IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOR THE FIRST APPELLATE DISTRICT
Division Three

WESTERN MANUFACTURED HOUSING COMMUNITIES ASSOCIATION	)	
	)	NO. A136617
Petitioner,	)	
	)	California Public
v.	)	Utilities
	)	Commission
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA	)	Application 10-03-014
Respondent,	)	
	)	Administrative
PACIFIC GAS & ELECTRIC COMPANY and THE UTILITY REFORM NETWORK,	)	Law Judge Thomas R. Pulsifer
Real Parties in Interest.	)	

REPLY OF THE WESTERN MANUFACTURED HOUSING COMMUNITIES ASSOCIATION TO THE ANSWERS OF PACIFIC GAS & ELECTRIC, THE UTILITY REFORM NETWORK, AND THE CALIFORNIA PUBLIC UTILITIES COMMISSION

EDWARD G. POOLE, ESQ., SBN 120976
Anderson & Poole, P.C.
601 California Street, Suite 1300
San Francisco, CA 94108-2818
Telephone: (415) 956-6413

IRENE MOOSEN, ESQ. SBN 126887
53 Santa Ynez Street
San Francisco, CA 94112
Telephone: 415-587-7343

Attorneys for Petitioner, Western Manufactured Housing Communities Association

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

STATUTES AND RULES

COMMISSION DECISIONS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOR THE FIRST APPELLATE DISTRICT
Division Three

WESTERN MANUFACTURED HOUSING COMMUNITIES ASSOCIATION	)	
	)	NO. A136617
Petitioner,	)	
	)	California Public
v.	)	Utilities
	)	Commission
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA	)	Application 10-03-014
Respondent,	)	
	)	Administrative
PACIFIC GAS & ELECTRIC COMPANY and THE UTILITY REFORM NETWORK,	)	Law Judge Thomas R. Pulsifer
Real Parties in Interest.	)	

I. INTRODUCTION

This Petition for Writ of Review requests that the Court review and vacate the California Public Utilities Commission decision that adopted an unduly discriminatory rate for delivery of electric service to a subset of residential customers within PG&E's service territory: those that receive service through private master-metered service facilities instead of receiving direct service from

PG&E.[1] The Commission has a statutory obligation to set the discount to compensate master-metered mobilehome park (MHP) owners that provide electric service for costs otherwise incurred by PG&E when it does not have to provide that same service directly. The discount is set using cost information and a calculation methodology that is set forth in Section 739.5 of the Public Utilities Code and the Commission decisions implementing that code section. Specifically, the Commission must cap the rate at PG&E's average cost of providing the same service. The Commission did not do so in this case.

The Commission should have set the discount rate with reference to PG&E's costs to directly serve MHP customers, that is "based on PG&E's costs to serve residential customers as a whole" because that is the methodology adopted by the Commission in its rulemaking that designed the calculation methodology for precisely this purpose. See Decision 04-11-033, Conclusion of Law 13; Affirmed on Rehearing in Decision 05-04-031. As the Commission stated in that decision, "[n]othing in the record suggests that the facilities used to directly serve MHP customers are materially different from those used to serve other residential customers." *Id.*, at page 16. In this case, the Commission did not follow Section 739.5 or its own precedent and, instead, exclusively relied on PG&E's cost estimates for serving multi-family residences in setting the discount

[1] Decision 11-12-053 and Decision 12-08-046, *Rehearing Denied.*

rate, resulting in a much lower rate for providing service to master-metered MHP residents than directly-served MHP resident customers of PG&E. The adopted rate was also significantly lower than the adopted rates of the prior 25 years, creating significant rate shock and financial hardship for master metered MHP owners.[2] Exhibit 15, WMA Surrebuttal, at page 21.

WMA made clear in the Application for Rehearing and the Petition for Writ of Review that because the adopted rate unlawfully discriminates against master-metered MHP owners in favor of PG&E by unfairly and inadequately compensating master-metered MHP owners for provision of electric service to their residents, the impact of the Commission's decision in this case was to severely economically burden master-metered MHP owners. While Section 739.5 does not guarantee actual cost recovery to master-metered MHP owners for providing electric service, it does guarantee recovery of PG&E's actual cost of providing direct service. Failing to follow Section 739.5 resulted in significant financial hardship to master-metered MHP owners providing electric service in PG&E's service territory while concurrently providing unfair economic advantage to PG&E. See Exhibit 3, WMA Application for Rehearing of Decision 11-12-053, at

[2] Contrary to the Commission's claim, the published discount as shown in the ET tariff is now 79% lower than it was previously. This fact is indisputable. Based on the plain reading of Schedule ET-1, the discount was $0.37925 per space per day. It is now $0.07721—79% lower.

pages 1-5 and page 17. PG&E is unreasonably enriched in two respects: 1) to the extent that the discount is inadequate, PG&E retains those revenues[3]; and 2) because master-metered MHP owners are restricted in their ability to recover their costs to provide electric service by the Decision, it forces master-metered MHP owners to transfer their residents to PG&E direct service in order to mitigate further financial losses. PG&E does not face any similar risk of falling short in recovery of their actual costs and their rate of return through Commission-adopted rates.

Therefore, it is clear that in failing to use PG&E's direct service avoided cost in setting the discount rate and neither considering the unjust and unreasonable economic hardship to master-metered MHP owners nor the unfair economic advantage to PG&E by its action, the Commission's decision is unduly discriminatory as a matter of law and should be vacated. None of the arguments presented by the Commission, PG&E or TURN in their Answers is dispositive of WMA's Petition for Writ of Review as discussed fully below. Accordingly, WMA

[3] Under traditional cost of service ratemaking, PG&E provides estimates of its revenue requirement in advance of the years in which it collects those revenues. If PG&E can cut its actual costs below those that were used to estimate its adopted revenue requirement, PG&E retains those revenues. There is no rule that any surplus revenue be redistributed to reduce rates to other customers. Therefore, use of surplus revenues is discretionary to PG&E and there is nothing to prevent distribution to those revenues to its shareholders.

respectfully requests that the Court grant relief as requested in the instant Petition for Writ of Review.

II. LEGAL ARGUMENT

A. The Commission Failed To Set The Discount Consistent With The Legal Mandates of Section 739.5

The Commission provided a helpful description of the process required to arrive at a properly determined discount rate. CPUC Answer at pages 5-7. Unfortunately, it did not apply its own adopted methodology. The Commission cites its "final and authoritative" decision in *Investigation to Re-Examine Submetering Discount*, [Decision 04-11-033], specifically, Ordering Paragraph 1 that requires the discount to be set at the level of a utility's avoided costs for "providing service to the [mobile home park] tenant directly..." (*Id.* at p. 47.) At Conclusion of Law 11, the Commission confirmed this by stating, "(t)he term 'comparable services' refers to services provided to directly-served MHP customers of the utility..." In the underlying case, however, it did not look at the costs underlying PG&E's direct service *rates*, that is, the costs of providing residential service as a whole. The E-1 rate schedule adopted by the Commission makes no distinction whatsoever between all residential and multi-family customers and the supporting analysis in the decision never included multi-family

costs separately. In contrast, the Commission relied solely upon multi-family service cost data to set the discount. While WMA disputed the accuracy and relevance of these cost estimates in the underlying case, even if it assumed, arguendo, that this evidence were accurate, it is, as a matter of law, an improper basis on which to calculate the discount. That is because PG&E's direct service rates charged to directly-served MHP residents are the same as PG&E's residential rate, which is in turn based on costs of residential service as a whole. See Petition for Writ of Review, page 15. Multi-family service costs are taken into account but subsumed into the cost calculation for the residential customers as a whole. The CPUC provided, by law, a discount based on a subclass of residential customers after charging the ET customers for the exact same service at the full class rate. This puts PG&E at an unfair advantage (previously acknowledged by the Commission in Decision 00-04-060 at p. 113, but ignored in this later decision) by receiving revenues based on one set of costs and providing a discount based on a different set of costs. By relying solely on multi-family cost data, the Commission failed to implement its cited Ordering Paragraph 1.

The Commission's discussion of its own precedent is distorted by its omission of Conclusion of Law 12 in Decision 04-11-033, which states, "The discount must be determined based on the average cost the utility incurs in directly serving MHP customers that is avoided by the utility when the tenant is

served through a submeter" (Decision 04-11-033 Conclusion of Law 12) and its discussion in the body of the decision where the Commission found "[n]othing in the record suggests that the facilities used to directly serve MHP customers are materially different from those used to serve other residential customers." Decision 04-11-033 at page 16. Indeed, when the Commission set the rate for PG&E's directly-served MHP residential customers, it properly relied upon residential costs as a whole. Given the statutory mandate to base the discount on the same costs as direct service, and the disparity between the adopted discount rate and the direct service rate, it is clear that the Commission erred as a matter of law in failing to set the discount rate on the same basis as PG&E's direct service rate. Clearly, there should be no difference with respect to this element of the discount calculation. The discount adopted by the Commission relying on costs other than direct service avoided costs is clearly unduly discriminatory and therefore unjust and unreasonable.

B. The Dispute In Question Concerns The Utility's Avoided Costs And Nothing More.

WMA and the Respondents agree on the nature of the controversy in the instant case. To be clear, WMA is not disputing here the evidentiary record in the underlying proceeding despite the Respondents' constant attempts to obfuscate

the legal issues by claiming it time and time again. This Petition seeks relief because the Commission's decision erred as a matter of law. Even PG&E admits that the Commission does not have free reign: if the attending circumstances and conditions are substantially similar, then unlawful discrimination can be found. *Cal. Portland Cement Co. v. Southern Pacific Co.* (1939) 42 CPUC 92, 117. In this case, the "attending circumstances and conditions" are exactly the same – residential customer costs.

The Commission attempts to show that there are "unique characteristics" that "cause them to be charged a rate that accounts for their specific circumstances" which, in turn, make reliance on multifamily cost data relevant and legally permissible. CPUC Answer at page 14. Even if it were true, it would be irrelevant because the controlling legal authority requires use of the utilities' avoided costs in providing direct service, not the MHP owners 'costs of providing service to their submetered MHP resident customers. The dispute in question is not about master-metered MHP facilities, but the utilities' average costs in providing direct service as directed by statute. The Commission argues that the Petition "fails to acknowledge the legitimate ratemaking principles – and a statutory requirement- supported the use of multifamily costs to calculate the master-meter discount." CPUC Answer at page 14. This is where the Commission fails to acknowledge the mandate of 739.5 and its own precedent. It

cannot justly and reasonably use one set of costs in setting a rate for directly-served customers by using residential service costs as a whole as adopted in PG&E's general rate case and then claim that different cost data, namely multi-family only, is really the "avoided cost" when setting the discount, particularly when the master-meter customer pays the same identical rates as directly served customers pay. It is either one or the other, but not both.

C. The Adoption Of The Discount Is Discriminatory

The multifamily cost data presented in evidence in the underlying case may well be accurate but reliance on it, to the exclusion of cost data admitted and rates adopted on that basis for PG&E but not for the discount, is wholly unjust and unreasonable. Respondent's entire discussion of the underlying record and its final decision fails to reveal the "legitimate ratemaking concern" that supports using one set of higher costs when setting PG&E's direct service -- the statutorily mandated determinant for setting the discount -- and then relying on an entirely different set of lower cost data when actually setting the discount. This "difference" is clearly unreasonable as a matter of law.

The Commission attempts to argue that no undue discrimination can be found if the differences between the rates in question can be shown to correspond directly to legitimate ratemaking and statutory considerations. CPUC

Answer at page 14. However, the Commission's discussion of this point highlights the Commission's own divergence from statute and precedent in setting the discount. The Commission describes its actions in the underlying proceeding stating, "the Commission found that multifamily cost data best reflected the actual costs that *PG&E would incur if it were to provide services comparable to those provided by a mobilehome park submeter system.*" CPUC Answer at page 24 *emphasis added.* The Commission then concludes "that finding alone should be enough to show that the master-meter discount is not unduly discriminatory." CPUC Answer at page 24. This discussion shows precisely how far outside the law the Commission diverged in using residential service costs as a whole to calculate PG&E's direct service rate yet using multifamily service costs to set the discount.[4] In its final and authoritative decision reaffirming its adopted methodology for setting the discount, the Commission described the law correctly where it stated:

> The term [comparable services] appears in Public Utilities Code Section 739.5(a) but it is not specifically defined. This statutory provision requires MHP owners to charge the same rates for electricity and natural gas that would be applicable if the utility served each park tenant directly. It also requires the utilities to provide electricity and/or natural gas to the MHP owner at a discount. The discount is intended to reimburse the MHP owner for

[4] The Commission adopted the use of PG&E's submitted cost data for the 2011 General Rate Case in Decision 11-12-053. The Settlement Agreement adopted by the Commission also explicitly refers to the use of PG&E's cost data for the revenue allocation process that computed residential rates. Decision 11-12-053, Appendix B at page 9.

> the reasonable average cost of providing submetered service. However, the statute also imposes a cap on the discount. It is not to exceed the average cost that the utility would have incurred in providing comparable services to the tenant directly. Because the parties agreed that the records of the various MHP owners are not adequate to determine their average cost of serving MHP tenants, *the average cost the local utility would have incurred in directly serving the MHP tenants determines the level of the discount.* Decision 05-04-031 at pages 2-3.

Clearly, the Commission understood until now that "comparable service" is not meant to be PG&E's cost estimate to provide service through a submeter, as is done by master-metered MHP owners. That is not, by definition, direct service. Clearly, Section 739.5 requires the Commission to use PG&E's actual costs of providing direct service to mobilehome park residents as used in computing the rates for those directly-served residents, as it does in numerous locations throughout its service territory, not a fictitious MHP situation where PG&E provided fictitious "submeter-like services to tenants on the premises of a mobile home park." CPUC Answer at page 25. The Answer submitted by PG&E and TURN similarly points to the evidence it presented in the underlying proceeding and the Commission's discussion in the final order to wrongly assert that there was an evidentiary basis in the record for the Commission's adopted discount calculation. PG&E/TURN Answer at pages 6-9. Taking PG&E's multifamily service cost data into evidence in the underlying proceeding was an impermissible detour from the statutory requirements and precedential decision

authority method it should have followed in setting the discount. Clearly, these "justifications" do not support the Commission's conclusion that there was no undue discrimination is found in its final decision. Undue discrimination is exactly what it has described in its Response.

D. The Commission Callously Ignored Its Own Precedent

The Commission was bound by statute and its own decisions to use the same cost structure used to determine the rate PG&E is authorized to charge for actual direct service delivered to MHP residents when calculating the discount. The Commission acknowledges this by correctly stating that "comparable services" are the specific services a utility would provide at a mobile home park in order to serve park tenants. CPUC Answer at page 25. WMA agrees. Inexplicably, the Commission goes on to contradict the plain language of its own final and authoritative decision on the subject. The Commission concludes "[t]he statute specifically *seeks to prevent the services "provided to residential ratepayers as a whole"* from being used in a calculation designed to determine what costs a utility avoids when a mobile home park owner delivers electricity over a submeter system." This statement is entirely false. The Commission's own cited, final and authoritative decision directly contradicts this assertion where it stated in Decision 04-11-033, Conclusion of Law 13: "*The discount can be*

calculated using a marginal cost method based on the costs to serve residential customers as a whole, if it is determined that the costs are approximately the same as those incurred in directly serving MHP tenants." Emphasis added.[5] It is important to note in this case that PG&E used and the Commission adopted residential costs as a whole as the basis for setting its direct service rate it is authorized to charge MHP residents. See Decision 12-08-046. The same cost basis should have been used to set the discount. It is clear that the Commission did not use its own established precedent in this case, as it claims.

E. Directly Served MHP Residents Are Identically Situated With Master-Metered MHP Residents And Any Rate Difference As A Matter Of Law Must Be Found To Be Discriminatory

The Commission's discussion of the status of master-metered MHP electric service as "specialized type of service" and the discount as "special" is of no consequence and confuses the question before the Court in this Petition: that is, whether the Commission unduly discriminated when it failed to follow the mandate to use PG&E's direct service costs to set the discount. The Commission's pointing to differences between the provision of PG&E direct

[5] Real Parties in Interest PG&E and TURN similarly claim that the Petition fails to identify authority to support the proposition that the only relevant rate in setting the discount is the PG&E direct service residential rate charged to MHP customers. This decision language was cited in WMA's Application for Rehearing, pp. 5-6. PG&E's assertion is therefore, false.

service to MHP residents and master-metered MHP electric service is irrelevant. If such a difference existed, to be non-discriminatory, then the master-metered MHP rate, Schedule ET, similarly should have a different distribution rate. Instead Schedules E-1 and ET are identical.

It is instructive to note that while the Commission attempts to highlight differences that do not actually justify the adopted difference in rates presented in this case, they do not dispute WMA's point, that is, that PG&E direct service to MHP residents and master-metered MHP customers pay the same rate. The only time the Commission turns to different cost data and sets a different rate is when it sets compensation for master-metered MHP owners for providing a service that PG&E avoids. Meanwhile, PG&E collects the higher rate based on the higher cost from both the directly-served MHP customer and the master-meter MHP customer. The Commission's discussion is about distinctions that have no difference.

For purposes of this Petition, both the master-metered customer of PG&E and the directly served customer of PG&E are identically situated: they both take service at a connection point from PG&E and pay a fully-bundled (commodity plus other charges) residential rates for the volume of electricity delivered. It is disingenuous for the Commission and the Real Parties in Interest to argue that direct service customers do not receive a discount which, in turn,

makes them "different" such that they are not similarly situated to master-metered MHP customers. Master-metered MHP customers pay the same rate as directly service customers. The "discount" is a credit for services the utility doesn't provide. The Commission treats both as "similarly situated" for rate classification purposes by charging them the same residential rate because PG&E's costs for serving them are the same. Further, there is no nexus between these "differences" identified in the Commission's discussion and the final adopted discount. Directly served customers do not receive a discount because they do not carry the burden of providing services that the utility usually provides, by definition. Therefore, this "difference" (CPUC Answer at pages 18-22 and PG&E/TURN Answer at pages 12-13) is irrelevant.

WMA also must clarify the point that both Respondent and PG&E/TURN claim, to wit that the WMA Petition confuses "costs" and "rates." CPUC Answer at pages 28-30. This discussion is misplaced and incorrect because the discount is both, by definition and design, a "cost" (PG&E avoided direct service cost as a cap that sets the rate) and a "rate" (the amount charged on a volumetric basis to the quantity of electricity consumed by a customer). In this case, because the discount is ultimately set by an avoided cost cap, it is correct to refer to both

"costs" and "rates" in the context of the instant case.[6] In no case is WMA asserting that master-metered MHP owners are entitled to "free electricity." CPUC Answer at page 30. On the contrary, WMA is asserting that PG&E should not be given revenues for services it does not provide. For the Respondent and Real Parties in Interest to argue now that costs and rates are not equivalent elements in this setting contradicts previous Commission's decisions on this point.

F. In Failing To Assess The Impact On Master-Metered MHP Owners, The Commission Did Not Act Justly Or Reasonably

The Commission's discussion gives the mistaken impression that the "discount" in this case entitles the master-metered MHP owner to receive lower cost electricity than other residential customers. This is not true. The discount in this case is actually a "differential" in the words of Section 739.5 to compensate

[6] The Commission itself acknowledged the equivalence between rates and costs in Decision 07-07-019 (2007 Cal. PUC LEXIS 317). In the only description of the basis for determining the average cost that a utility would otherwise incur for providing distribution service, the Commission considered the costs that the utility saves by allowing a third-party contractor to install new services for residential customers. The CPUC equates utility costs and revenues (revenues being a direct function of rates) (2007 Cal. PUC LEXIS 317, *19) , and then, the Commission states that utility revenues, and by comparison, costs are to be "based on the average distribution revenue per residential customer calculated as the total residential distribution revenue divided by the total number of residential customers." 2007 Cal. PUC LEXIS 317, *27.

the operator for the costs it incurs and PG&E avoids through the provision of service to its submetered tenants. The owner pays full retail rates for all service delivered for end use on its property: common area, public space usage and all submetered residential tenant electricity. The discount is designed to prevent the utility from recovering revenues for services it does not provide; that it "avoids" because the owner is providing them instead. As the Commission acknowledges, the owner is not guaranteed total recovery of actual costs in all cases since the discount is capped at the utility's avoided cost. If a MHP owner's costs are higher than utility avoided costs, that MHP owner operates at a loss unless it can recover those costs in rent. CPUC Answer at page 30. In this case, the Commission not only lowered the discount without regard to the MHP owner's costs, it lowered it below PG&E's avoided cost. In failing to assess the impact on master-metered MHP owners, the Commission failed to consider whether its actions were just and reasonable. In failing to consider PG&E's avoided cost of direct service, it failed to follow the law and unduly discriminated against master-metered MHP owners in setting the discount rate.

III. CONCLUSION

Based on the above legal arguments, Petitioner requests that this Honorable Court grant the issuance of the Petition for Writ of Review and

reverse and annul the decision that harms in a truly significant manner a class of PG&E ratepayers.

DATED: November 20, 2012

Respectfully submitted,
ANDERSON & POOLE, P.C.

EDWARD G. POOLE, ESQ.
601 California Street, Suite 1300
San Francisco, CA 94108
Telephone: (415) 956-6413
Facsimile: (415) 956-6416

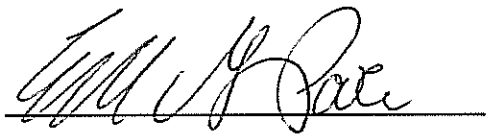
IRENE MOOSEN, ESQ.
53 Santa Ynez Street
San Francisco, CA 94112
Telephone: 415-587-7343

Attorneys for Petitioner, Western Manufactured Housing Communities Association

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 4105 words as computed by the word processing program (Microsoft Office Word 2007) used to prepare the petition.

DATED: November 20, 2012



EDWARD G. POOLE

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Contra Costa, California. I am over the age of 18 years and not a party to the above-numbered action; my business address is Anderson & Poole, 601 California Street, San Francisco, California.

CERTIFICATE OF SERVICE BY HAND DELIVERY

I hereby certify that I served the foregoing REPLY OF THE WESTERN MANUFACTURED HOUSING COMMUNITIES ASSOCIATION TO THE ANSWERS OF PACIFIC GAS & ELECTRIC, THE UTILITY REFORM NETWORK, AND THE CALIFORNIA PUBLIC UTILITIES COMMISSION by placing the documents in an envelope addressed to the persons at the addresses listed below and providing them to a professional messenger service for hand delivery on the following parties:

Frank Lindh
General Counsel
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Paul Clanon
Executive Director
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Gail L. Slocum
Randall J. Litteneker
Pacific Gas & Electric Company
77 Beale Street
San Francisco, CA 94105

Matthew Freedman
The Utility Reform Network
115 Sansome Street, Suite 900
San Francisco, CA 94111

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 20, 2012, at San Francisco, California.

Sandra L. Fritts

SANDRA L. FRITTS