.

8. The petition to intervene by Building Owners and Managers Associations of San Francisco and California is denied.

9. In order to allow public review and comment, pursuant to § 311(g), we extend the six-month period for consideration of the petition, consistent with § 1708.5(b)(2).

10. The petition for rulemaking by is denied.

11. Petition 04-08-038 is closed.

This order is effective today.

Dated May 26, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners