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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission's Own Motion to re-examine the underlying issues involved in the submetering discount for mobile home parks and to stay D.01-08-040.

FILED  
PUBLIC UTILITIES COMMISSION  
March 13, 2003  
SAN FRANCISCO OFFICE  
Rulemaking 03-03-017

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SAN FRANCISCO OFFICE  
Investigation 03-03-018

Robert Hambly, for Himself and, On Behalf of the Residents of Los Robles Mobilehome Park,

Complainant,

vs.

Hillsboro Properties, a California Limited Partnership, and the City of Novato,  
Defendants.

Case No. 00-01-017  
(Filed January 14, 2000)

**ORDER INSTITUTING RULEMAKING AND INVESTIGATION**

**I. Summary**

This Order opens a Rulemaking (OIR) and an Investigation (OII) on the Commission's own motion to re-examine the unresolved issues involved in the master meter discount for submetered mobile home parks (MHPs), and to stay

Decision (D.) 01-08-040, which was issued in a recent complaint case. We consolidate the complaint case with this OII/OIR. This OII/OIR will explore setting a uniform statewide rate structure and method to calculate the master meter discount. In Phase 1 we will examine whether additional cost components exist. The Commission previously deferred this review to utility general rate cases (GRCs). In Phase 2, which we anticipate will include testimony and hearings, we will determine whether to adopt a statewide master meter discount and if so, the amount of the discount applicable to all jurisdictional utilities. We will also explore mechanisms to ensure any refunds to tenants are appropriately made.

## **II. Background**

MHP tariffs for electric and gas service currently allow for direct metering of tenants by the utility or, in grandfathered cases, for a utility master meter with tenant submeters. Under the submetering arrangement, the MHP pays a single bill discounted by the utility while collecting bills from its submetered tenants at rates no higher than those for direct utility service. Under Public Utilities (PU) Code Sec. 739.5 submetering schedules were closed to new customers after January 1, 1997.

Approximately 5,000 MHPs in California provide spaces for 675,000 tenants. Disputes between MHPs and tenants have increased since the early 1990s. Most of the complaints that the Commission receives are from park residents who feel that the owners are passing on costs in violation of PU Code 739.5. They also allege that MHP owners have failed to provide information regarding low-income assistance, posting of current rates, surcharges, and Commission mandated refunds.

### III. Procedural History

This OII continues our review of MHP submetering issues. In OII 93-10-022 we addressed the concerns of MHP tenants who alleged that they were being charged twice for repair and replacement of MHP utility systems: once through submetered utility rates paid to the MHP owner and secondly through rent increases and surcharges. That OII was limited to master-metered / submetered gas and electric service provided to MHPs by Edison, PG&E, SDG&E and SoCalGas. The OII was limited further to the single issue of whether receipt of the submetering discount bars park owners from recovering “costs of owning, operating, and maintaining a submetered system” beyond the reimbursement provided by the submetering discount.

The resulting Decision 95-02-090 added new language to submetering tariffs to prohibit MHPs from further recovery of the cost of the replacement of the submetered gas / electric system beyond those costs that the PU Code Section 739.5 requires the master meter discount to include.<sup>1</sup> Whether there might be other, non-statutory “costs of owning, operating and maintaining” the system was not determined but left to GRCs.

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<sup>1</sup> Utilities added the following tariff language pursuant to Ordering Paragraph 4. of D.95-02-090:

*“Condition for Receiving Submeter Rate Discount*

*The master-meter / submeter rate discount provided herein prohibits further recovery by mobile home park owners for the costs of owning, operating, and, maintaining the gas / electric submetered system. This prohibition also includes the cost of the replacement of the submetered gas / electric system.”*

Rehearing was denied in D.95-08-056.

The GRC review did not occur and the unresolved issues were raised, most recently in C.00-01-017 (Hambly case), which was opened when an MHP tenant filed a complaint alleging that an MHP impermissibly passed on costs to its tenants for which it was already compensated via the discount available to the master meter customer who is the MHP owner or operator. The Commission heard the complaint and issued D.01-08-040, concluding that, consistent with D.95-08-056 and PU Code Sect. 739.5, the “utility common area costs” in question could not be passed through to tenants because they were costs recovered through the master meter discount. In the Hambly case, PG&E presented evidence on the record that the costs questioned by the complainant (costs associated with pedestals and with service to common areas) may not be costs that the MHP recovers through the master meter discount, but are instead costs that the MHP may collect from submetered tenants via rents.

In D.01-08-040, the Commission also ordered MHPs to refund rents improperly collected from tenants and, consistent with D.95-08-056, invited the MHP industry to participate in their particular utility’s next GRC in order to establish whether costs related to common area plant are deemed to be included in the master-meter discount.

D.01-08-040 thus held for complainant that, since the MHP had ignored the direction of D.95-08-056 and failed to seek Commission approval to recover certain costs from submetered tenants via rents, the MHP could not pass through the costs in question. On August 9, 2002, the California Court of Appeal granted review in the Hillsboro Writ Proceeding (Decision (D.) 01-08-040); (*Hillsboro Properties v. CPUC*, Cal. Ct. of App. Case No. A097737); and (*WMA v. CPUC*, Cal. Ct. of App. Case No. A098327), and oral argument was held on January 15, 2003. In briefing to the Court and at oral argument, the Commission asserted its

exclusive jurisdiction to administer and implement PU Code Sect. 739.5, to calculate the master meter discount, and to ensure that submetered tenants are not treated differently than directly metered tenants.

#### **IV. Preliminary Scoping Memo**

##### **A. Issues**

Decision (D.) 01-08-040 should be stayed and consolidated with this OII/OIR because:

1. The Commission has not, but should, define and quantify any average costs, not already identified in D.95-02-090 and D.95-08-056, avoided by jurisdictional electric and gas utilities when serving MHPs that submeter electricity or gas used by their tenant residents;
2. MHP owners have not been given the promised opportunity through the GRC process to litigate whether any non-statutory avoided costs exist that should be recovered from MHP tenants in rent because they are not included within the MHP master meter discount; and because
3. Any refunds due tenants from MHPs if ordered through GRCs might constitute prohibited retroactive ratemaking but where warranted could be ordered through an OII/OIR process.

The Commission plans to answer the following questions as described further below:

1. What are the components of the cost to a utility of directly serving MHP tenants, not already identified in D.95-02-090 and D.95-08-056, and which of them does a utility avoid if a MHP submeters its tenants?
2. Can the Commission set a uniform statewide rate structure and method to calculate the master meter discount, and if so what cost

figures or other issues of fact in dispute can parties present to resolve them?

3. Should the Commission revise the refunds ordered in D.01-08-040?
4. What mechanism should be implemented to ensure refunds, ordered in D.01-08-040, are appropriately made to MHP submetered tenants?
5. Should the Commission explore beyond the conclusions reached in D.95-08-056 a fair and reasonable way to mitigate the cost to MHP owners of converting existing submetered systems to directly metered service?
6. Should the Commission revise the methods and formulas by which refunds are currently paid to submetered tenants by MHP owners?

The first and central issue of this proceeding (Phase 1) is to identify, among all utility-related costs of operating an MHP, those costs, not already identified in prior Commission decisions that are avoided by a utility serving an MHP, when the MHP submeters its tenants. Costs identified and defined as not being incurred by the utility in MHPs that it meters directly, will emerge as costs that MHP operators will be legally entitled to pass through to their tenants, subject to the oversight and discretion of local rent control boards, where applicable. Examples of cost categories that we will address include: meter reading and billing, capital improvement and associated maintenance, repair and replacement for common areas, lighting, appliance energy, pedestals, and service drops. In Phase 1 we will define cost components and categories as a matter of policy.

PU Code Section 739.5 precludes the use of costs in excess of those that would be incurred by the serving utility in providing comparable service (D.89907, 1 C.P.U.C.2d 172, 179), but only bars from further recovery those capital improvement costs that relate to the submetered system and that are costs

factored into the master meter discount. (D.95-08-056, 61 C.P.U.C.2d 225, 229.) We will determine which costs are not factored into the master meter discount.

The second reason for opening this OII (Phase 2) is to explore setting a uniform rate structure and method to calculate the master meter discount, and to establish a statewide discount if possible. In Phase 2, depending on factors including developments in current GRCs for PG&E and Edison, we may quantify the amount of the master meter discount. To the extent permissible by statute or code, we will consider adopting a fixed discount per dwelling unit per day applicable to all jurisdictional utilities throughout the state.

A third reason for establishing this proceeding is to clarify what refunds are due tenants in C.00-01-017, the Hambly case, and to develop a mechanism to ensure refunds are appropriately made to submetered tenants. In D.01-08-040, the Commission ordered the parties to meet and confer to calculate refunds for excess rents charged to tenants via the improper operation of the NOI (net operating income) rent control formula, and for trenching, conduit and pedestal costs. In this OII/OIR, the Commission does not intend to revisit the issue of rent increases authorized pursuant to the NOI formula. The Commission does intend to re-examine the trenching, conduit and pedestal costs, and to that extent any refunds ordered by D.01-08-040 for trenching, conduit and pedestal costs should be stayed until resolution of this OII/OIR. In the event that the California Court of Appeal remands any part of the Hambly case back to the Commission, this proceeding will provide a forum to implement any refunds due tenants. Additionally, the Commission intends to examine, and possibly revise, the methods and formulas by which refunds are currently paid to submetered tenants by MHP owners throughout the state.

A final goal of this OII is to explore fair and reasonable ways to address the economic barrier that an MHP operator faces when converting a legally submetered delivery system to one directly metered by the local utility. MHPs can face significant expenditures to bring existing submetered systems into compliance with current construction standards such as GO 95 and GO 112. Substantial system upgrades to MHPs might be required before utilities will directly meter MHP tenants as utility customers, particularly if the MHP has not properly maintained the submetered system. The adequacy of the tariffed discount, over time, to offset the average cost of replacing the MHP submetered system remains an unresolved issue before the Commission, and will be addressed in this proceeding.

### **B. Schedule**

The schedule for this proceeding, which the assigned Commissioner or assigned administrative law judge may adjust, is as follows:

<b>Phase 1</b>	
March 13, 2003	OII issued and mailed.
April 3, 2003	PHC Statements due
April 10, 2003	PHC Phase 1
Approx. April 18, 2003	Scoping Memo Phase 1
Approx. May 14, 2003	Concurrent Initial Briefs
June 6, 2003	Concurrent Reply Briefs / Submission Phase 1
July 22, 2003	Phase 1 Draft Decision mailed
Dates to be set	Comments / Reply Comments on

	Draft Phase 1 Decision
August 21, 2003	Commission Meeting on Phase 1 Decision
<b>Phase 2</b>	
Approx. September 3, 2003	PHC Phase 2
Approx. September 12, 2003	Scoping Memo Phase 2
Dates to be set	Parties Concurrent Prepared Testimony served
Approx. October 29, 2003	Evidentiary Hearings
Date to be set	Concurrent Initial Briefs
Approx. December 15, 2003	Concurrent Reply Briefs / Submission Phase 2
Approx. February 15, 2004	Phase 2 Draft Decision mailed.
Dates to be set	Comments / Reply Comments on Draft Phase 2 Decision
Approx. March 15, 2004	Commission Meeting on Phase 2 Decision

We name as respondents to this proceeding all gas and electric utilities regulated by this Commission that provide gas or electric service to master meter customers for submetering to MHP tenants. Respondents and other persons or entities who intend to participate in the proceeding shall file and serve Preliminary Hearing Conference statements, and shall provide a courtesy copy to the assigned administrative law judge. The initial service list is attached hereto as Appendix A.

### **Findings of Fact**

1. Mobile home park (MHP) tariffs for electric and gas service currently allow for direct metering of tenants by the utility or for a grandfathered utility master meter with tenant submeters under which the MHP pays a single bill discounted by the utility and collects bills from its submetered tenants at rates no higher than direct utility service.
2. The CPUC continues to receive complaints from MHP residents who feel that the owners are passing on costs in violation of PU Code Section 739.5.
3. In Decision D.95-02-090, specific language was added to submetering tariffs prohibiting MHPs from further recovery, beyond the master meter discount, of the “cost of the replacement of the submetered gas / electric system.”
4. Decision D.01-08-040 ordered the MHP industry to participate in their particular utility’s next GRC in order to establish which costs related to common areas are deemed to be included in the master-meter discount.
5. In D.01-08-040 the Commission did not define the costs of owning, operating, and maintaining a submetered system not already identified in D.95-02-090 and D.95-08-056.
6. In D.01-08-040, the Commission ordered the MHP to refund rents improperly collected from tenants.

### **Conclusions of Law**

1. Decision (D.) 01-08-040 should be stayed.
2. No hearings are necessary on the issue of whether (D.) 01-08-040 should be stayed because the stay is temporary pending the resolution of this OII/OIR, and because this OII/OIR does not deprive tenants of their refund rights under (D.) 01-08-040.

3. The Commission should re-examine (D.) 01-08-040 as part of this OII/OIR to resolve the common issues identified herein.
4. In order to provide a complete record, all Commission-regulated gas and electric utilities that serve master meter customers at submetered MHPs should be named as respondents to this proceeding.
5. The Commission asserts its exclusive jurisdiction to administer and implement Public Utilities Code Section 739.5, to calculate the submetering discount, and to ensure that submetered tenants are not treated differently than directly metered tenants.

**IT IS ORDERED** that:

1. All electric or gas utilities regulated by the California Public Utilities Commission, which provide gas or electric service to master meter customers at submetered MHPs, are made respondents to this proceeding.
2. Decision (D.) 01-08-040 is stayed.
3. C.00-01-017 is consolidated with this OII/OIR for further proceedings.
4. Respondents and other persons and entities who intend to participate in this proceeding shall file and serve Prehearing Conference Statements on or before April 3, 2003, and shall file a courtesy copy by e-mail to the assigned administrative law judge. The initial service list for this proceeding is attached as Appendix A.

ENERGY/PAC/eg1 I.03-03-018

This order is effective today.

Dated March 13, 2003, at San Francisco, California.

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

**Appendix A**  
**Service List**

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**Appendix A**  
**Service List**

I.03-03-018

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