**TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE COURT OF APPEAL OF THE FIRST APPELLATE DISTRICT OF THE STATE OF CALIFORNIA**.

Pursuant to California Public Utilities Code §1756 (hereinafter “Public Utilities Code” or “Section”), and California Rules of Court Rule 8.496, the Western Manufactured Housing Community Association (hereinafter “WMA”) files this Petition for Writ of Review to seek the annulment of two decisions of the California Public Utilities Commission (hereinafter “the Commission”) that set a rate for the provision of electric service in mobilehome parks in the service territory of Pacific Gas & Electric.

**QUESTIONS PRESENTED FOR REVIEW**

1. Did the Commission set a rate for the master-meter discount that was discriminatory and in contravention of Public Utilities Code §453 and §739.5?

2. In improperly setting the differential in the underlying case, did the Commission fail to consider the impact on the master-metered customers in PG&E’s service territory, resulting in preferential treatment to other similarly situated customers?

**INTRODUCTION**

At issue in this case is the rate established by the Commission for the provision of electric service in manufactured housing communities, also known as mobilehome parks, (hereinafter “MHPs) where that service is provided by the owner as opposed to the host utility, in this case Pacific Gas & Electric Company (hereinafter “PG&E”). Electric service provided to residents in MHPs by the owners is commonly referred to as “master-metered service” whereas when PG&E provides electric service directly to the MHP resident, it is commonly referred to as “directly-metered service.”

Master-metered MHPs parks provide a privately-owned electric distribution to deliver electric service to individual tenants residing in individual residents located on individual lots within an MHP. The owner purchases electricity from the local serving utility to serve both common areas and residential tenants. The owner is a residential electricity service customer of PG&E, but not a wholesale purchaser of bulk power. In this case, the owners purchase electricity from PG&E at the fully bundled residential rate. The owner, in turn, must provide electricity and all other supportive services necessary to deliver safe and reliable electric service to the resident tenants. PG&E, by statute, is then required to discount the total bill for the costs they would have otherwise incurred by having the owner provide distribution and other services related to delivering electricity to the individual residents that PG&E would otherwise provide if the MHP were directly-served by PG&E.

The owner of the master-metered MHP stands in the shoes of PG&E when charging resident tenants for electric utility service, and is constrained by statute to charge the same rate the resident tenant would pay if PG&E provided the service directly. In turn, the owner receives a discount on its bill from the full, bundled default residential rate charged by PG&E. Simply stated, the discount is calculated by multiplying the adopted rate by the sum of the residential tenants’ metered usage for each billing period.

In this manner, the resident tenants are protected, as is the owner, from any unreasonable difference in rates for the provision of identical service to residential customers who reside in all MHPs. In this case, the Commission departed from the statutory requirement of Section 739.5 that required the differential be set at the rate charged by PG&E to its directly-served residential customers and instead adopted a lower, different rate that did not reflect either the rate charged by the owners to their resident tenants nor the rate that PG&E charged to their directly-metered resident tenants. The Commissions’ actions are not only unreasonable and discriminatory, but are in contravention of Section 739.5 and therefore unlawful.

In improperly setting the differential in the underlying case, the Commission failed to consider the impact on the master-metered customers in PG&E’s service territory. The impact of under-recovery of costs through the inadequate differential amounts to preferential treatment in favor of PG&E, disadvantage to master-metered customers of PG&E and results in unlawful prejudice. PG&E is impermissibly enriched to the financial and commercial detriment of the owners in direct proportion to the amount that PG&E does not have to compensate them for the costs PG&E would have otherwise incurred when the owner provides utility service in PG&E’s place. In essence, the Commission has authorized PG&E to be compensated for a service it does not provide.

Accordingly, WMA requests that the Court annul Decision 11-12-053 and Decision 12-08-046 Denying Rehearing and remand this case back to the Commission with the order that the differential be set using the same residential rate PG&E charges to directly-served MHP residents within its service territory. This residential rate is the rate PG&E bills the master-metered MHP and is the same rate the master-metered MHP pays to PG&E.

**PETITION FOR WRIT OF REVIEW**

WMA hereby petitions this Court for a Writ of Review directed to respondent California Public Utilities Commission, and by this verified petitioner alleges:

1. Respondent is a constitutional agency of the State of California, the California Public Utilities Commission.

2. Petitioner, Western Manufactured Housing Communities Association is a nonprofit organization created in 1945 for the exclusive purpose of promoting and protecting the interests of owners, operators and developers of manufactured home communities in California. WMA assists its members in the operations of successful manufactured home communities in today's complex business and regulatory environment. WMA is a statewide trade association whose members are largely MHP owners who own, operate and control over 175,000 mobilehome spaces in California. WMA has over 1700 member parks located in all 58 counties of California.

3. Other than Real Parties in Interest PG&E and The Utility Reform Network (hereinafter “TURN”) who took positions adverse to Petitioner, any other “real parties in interest,” would be parties to the CPUC docket in which D. 12-08-46 was issued.

4. All exhibits to this petition are true and correct copies of the original documents filed and/or admitted into evidence with the Commission. Petitioner filly incorporates Exhibit volumes I through VIII as if they were fully set forth in this petition.

5. This petition concerns whether the Commission set rates that were discriminatory and in contravention of Public Utilities Code Sections 453 and 739.5.

6. Following the testimony by WMA, PG&E and TURN, hearings were held on contested issues from August 17 to 18, 2011, before Administrative Law Judge Thomas R. Pulsifer.

7. Opening Briefs were filed by WMA, PG&E and TURN on September 23, 2011 and reply briefs were filed on October 7, 2011.

8. The Commission issued Decision 11-12-053 on December 22, 2011 that decided the rate at issue.

9. On January 23, 2012, WMA filed a timely Application for Rehearing, to which PG&E and TURN filed a Joint Response on February 7, 2012.

10. The Commission issued Decision 12-08-046 on August 23, 2012 denying rehearing and modifying Decision 11-12-053. Thus, this Petition is timely filed on September 21, 2012.

**PRAYER**

WHEREFORE, and for the reasons stated more fully below, petitioner prays that this Court:

1. Grant the Petition and issue a writ of review directing the respondent to vacate Decisions 11-12-053 and 12-08-046;

2. Direct respondent to enter a new and different order providing that the differential be set using the same rate PG&E charges to directly-served mobilehome MHP tenants within its service territory;

3. Alternatively, issue an alternative writ of review directing the Commission to show cause why it should not be so directed, and upon return of the alternative writ, issue a writ as set forth in the prior paragraph;

4. Grant such further relief as may be just and proper.

**VERIFICATION**

I, EDWARD G. POOLE, am a member of Anderson & Poole, P.C., one of the law firms representing petitioner. I make this verification as petitioner’s counsel because I am more familiar with the facts relevant to this petition. The facts referred to in this petition are true based on my knowledge from my review of the pleadings, briefs and other documents filed with the California Public Utilities Commission.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on September 21, 2012, at San Francisco, California.

EDWARD G. POOLE

**MEMORANDUM OF POINTS AND AUTHORITIES**

**A. Writ Review Is Appropriate When The Charge To A Group Of Customers Within A Rate Class Is Different Than Rates For Identical Service Rendered To The Rest Of The Rate Class To Which They Belong.**

“The primary purpose of the Public Utilities Act…is to insure the public adequate service at reasonable rates without discrimination.” Pac. Tel. & Tel. v. Public Utilities Com. (1950) 34 Cal.2d 822, 826, 215 P.2d 441. California Public Utilities Code §453 provides: “c) [n]o public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect either as between localities or as between classes of service.” The elements necessary to demonstrate a violation of Section 453 therefore are (1) a different rate, charge, service, facility or in some other respect charged to the same class of customers for the same service and (2) that the difference is unreasonable. WMA made a clear showing in the hearings that both elements were met.

While the standard of review on rehearing of WMA’s discrimination claim was correctly stated by the Commission (*see* Decision 12-08-046 at pages 9-11), the Commission erred in finding that WMA failed to make a proper showing under this standard. The Application for Rehearing clearly showed that the Commission’s adoption of PG&E’s multi-family costs for calculating the master-meter discount when PG&E charges its residential rate to directly-served MHP residents (and all other residential customers including multi-family residents)[[1]](#footnote-1) was unreasonably discriminatory. The Commission relied upon evidence presented by PG&E to support its proposal to use multi-family cost calculations to set the discount rate, claiming that this represented PG&E’s cost of providing “comparable services.” Decision 12-08-046 at 11. However, PG&E does not have a multi-family rate it uses to charge when it is providing comparable services to MHP residents (or multi-family residents, for that matter) that it serves directly. PG&E charges its residential rate when it directly serves MHP residents. WMA submits that PG&E’s residential rate is the comparable service rate charged to directly-served MHP residents and is the only just and reasonable and not unreasonably discriminatory rate the Commission should have used to set the discount presented in the underlying proceeding.

The Commission found that WMA failed to identify “any actual rate” that was improperly set. Decision 12-08-046 at 11. This statement is untrue. WMA compared the adopted discount rate to the rate PG&E charges when it provides comparable services to directly-metered resident tenants. Given that the master-meter customer pays exactly the same rate for service that PG&E provides to directly-served customers, the master-meter discount rate adopted in this case is discriminatory when compared with PG&E’s residential rate: that which they charge to provide direct service to MHP resident tenants. The Commission went on to mischaracterize WMA’s rehearing request stating that “WMA’s claim of discrimination compares one particular element of the rate design we used to calculate ordinary residential rates paid by ordinary residential customers with an element of rate design we used to calculate the *bulk meter-meter* rate paid by mobile home park owners.” Decision 12-08-046 at 11, *emphasis added*. There is no such thing as “bulk master-meter rate.” There is a master-meter residential tariff schedule that is simply PG&E’s residential rate minus the discount rate. The Commission’s discussion represents a fundamental misunderstanding of both WMA’s argument on rehearing and the action taken by the Commission itself when it set the discount rate. The Commission also fails to acknowledge (or understand) that master-meter customers are not wholesale customers who resell “bulk” power. They are residential customers who are passing through rates as directed by law.

Some discrimination may be reasonable. In this case, however, it is unreasonable for two reasons: (1) the Commission violated Section 739.5 because it did not cap the discount at PG&E’s average cost of comparable service, choosing instead to adopt a rate substantially lower that is not related to the computation of the default residential rate to the detriment of master-meter customers; and, (2) the Commission failed to consider the adverse impact on master-metered MHP owners of its discriminatory rate decision. As such, the Petition for Review should issue.

**B. The Commission Set An Unreasonably Discriminatory Rate And Violated Public Utilities Code §739.5 By Setting The Master-meter Discount Using A Different Rate From That Which PG&E Charges Residential Tenants Of Parks It Serves Directly.**

The Commission stated that WMA failed to demonstrate that any claimed discrimination was unreasonable. Decision 12-08-046 at 11. Iin this case, however, it is unreasonable because it adopted a different charge for identical service to identically situated customers when those customers were served by master-metered MHP owners instead of PG&E.

There is no dispute that when PG&E serves residential tenants within a directly-served MHP it charges residential rates. Section 739.5 requires the Commission to compensate master-metered MHP owners for service to its resident tenants at PG&E’s cost capped at the average cost of providing comparable service. PG&E’s residential rate charged to directly-served MHP residential tenant customers is the average cost of providing comparable service. WMA submits that the only rate relevant to setting the differential for master-metered MHPs is the same rate PG&E charges to directly-served MHP residential customers. The Commission’s failure to do so is unreasonably discriminatory in contravention of Section 453(c) and Section 739.5.

The Commission rejected WMA’s Request for Rehearing stating that, “the rehearing application provides no reason why all electricity delivered to any mobilehome park must be priced the same way, regardless of the facilities in place at different mobile home parks…” Decision 12-08-046 at page 12. On the contrary, it is clear that Section 739.5 and 453(c) require that the Commission must do exactly that: set the discount at the same rate that PG&E charges when serving the same customers through direct service. In PG&E’s service territory, that rate is the residential rate. PG&E’s tariff, Schedule E-1, makes no distinction among residential customers.[[2]](#footnote-2)

The Commission’s failure to set the differential at the same rate as that charged by PG&E to serve its directly-served resident tenants of MHPs rests on theoretical distinctions that do not exist in practice or where otherwise irrelevant to the underlying proceeding leading to the Commission’s decision on rehearing. The Commission stated that WMA failed to acknowledge a difference “between direct service to tenants by PG&E or bulk delivery to the park owner at the master-meter**.”** Decision 12-08-046 at 12. This “difference” is both irrelevant and based upon an assumption that is not possible. It is irrelevant because the salient comparison is between service to residential tenants of master-metered MHPs and PG&E’s directly-served residential tenants of MHP. This is the comparison required by Section 739.5 when setting the discount to compensate owners for their expenditures to deliver service in place of PG&E.

Moreover, the Commission’s decision is based upon an erroneous assumption that master-metered MHPs buy “bulk power.” To the contrary, master-metered MHP owners purchase residential electricity at the full bundled rate from PG&E as a residential, end-use customer for use on private property. This is wholly distinct from a public utility or other load serving entity that purchases wholesale “bulk power.” Most important for this case, master-metered MHP owners do not pay wholesale commodity rates for electricity.[[3]](#footnote-3) MHP owners buy electricity at the residential rate. Therefore, the word “bulk power” as used by the Commission to create a distinction to justify a rate differential is entirely meaningless.

To be clear, the owner at the master-meter is not “buying in bulk” but rather buying at the same rate the residential customer would pay if directly-served and then taking a credit for providing the service that PG&E is not providing. By failing to properly set the discount, the Commission is therefore transferring revenues from the master-metered MHP owner to PG&E for services PG&E does not provide. Contrary to the Commission’s statement that “WMA also fails to acknowledge that the rate calculation for “one set of MHPs” is required by statute to rely on PG&E’s cost of providing “comparable services” (Decision 12-08-046 at 12), WMA is in fact attempting to have the Commission do just that —base the calculation on the rate that directly-served MHP tenants pay to PG&E and not on a fictional rate that is paid by no other customers in PG&E’s system. WMA requested that the Commission use the same rate for comparable services when a master-metered MHP owner is providing the service as PG&E would use if it provided the service.

The Commission implies that setting residential rates for the residential class as a whole is not the proper basis for setting the master-metered MHP differential because those rates are set in proceedings that “respond to policy considerations that apply to the residential customer class as a whole.” This is a distinction without a difference since resident tenants of MHPs are residential customers. No policy considerations are identified by the Commission in these two decisions that differ between residents of directly-served MHPs and residents of master-metered MHPs relevant to setting the discount.

The Commission’s decision argues that this principle is “without regard to what type of customer is buying that electricity or what facilities are used.” Decision 12-08-046 at 12. However, there was no showing that the master-metered MHP residents in its service territory are different than its directly-served MHP resident customers. In fact, there was no showing anywhere in the record that compared master-metered MHP resident customers to directly-served MHP customers. Differences in facilities are likewise irrelevant because the only relevant facilities are those used by the utility to serve MHP residents directly. The average cost of so doing is exactly what PG&E’s residential rate represents and should be the basis for the calculation of the discount. Accordingly, the Writ of Review should issue.

**C. The Commission Denied Master-Metered MHP Owners Equal Protection When It Failed To Consider The Adverse Economic Impact On Master-Metered MHP Owners To The Advantage Of PG&E In Setting The Rate For Recovery Of Costs To Serve Resident Tenants Of Master-Metered MHPs Outside The Requirements Of Public Utilities §739.5.**

The only relevant comparison in this case is the rate that PG&E charges to directly-metered residential tenants of MHP parks so that master-metered MHP owners are properly compensated for providing the same service to the same class of customers, namely directly-served residential tenants of MHPs.

The charge in question is the MHP discount set in the PG&E General Rate Case (Application 10-03-014) pursuant to Public Utilities Code Section 739.5(a), *emphasis added*:

739.5 (a) The commission shall require that, whenever gas or electric service, or both, is provided by a **master-meter** customer to users who are tenants of a mobilehome park, apartment building, or similar residential complex, the **master-meter** customer shall charge each user of the service *at the same rate which would be applicable if the user were receiving gas or electricity, or both, directly from the gas or electrical corporation*. The commission shall require the corporation furnishing service to the **master-meter** customer to establish uniform rates for **master-meter** service at a level which will provide a sufficient differential to cover the reasonable average costs to **master-meter** customers of providing submeter service, except that *these costs shall not exceed the average cost that the corporation would have incurred in providing comparable services directly to the users of the service*.

The Legislature clearly stated its intent with respect to the setting the differential: The legislative history of Section 739.5 (Stats 1976 ch 923, effective September 14, 1976, *emphasis added*), provides:

SECTION 1. The Legislature hereby finds and declares as follows:

(a) Increasing numbers of the state's population are residing in mobilehome parks.

(b) It is in the best interests of the state to protect such tenants by taking reasonable steps to remove conditions which would necessitate rent increases by such parks.

(c) Many mobilehome parks own and maintain distribution facilities for gas and electric service to park tenants.

*(d) The California Public Utilities Commission has for many years required that parks charge for submetered gas and electric service to tenants the same rate as would be charged by the utility company if serving the tenants directly.*

(e) The existing tariffs of regulated public utilities have enabled the mobilehome parks to recoup a part or all of their expenses in maintaining and operating such submetered distribution systems.

*(f) The rates charged by a regulated public utility to a mobilehome park and the rate charged by such park to its tenants should provide a differential sufficient to enable the park to cover its costs of providing submetered gas and electric service.*

(g) The maintenance of such differential will benefit tenants of mobilehome parks by enabling them to have the full benefit of "lifeline rates."

Thus, it is clear the only task before the Commission in setting the differential is to use the “same rate as would be charged by the utility company if serving the tenants directly.” In this case, that rate is the residential rate, Schedule E-1. Note that nowhere does the Legislature declare that the utility shareholders or ratepayers are to be protected by the Commission by keeping the discount as low as possible.

Instead, the Commission, improperly created, in essence a new “quasi-multi-family” rate that is paid by no other customer including the submetered tenants or the directly-served MHP customers. Therefore, in setting the differential in the underlying case in this manner, it results in an unreasonable difference in rates charged by MHP owners to their tenants and the rate MHPs in turn, charge for serving those tenants.

As the above citation shows, Section 739.5 was intended to provide compensation to master-metered MHP owners for the cost of delivering electricity service thus allowing the local utility to avoid those same costs. In doing so, a primary purpose of the discount is that it “should provide a differential sufficient to enable the park to cover its costs of providing submetered gas and electric service.” Section 739.5. Here, however, the Commission failed to consider the adverse impact of lowering the discount from PG&E’s direct service residential service rate, yet it is required to do so. The Commission ignored material economic impacts that should have been central to its decision in setting the level of the master-metered MHP discount. In failing to assess the real impact of lowering PG&E’s master-metered MHP published discount by 79% when PG&E’s own rates were rising 14%, the Commission abused its discretion.[[4]](#footnote-4) Such a change in rates required an investigation by the Commission into the consequences of its decision and whether those consequences conformed to the requirements of Section 739.5. The Commission did not consider the economic impact on master-metered MHP owners of its precipitous lowering of the discount, nor the potential resulting impact on provision of safe, reliable service to master-metered MHP residential tenants (*See* *e.g*., Public Utilities Code §2794(a)(1). Since the Commission’s action will give an unfair advantage to both PG&E in delivering utility service and to owners of directly-metered MHPs in providing housing services over master-metered MHP owners providing the same service to the same class of customers, the Commission should have assessed the economic impact of its action. *See* United States Steel Corp. v. Public Utilities Com. (1981) 29 Cal.3d 603, 610; 175 Cal.Rptr. 169, 629 P.2d 1381. As the court noted in U.S. Steel Corp., “[c]oncomitant with the discretion conferred on the commission is the duty to consider all facts that might bear on exercise of that discretion. The commission must consider alternatives presented and factors warranting adoption of those alternatives. City of Los Angeles v. Public Utilities Com. (1975) 15 Cal.3d 680, 693-695, 125 Cal.Rptr. 779, 542 P.2d 1371; City and County of San Francisco v. Public Utilities Com. (1971) 6 Cal.3d 119, 129, 98 Cal.Rptr. 286, 490 P.2d 798. The Court annulled the Commission’s decision to exempt certain freight shippers from regulation, thus conferring an economic advantage on one group of commodity shippers over others providing the same service, finding that the adverse impact on one group of shippers was material and that the Commission had a duty to consider alternatives to the discriminatory pricing adopted that would not have the same impact.

Because the impact of the Commission’s decision is so materially detrimental to master-metered MHP owners when providing the same service to the same class of customers as PG&E’s directly serviced MHP residential tenant customers, it results in preference, disadvantage and prejudice in violation of Section 453 c). See Cal. Portland Cement Co. V. Public Util. Com. (1957) 49 Cal.2d 171, 175, 315 P.2d 709. As such it should be annulled.

**D. Conclusion**

For the reason given, this Court should grant the petition and issue a peremptory Writ of Review directing the respondent to vacate its orders. The respondent Commission should be instructed to enter a new and different order providing that the differential be set using the same rate PG&E charges to directly-served mobilehome MHP tenants within its service territory.

DATED: September 21, 2012 Respectfully submitted,

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**CERTIFICATE OF LENGTH OF PETITION**

The undersigned, counsel for the plaintiffs and appellants, hereby certifies pursuant to Rule 14(c)(1), California Rules of Court, that the foregoing petition is proportionately spaced, has a 13-point typeface, and contains 4,493 words as computed by the word processing program (Microsoft Office Word 2007) used to prepare the petition.

DATED: September 21, 2012

EDWARD G. POOLE

1. While PG&E does have a separate master-metered multi-family tariff (Schedule ES), that tariff provides

   for the same exact rates as applied to residential customer under Schedule E-1. PG&E does not have a

   direct service multi-family tariff. [↑](#footnote-ref-1)
2. There are some distinctions based on geographical location in setting the baseline usage rates that are not at issue in this proceeding. PG&E also offers Schedule EL-1 to qualifying low-income customers and again that rate is a universal residential rate that only makes a distinction among geographic location in setting the baseline rate. [↑](#footnote-ref-2)
3. As noted in supra footnote 1, the responsibility and authority to regulate wholesale transactions is reserved to the Federal Energy Regulatory Commission under the Federal Power Act. In fact, if this were a bulk power transaction, the roles would be reversed, and PG&E would have to justify its cost of service for delivering power to the master-meter customer rather than receiving a discount based on a residual of PG&E’s total residential rate [↑](#footnote-ref-3)
4. The discount that is realized by a master meter customer is the one published in the master meter tariff Schedule ET. PG&E’s residential rate structure was not changed significantly in the decision in dispute and thus master meter customers suffered the entire 79% reduction in the discount despite any claims to the contrary. [↑](#footnote-ref-4)