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Decision 97-07-009 July 16, 1997

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RICHARD L. STEINER,

Complainant,

vs.

PALM SPRINGS MOBILEHOME PROPERTIES, a California general partnership, dba SAHARA MOBILEHOME PARK, AND SOUTHERN CALIFORNIA GAS COMPANY,

Defendants.

C. 96-08-028
(Filed August 13, 1996)

ORDER GRANTING REHEARING OF DECISION 97-02-032

I. SUMMARY

Applicant, Richard L. Steiner, filed a complaint with us requesting, essentially, an order prohibiting an increase in natural gas utility charges that had been approved by the Rent Review Commission of the City of Palm Springs ("Rent Commission") for the tenants of Sahara Mobilehome Park ("Sahara Park"), and an order requiring Southern California Gas Company (SoCalGas") to enforce its residential tariff applicable to the tenants.[1]

[1] Applicant owns and resides in a mobilehome located on leased space in Sahara Park and is among those similarly situated who are referred to herein as "tenants."

In D.97-02-009, we dismissed the complaint on a motion by SoCalGas on the grounds that the Rent Commission had "clearly exercised jurisdiction over the matter of replacement of the Sahara Park submetered gas system," that its order was still subject to review by the Superior Court, and that this Commission "does not have exclusive jurisdiction over any and all matters having any reference to the regulation and supervision of public utilities." (D.97-02-009, mimeo, Conclusions of Law Nos. 1 and 2, p. 4.)

In dismissing the complaint, we focused on the procedural aspects of the case and the fact that the case originated with the Rent Commission. We therefore did not address the essential issue implicated in Applicant's complaint, which is: Can a Rent Commission, pursuant to local ordinances, authorize a mobilehome park owner to charge its tenants more for the cost of natural gas utility service than is provided for in the utility tariffs approved by this Commission in compliance with Cal. Pub. Util. Code Section 739.5?[1]

Upon review of the application for rehearing, however, we now conclude that by not reaching or resolving this issue, we effectively delegated our exclusive ratemaking jurisdiction to the Rent Commission and the California Superior Court, a delegation we cannot make consistent with Section 739.5. This result was obviously not intended and can be attributed to misconstruing the controlling issue in the complaint as one involving only the question of a tenant's rent increase. It was legal error to conclude that because "the Rent Commission has clearly exercised jurisdiction over the matter of replacement of the Sahara Park submetered gas system...," the utility charges ordered by the Rent Commission for the submetered system were properly within the Rent Commission's jurisdiction, and that we could defer approval or disapproval of these utility charges to the Superior Court. As a consequence of our decision, we are now faced with an order of the

[1] All statutory section references herein are to the California Public Utilities code, unless otherwise indicated.

Superior Court issued June 6, 1997 which upholds the Rent Commission's increase of utility charges for Sahara Park tenants, an order in direct conflict with the utility charges duly prescribed by this Commission.

Accordingly, pursuant to Sections 1731 and 1732, there is good reason to grant rehearing of D.97-02-032, and to affirm that, to the extent the Rent Commission has ordered a "rent" increase to cover the costs of the natural gas submeter system incurred by Sahara Mobilehome Park ("Sahara Park"), the Rent Commission has impermissibly intruded on the constitutional and statutory ratemaking authority of this Commission. Further, as we explain in the discussion which follows, the Rent Commission's order is invalid even if it is approved by the California Superior Court. Sahara Park, therefore, shall not oblige the tenants of the park to pay the increased charges for the submeter system utility costs in their rent or other surcharge.[3]

We note at the outset that the issue whether mobilehome park utility costs may be added to or included in rent charges is not a matter of the first impression before the Commission. In an investigatory proceeding (OII), the Commission determined in 1995 that mobilehome park owners are prohibited from recovering the costs of repairing and maintaining submeter system, including replacement costs, in rent charges or surcharges. (D.95-02-090, Re Rates, Charges, and Practices of Electric and Gas Utilities Providing Services to Master-metered Mobile Home Parks, 58 CPUC 2d 709, at pp. 717-718, and Ordering Paragraph 4, p.721, rehearing denied, D.95-08-056.) The California Supreme Court upheld our decision in denying a petition for review filed by representatives of mobilehome park owners. (Western Mobilehome Parkowners Association and De Anza Properties-X v. Public Utilities Commission of California, Case No. S048893, review denied, October 12, 1996.)[4]

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[3] The submeter system consists of the facilities delivering natural gas from the mobile home park's master-meter to the individual meters of the mobilehomes.

[4] At the time of issuing its order, the Rent Commission acknowledged that it knew this Commission's OII decision was before the California Supreme Court. It nevertheless chose to disregard the rules and

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As the law stands, therefore, a mobilehome park owner, such as Sahara Park, is prohibited from collecting utility costs from tenants, no matter the rubric under which the utility costs are charged, except for those costs included in the applicable residential tariff of the serving public utility, in this case Southern California Gas Company (SoCalGas). Sahara Park's costs of maintaining or replacing the natural gas submeter system are utility costs and their recovery is subject to the exclusive jurisdiction of this Commission.

II. BACKGROUND

Section 739.5 prescribes this Commission's specific mandate and the rules it must apply in determining the utility charges tenants of a mobilehome park and the park owner pay for electricity or natural gas delivered first by a public utility to the mobilehome park's master-meter, and then through the park's submeter system to the individual tenant meters. The applicable rates and rules are set forth in the public utility's tariffs which are applicable to the park owners and, separately, to the residential tenants of the parks within the public utility's service territory.

The park owner's tariffed rates are applied to the entire gas or electric usage of the park as registered by the master-meter. The master-meter bill is paid by the park owner to the public utility. The tenants in turn pay the park owner according to their individually metered usage and the rates provided in the Commission-approved residential tariff. Section 739.5(e) requires that the park owner include in the tenant billings certain usage and rate information, which is essentially the same information that is generally included by a public utility in its customer billings.

Additionally, pursuant to Section 739.5(a), the park owner receives a credit for operating and maintaining the submeter system between the master meter and the

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orders we issued in D.95-02-090 and awarded the misnamed "rent" increase without waiting for and according the deference owed the Court's decision, which as we have noted, upheld D.95-02-090. (See In Re Hardship Rent Increase Petition of Palm Springs Mobil Home Properties, a California general partnership, Proprietor of Sahara Park, Findings and Decision, Case No. 96-01-023-PTN-42 ("Rent
(continued on next page)

individual mobilehome meters.[5] This Commission determines the amount of the credit for all the park owners served by the public utility. As Applicant's evidence has demonstrated in this case, the credit is reflected by the public utility in the park owner's master-meter bill. When a park owner pays the master-meter bill, therefore, he automatically receives the credit for the submeter system costs. The directives of Section 739.5, as explained in the OII decision, D.95-02-090, and discussed more fully below, preclude the park owner from receiving more for the submeter system costs through tenant rent charges or surcharges.

On August 13, 1996, Applicant filed a complaint with the Commission against Sahara Park and SoCalGas. The complaint alleges that Sahara Park impermissibly sought and the Rent Commission unlawfully approved an increase in the tenants' utility charges in the guise of a "hardship rent increase." The Rent Commission's findings indicate that this increase is predominantly based on submeter system costs claimed by Sahara Park.[6] The complaint also alleges that SoCalGas, in failing to oppose this increase in utility charges, failed to enforce its applicable tariffs and thereby violated this Commission's orders.

Among the remedies requested in Applicant's complaint is a Commission order prohibiting Sahara Park from collecting the rent increase ordered by the Rent Commission. In addition, if Sahara Park were not to comply, the complaint asks that the Commission require SoCalGas to withhold all submetering credits from Sahara Park and

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Commission's Order"), at ¶ 88, pp. 21-22.)

[5] Section 739.5(d) provides that the mobilehome park owner is responsible for the costs of operating, maintaining and repairing the submeter system between the master-meter and the individual meters of the mobilehomes.

[6] Although a significant portion of the Rent Commission order discusses the submeter costs in justifying the "rent" increase sought by Sahara Park, it is not clear from the present record precisely how much of the total "rent" increase was based on the submeter system costs submitted by Sahara Park. The order, for example, references in connection with the "rent" increase the finding "that the hardship suffered by Sahara Park in the replacement of the submeter system in the same year totaled $55,305.48. A rent increase of $18.07 a month was approved for 120 consecutive months. (Rent Commission's Order, supra, at ¶ 69, p.16 and Findings 1 and 4, pp. 25-26.)

to refund the credits to the affected tenants. Alternatively, the complaint asks that the Commission exercise its authority under Sections 2102, 2106, and 2111 to seek injunctive relief and civil penalties against SoCalGas and Sahara Park for violations of the law and Commission orders.[2]

SoCalGas and Sahara Park individually answered the complaint. SoCalGas also filed an abbreviated, two-page motion to dismiss which effectively relies on the simple assertion that the Rent Commission had properly assumed jurisdiction of a rent control matter, and that pursuant to Code of Civil Procedure Section 1094.6, any review of the Rent Commission's order must be sought in the California Superior Court. In D.97-02-032, we granted SoCalGas's motion and dismissed the entire complaint.

Applicant then timely filed for rehearing of our decision, and contemporaneously, the tenants' association of Sahara Park, of which Applicant is a member, also appealed the Rent Commission's order to the Superior Court as is statutorily required to preserve their rights pending this Commission's further review of the matter. (Sahara Mobilehome Park Homeowners Association v. Rent Review Commission of the City of Palm Springs, California Superior Court for the County of Riverside, Case No. 091299.) We have learned that although the Superior Court had scheduled a second hearing on the matter for July 23, 1997, it unexpectedly issued a Minute Order on June 6, 1997 denying the petition of the tenants, thus approving the Rent Commission's Order increasing the tenants' charges for the submeter system of Sahara Park. The Superior Court will reconsider its Minute Order on July 29, 1997 in response to the tenants' motion to vacate the judgment.

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[2] Section 2106 is not applicable to the Commission since it provides for a private right of action by a person or corporation against any public utility based on violations of the law or Commission orders. Section 2102 authorizes the Commission to seek a writ of mandamus or injunction in the Superior Court against a public utility's violations of the law or Commission orders. Section 2107 and 2111, in conjunction with Section 2104, provide for the Commission to recover civil penalties in the Superior Court against any public utility, corporation, or person for violations of the law or Commission orders in the amount of not less than $500 and not more than $20,000 for each offense. We note further that pursuant to Sections 2105 and 2108, penalties are cumulative, and in the case of a continuing violation, each day's violation represents a separate and distinct offense.

The application now before us argues for a rehearing of our dismissal of the complaint on the grounds that this Commission abdicated its exclusive jurisdiction, as established in Section 739.5, and did not adhere to its own precedent established as recently as 1995 in the OII decision, D.95-02-090, a decision which was upheld by the California Supreme Court. Applicant's arguments are well-taken.[8]

Accordingly, we hereby grant rehearing to affirm our proper jurisdiction over the matter and to hold that Applicant, and all other similarly situated tenants of Sahara Park, shall not be obligated to pay for natural gas utility services delivered through the master-meter/submeter system other than in accordance with the rates set by this Commission in SoCalGas's tariff. Sahara Park's costs of operating, maintaining, upgrading, or replacing the park's natural gas submeter system are not recoverable from the tenants in rent or other tenant surcharges. Sahara Park's costs are recoverable from the credit on his master-meter bill as that credit is determined in SoCalGas's mobilehome park tariff.

III. DISCUSSION

The Commission's dismissal of Applicant's complaint was in error. We impermissibly delegated to the Rent Commission and to the Superior Court the authority to determine whether the tenants may be obligated to pay utility submeter system charges in excess of the utility charges currently approved by this Commission in SoCalGas's tariffs. We had already resolved that issue in the OII decision, D.95-02-090, where we held that pursuant to the Legislature's express directives in Section 739.5, mobilehome park tenants, whose utilities are delivered through a submeter system, may not be

[8] SoCalGas's motion to dismiss is consistent with the position the company took in the OII proceeding, I.93-10-022. SoCalGas filed comments in the OII proceeding which contended that a mobilehome park owner was not limited to the Commission authorized credit to recover his submeter utility costs. In the Commission's order SoCalGas's contention was squarely rejected. D.95-02-090, 58 CPUC 2d 709, 715, and Ordering Paragraph 4, at p.721.

required to pay more for utility service than they would if they were served directly by the public utility.

While we of course acknowledge that a rent commission is authorized to administer local rent ordinances, and its orders are subject to review by the courts, not by this Commission, it is more pertinent to Applicant's case to recognize no matter the name attached to the natural gas submeter system charges by Sahara Park and the Rent Commission, they are charges for utility service which are limited by law to those derived from the tariffs approved by this Commission.

A. Ratemaking for Mobilehome Parks

There is no dispute as to the fact that Sahara Park and its tenants are subject to the utility rates and regulations ordered by this Commission pursuant to Section 739.5. Further, Sahara Park and its tenants are served by SoCalGas, a regulated public utility under the jurisdiction of the Commission, and there is a SoCalGas tariff applicable to Sahara Park as a mobilehome park owner in SoCalGas's service territory , and a SoCalGas residential tariff applicable to the park's tenants.

As part of the tariff applicable to the mobilehome park owners, this Commission sets the submeter system credit in accordance with Section 739.5(a) which requires that the credit "not to exceed the average cost that the corporation [e.g., SoCalGas] would have incurred in providing comparable services directly to the users of the service."[2] Any costs recoverable by Sahara Park for the submeter system, therefore, are limited to those that would otherwise be recoverable by SoCalGas pursuant to the findings and conclusions of this Commission.

There is, furthermore, clear and convincing evidence that Sahara Park receives the submeter system credit from SoCalGas. Exhibit B of the Complaint filed by Applicant

[2] Section 739.5(a) provides that the submeter system costs which shall be recovered by the park owner in the credit, or differential, "shall not exceed the average cost that the corporation would have incurred in providing comparable services directly to the users [i.e. tenants] of the service."

includes copies of SoCalGas's billings for Sahara Park's three master-meters, each of which contains the following line item: "Includes a sub-metered credit of..." On each of the bills, this line item is followed by $199.30, $107.02, and $533.34, respectively.[10] We note that in its answer to Applicant's complaint to this Commission, Sahara Park did not specifically deny that it received the authorized credit.

The tariffed rates for the park owners, including the submeter system credit, and the residential tenants' tariff, are determined in the utility's general rate case proceedings, and related proceedings such as the Biennial Cost Allocation Proceeding ("BCAP"). For example, in the most recent BCAP order issued in April 1997, D.97-04-082, the Commission adopted the proposal of the park owners' representative, Western Mobilehome Parkowners Association (WMA), to increase the SoCalGas submeter credit. D.97-04-082, mimeo, p.126. This credit increase applies to Sahara Park as well as the other mobilehome parks with master-meter/submeter systems in SoCalGas's service territory.

With respect to the rates and charges applicable to Sahara Park's tenants for their utility service through the master-meter/submeter system, the controlling rule, as set forth in Section 739.5, is that they are to pay no more than if they were receiving the service directly from SoCalGas to their individual residences. Section 739.5(a) begins with this mandate:

> "The commission shall require that, whenever gas or electric service, or both, is provided by a master-meter customer [e.g. park owner] to users who are tenants of a mobilehome park, apartment building, or similar residential complex, the master-meter customer [i.e., the park owner] 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." Emphasis added.

[10] Without a clear reference to the record of its inquiry, the Rent Commission inexplicably found that Sahara Park did not receive the submeter credit, even though the bills of Sahara Park, which indicate the credit provided by SoCalGas, should have been available to the Rent Commission. (Rent Commission's Order), at ¶ 93, p. 23.

Therefore, an order of the Rent Commission which affects the costs mobilehome park tenants pay for utility service, or which approves a charge the park owner wants to impose on the tenants to recover submeter system costs, is preempted by the orders issued and the utility tariffs approved by this Commission in the regular pursuit of its authority.

The Commission's implementation of Section 739.5 was reviewed in the OII proceeding, I.93-10-022, in response to complaints received in 1991 and 1993 from mobilehome park tenants who alleged that they were being charged twice for the repair and replacement of the submeter system: once in their utility charges billed by the park owners, and then again through rent increases or surcharges also paid to the park owners for submeter system costs. (C.91-11-029, C.91-11-030, and C.93-08-017.)

To resolve the issues raised by the tenants, we opened the investigation and on February 22, 1995 issued our decision, D.95-02-090. We described the issue addressed as follows:

> "The question then is whether having elected to submeter and having received the utility's submetering credit, an individual park owner, whose reasonably incurred costs exceed the utility's average, may pass through to park tenants all or part of such system replacement costs in the form of rent increases and surcharges?" (D.95-02-090, 58 CPUC 2d, supra, at 717. Emphasis added.)

Answering that question, we held that no part of the submeter system costs, including replacement costs, could be charged the tenants in the form of a rent increase or other surcharge:

> "Therefore, we conclude that tenants of master-metered parks shall not be subject to utility cost rent surcharges for ongoing utility system repair and replacement. Master-meter customers are compensated in the manner and to the extent directed by §739.5(a), which provides a reasonably accessible means to obtain a return on property." (Id., at 718. Emphasis added.)

To assure compliance with the statute and our rules implementing the statute, we required that the utility companies which serve mobilehome parks, such as SoCalGas, clearly provide in their tariffs that receipt of the Commission authorized master-meter credit prohibits further recovery of submeter costs. The utilities were ordered to include the following language in their tariffs:

> "Condition for Receiving Submeter Rate Credit"
>
> "The master-meter/submeter rate credit provided herein prohibits further recovery by mobile home park owners for the costs of owning, operating, and maintaining their gas/electric submetered system. This prohibition also includes the cost of the replacement of the submetered gas/electric system." (D.95-02-090, 58 CPUC 2d, supra, at 721, Ordering Paragraph No. 4. Emphasis added.)

This tariff provision, as with other provisions of a public utility's tariffs, has the force and effect of law. (See Dyke Water Co. v. Public Utilities Com. (1961) 56 Cal.2d 105, 123; Colich & Sons, et al. v. Pacific Bell (1988) 198 Cal.App.3d 1225, 1232, citing Dollar-A-Day Rent-A-Car System, Inc., v. Pacific Tel. & Tel. Co. (1972) 26 Cal.App.3d 454, 457.)

With respect to the park owner obtaining a fair return on their property, we explained in Finding of Fact No. 3 of our OII decision that the master-meter/submeter system credit is regularly reviewed in the general rate case proceeding of each gas and electric utility. D.95-02-090, 58 CPUC 2d, supra, at 720. Although general rate case proceedings have usually occurred on a three-year cycle, a change in a meter credit rate may also be effected, as noted above, in our BCAPs. Sahara Park, therefore, has recourse to a Commission proceeding if the park owner believes the credit last set for SoCalGas's territory does not adequately compensate for the submeter costs incurred. We note again, moreover, that in our 1997 BCAP decision, Sahara Park, like other park owners, was granted an increase in the credit for submeter systems in the amount recommended by WMA, the association representing park owners. (See D.97-04-082, mimeo, p.126.)

We further explained in our OII decision, D.95-02-090, that park owners should be aware that by the terms of Section 739.5(a), the credit they receive for submeter system costs must be based on the serving utility's average cost. As a result, the credit for one park owner may produce a savings in one year if his costs are lower than the average, but the credit may also be less than actual costs in any other year. (D.95-02-090, 58 CPUC 2d, supra, at 718, and Finding of Fact No.5, at 720.) Although we recognized that there may be a lag in a park owner's recovery of the costs, we affirmed that the Commission must nevertheless follow the directions of the statute in setting the credit at the public utility's average cost. We recommended that if park owners have a significant problem under the applicable law, they have the right to seek an amendment to Section 739.5. (D.95-02-090, 58 CPUC 2d, supra, at 718.) On a policy basis, however, we also stated that the use of the utility's average cost is "an appropriate incentive which encourages the establishment of master-meter service only when efficiencies are to be gained." (Id., Finding of Fact No. 5, at 720.)

In reviewing Applicant's present case, we find fundamental similarities with the issues addressed in our OII decision. Applicant, a mobilehome tenant, has been made subject by the Rent Commission to the payment of a rent charge to pay the park owner for certain costs incurred in maintaining and/or replacing the submeter system. Consistent with Section 739.5 and our OII decision, D.95-02-090, therefore, we conclude that the "rent" charge ordered by the Rent Commission is prohibited to the extent it is to pay for the natural gas submeter system costs incurred by Sahara Park. A charge for the cost of providing utility service by any other name is a charge for utility service which can only ordered by this Commission.

B. Commission's Exclusive Ratemaking Jurisdiction

Article XII of the California Constitution gives the Commission broad regulatory powers, directly and as delegated by the Legislature. (See e.g. San Diego Gas & Electric Co. v. Superior Court (1996) 13 Cal.4th 893, 914-915; Waters v. Pacific

Telephone Co. (1974) 12 Cal.3d 1,6; People v. Western Air Lines, Inc. (1954) 42 Cal.2d 621.630.)

Particularly pertinent to the present case, the Constitution specifically mandates that: "A city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the Commission...." (Cal. Const., Art. XII, Section 8.) As we have discussed here, among the authorities delegated by the Legislature to the Commission, Section 739.5 expressly mandates that the Commission regulate the utility costs paid by tenants in mobilehome parks with master-meter/submeter utility systems.

Thus, when the Commission acts, as it did in the referenced BCAP decision, at D.97-04-082, mimeo, p.126, to determine SoCalGas's tariffs, and as it did in the OII decision, D.95-02-090, the Commission acts pursuant to its exclusive jurisdiction and constitutional authority. Furthermore, by establishing the tariffs applicable to mobilehome park owners and to the residential tenants of mobilehome parks, this Commission determines two controlling elements of the present case: 1) the only rates and charges the tenants of Sahara Park and other mobilehome parks in the territory are obligated to pay under the applicable residential tariff for the delivery of natural gas through the master-meter/submeter system, and 2) the rates and charges applicable to the owner, Sahara Park, including the amount of the credit incorporated in the charges for the recovery of the natural gas submeter system costs.

Although we have not found a case involving a conflict between a rent commission's order and this Commission's ratemaking authority, the courts have consistently held under Article XII, Section 8 that a local ordinance and its implementation are unconstitutional where they intrude on or interfere with State regulatory law and the jurisdiction vested in a State regulatory agency. For example, in Southern California Gas Co. v. City of Vernon (1995) 41 Cal.App.4th 209, the Court of Appeal concluded:

> "In sum, under the Constitution a city may not regulate matters over which the PUC has been granted regulatory

> power, the Legislature has granted regulatory power to the PUC over the safety of gas pipelines, and the PUC in fact has promulgated rules on this subject. Therefore, Vernon cannot purport to regulate the design or construction of the proposed pipeline under the guise of ensuring the pipeline's safety." (41 Cal.App 4th, at 217.)

Similarly, with respect to the matters of the present case, the State, through the Commission, has occupied the field regulating the costs paid for utility services by those living in mobilehome parks, and those owning mobilehome parks, and the Rent Commission may not intrude in this area of regulation. The Rent Commission's order in question in this proceeding is, therefore, unconstitutional because it directly conflicts with both the current SoCalGas tariffs applicable to Sahara Park and its tenants, and the orders in the OII decision, D.95-02-090.[11] Just as the Rent Commission does not have authority to approve the tariffs of SoCalGas, by the plain language of Section 739.5, it is preempted from ordering the rates and charges Sahara Park tenants pay for utility service, including service delivered through a submeter system, notwithstanding the label applied to order.

The exclusive jurisdiction of the Commission is not a mere formalistic division of authority. It is based on sound public policy affecting mobilehome parks throughout the State. The State's goal of assuring non-discriminatory rates and charges for essential utilities, such as natural gas and electricity, would be obstructed if the Rent Commission could require that tenants of Sahara Park pay more for their gas service than tenants of other mobilehome parks in SoCalGas's service territory, or more than other residential customers served directly by SoCalGas. As we have explained, consistent with the

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[11] See People v. Levering (1981) 122 Cal. App.3d Supp. 19, 21 (El Segundo's legislative scheme applicable to vehicles for hire was unconstitutional because "[I]t was an attempt to legislate on matters covered by public utilities commission," and it was immaterial that some of the El Segundo enactments might not be in direct conflict with the Public Utilities Code. "It is enough that they cover the same subject."), citing Abbott v. City of Los Angeles (1960) 53 Cal.2d 674, 682; In re Lane (1962) 58 Cal.2d 99, 102; and People v. Moore (1964) 229 Cal.App.2 221, 225. See also California Water & Tel. Co. v. Los Angeles County (1967) 253 Cal. App.2d 16, 31-32 (county ordinances requiring water utility companies to submit a certificate issued by the city in order to apply for a city building permit were unconstitutional because such matters fell within the exclusive jurisdiction of the Public Utilities Commission); City of Union City v. Southern Pacific Co. (1968) 261 Cal. App.2 277, 280-281

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Commission's mandate in Section 739.5, SoCalGas's residential tariffs, which have the force and effect of law, apply to the mobilehome park tenants within all of SoCalGas's service territory, not just to Sahara Park tenants.

In addition, when this Commission sets the park owner's credit for the submeter system costs, we consider the same elements that we consider in determining the recoverable costs for a regulated public utility like SoCalGas. We stated in our OII decision:

> "The credit includes a substantial factor for all initial and ongoing capital upgrade costs, including operation, maintenance and customer billing expenses, depreciation of the average installed cost of the park system, a factor for return on investment, income taxes on the return, and property taxes. The credit is based on a typical ratemaking life of about 30 years. Thus, mobile home park owners, on average, are compensated over time for system replacements and upgrades." (D.95-02-090, 58 CPUC 2d, supra, Finding of Fact No. 4, at 720. Emphasis added.)

The exclusive mandate of this Commission, therefore, is not only well-established in the State's constitution and statutory law, it is administered on principles of fairness and in the public interest.

We note that with respect to the exclusivity of this Commission's mandate, the Rent Commission misapprehended the meaning of one sentence in our OII decision where we observed that mobilehome park "owners may seek amendments to the applicable [rent control] ordinances to authorize specific types of infrastructure improvements necessary to preserve the quality of utility service to their mobilehome park tenants." (See the Rent Commission's Order, p. 22, paragraph 92 where it references D.95-02-090, 58 CPUC 2d, supra, at pp. 718-719.) The Rent Commission apparently misinterpreted and unduly extended the import of this statement to infer that we conceded

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(implementation of regulation duly enacted by regulatory agency cannot be an actionable "nuisance").

a local rent control ordinance could set the costs of utility service to be paid by the tenants by authorizing infrastructure improvements for utility service.

To clarify this point: we did not mean, and we are not authorized to propose, that a local ordinance could or may preempt the ratemaking authority vested in the Commission by the State's Constitution and statutory law. Our intention was only to suggest that some infrastructure improvements which may affect a mobilehome park and other surrounding properties, such as costs for a flood diversion project, may be considered by the park owner to preclude future submeter system maintenance costs. By applying the standard rules of text construction, our statement cannot mean, and obviously was not intended to mean, anything which contradicts or is inconsistent with the explicit Conclusions of Law and the express orders of D.95-02-090 prohibiting submeter system costs in rent charges.

We reiterate, our OII decision, D.95-02-090, prohibiting the mobilehome park owners from recovering submeter system costs from the park tenants in rent or other charges not approved by this Commission was upheld by the California Supreme Court. (Western Mobilehome Parkowners Association and De Anza Properties-X v. Public Utilities Commission of California, Case No. S048893, October 12, 1996.) Therefore, the Rent Commission directly contravened a duly established final order of this Commission, and impermissibly intruded in the area of utility ratesetting. It is well-established that this Commission's orders may not be hindered, evaded, or ignored. (See, e.g., San Diego Gas & Electric Co. v. Superior Court, supra, 13 Cal.4th, at 916, and 920-921; Brian T. v. Pacific Bell (1989) 210 Cal.App.3d 894, 900-901; Schell v. Southern Cal. Edison Co. (1988) 204 Cal. App.3d 1039, 1045-1047.)

The Rent Commission's Order, moreover, cannot be saved or given enforcement power by the Superior Court. There is no question the Superior Court is statutorily authorized to review Rent Commission orders implementing the terms of a

local rent ordinance. However, the Superior Court does not have jurisdiction over those matters delegated by the Legislature to this Commission.

For not only is this Commission mandated to regulate the matters in question, State law denies jurisdiction to all courts of this State, except the California Supreme Court, to review, reverse, correct, or annul a Commission order or decision. (Sections 1756 and 1759.[11] See also San Diego Gas & Electric Co. v. Superior Court, supra, 13 Cal.4th, at 916; Dollar-A-Day Rent-A-Car System, Inc., v. Pacific Tel. & Tel. Co., supra, 26 Cal.App.3d, at 458-462.)

Therefore, this Commission's orders issued in the OII decision, D.95-02-090, and we may now add, the present decision, supersede the June 6, 1997 Minute Order of the Superior Court of the County of Riverside where it upheld the Rent Commission's Order approving an increase in tenant charges to cover Sahara Park's submeter system costs.

> "The PUC has exclusive jurisdiction over the regulation and control of utilities, and once it has assumed jurisdiction, it cannot be hampered, interfered with, or second-guessed by a concurrent superior court action addressing the same issue. (See Pacific Tel. & Tel. Co. v. Superior Court (1963) 60 Cal.2d 426, 429-430.) Even if the PUC makes an invalid order, it is binding and conclusive until annulled by the Supreme Court, which is the only court that can review PUC orders. (See Pub. Util. Code, §1756; Hickey v. Roby (1969) 273 Cal. App.2d 752, 763-764.) Moreover, if a superior court were to determine certain rights between parties, a later applicable decision by the PUC would supersede the prior superior court judgment. (Id. at p.764.) Thus it makes no difference that the within action was filed before the PUC determined the case before it." (Barnett v. Delta Lines, Inc. (1982) 137 Cal.App.3d 674, 681. Cited and followed in Schell

[11] Pursuant to legislation enacted in 1996 (Stats.1996, c.855, S.B.1322), Sections 1756 and 1759 are amended, effective January 1, 1998, to provide for review by the State's Court of Appeal where a Commission decision is issued in an adjudicatory proceeding.

v. Southern Cal. Edison Co. (1988) 204 Cal.App.3d, supra, at 1047.)

The Rent Commission's order, therefore, is not enforceable with respect to the tenant's "rent" increase, notwithstanding the June 6 Minute Order of the Superior Court.[13]

The complexity of ratemaking and of regulatory law has no doubt influenced the procedural circumstances of this case, and has lent some confusion for all those involved. However, with this decision, the problem before us may be readily resolved were the Superior Court, or the Rent Commission, to determine the amount of the subject "rent" increase which is attributable to the submeter system costs, and eliminate that amount from the charges Sahara Park may collect from its tenants.

IV. CONCLUSION

The charges paid by Applicant, and other tenants of Sahara Park, for utility services, including the delivery of those services through the natural gas submeter system, are limited by their individually metered usage and the Commission-approved applicable rates and rules set forth in SoCalGas's residential tariff. Pursuant to Section 739.5, they shall not be obligated to pay any additional costs associated with the natural gas submeter system which may be demanded by Sahara Park, or ordered by the Rent Commission, whether or not the Rent Commission's order is upheld by the Superior Court. Primary and exclusive jurisdiction of the mobilehome park tenant charges for submetered service is with this Commission.

By this order, therefore, we are rescinding the dismissal of Applicant's complaint set forth in D.97-02-032. We will, however, leave this docket open to consider available remedies and penalties in the event the tenants of Sahara Park are forced to pay

[13] The Superior Court, in its proper role as the reviewing court for the Rent Commission's actions, would have reached the same conclusion as we have in the present decision if it had applied the judicial policy of stare decisis. Pursuant to that policy, the precedents to be followed include the case law under Article XII, Section 8 of the California Constitution, discussed above, and this Commission OII decision, D.95-02-090 prohibiting the charging of mobilehome part tenants for submeter system costs in rent or other surcharges not authorized by this Commission. (D.95-02-090, 58 CPUC 2d, supra, at 718 and 721.)

the submeter costs not approved by this Commission. Such circumstances may require, for example, that we hear an accounting of the utility charges billed to Applicant, and the other tenants of Sahara Park, to determine whether any part of the credit provided by SoCalGas should be withheld from Sahara Park and allocated as a refund to the tenants for overpaying utility charges. We may also consider whether we will require that SoCalGas immediately file an advice letter requesting a lowering of the credit allowed Sahara Park, and whether monetary penalties should be imposed against Sahara Park and SoCalGas for failing to comply with SoCalGas's tariffs and Commission decisions.

THEREFORE, IT IS ORDERED that:

1. The application of Richard L. Steiner for rehearing of D.97-02-032 is granted.

2. Sahara Park is prohibited from collecting from its mobilehome tenants any charges, in any form and under any name or classification, for Sahara Park's costs of the operating, maintaining, upgrading, or replacing Sahara Park's natural gas submeter system other than those charges authorized in the applicable SoCalGas tariffs approved by this Commission.

3. SoCalGas shall forthwith inform the Superior Court that the park owner, Sahara Park, in fact receives the credit authorized by this Commission for its submeter system costs in accordance with Section 739.5 of the California Public Utilities Code. This information shall be conveyed to the Superior Court, County of Riverside, in the case of Sahara Mobilehome Park Homeowners Association v. Rent Review Commission, et al., Case No. 091299, no later than July 21, 1997, in the form of an appropriate affidavit, with attached copies of master-meter billings evidencing the receipt of the credit. If necessary, the affidavit is to be provided to the Court through the Sahara Park tenants' association, which is a party in the case.

4. This docket shall remain open for further consideration of the matter as may be required by a supplementary filing of Applicant depending on the future actions of Sahara

Park and the decision of the Superior Court on the appeal of the Rent Commission's order.

5. Applicant is asked to provide this Commission with a statement on the status of the proceedings before the Superior Court and the Rent Commission, and in any other related court proceedings, when such proceedings have reached provisional or final rulings affecting Applicant's claims. Should the matter be resolved without further action by this Commission, the Applicant is directed to submit a motion to voluntarily dismiss his complaint.

This order is effective today.

Dated July 16, 1997, at San Francisco, California

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners