L/afm

MAIL DATE
11/10/97

Decision 97-11-033 November 5, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RICHARD L. STEINER,

Complainant,

v.

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

Defendants.

Case No. 96-08-028
(Filed August 13, 1996)

ORDER DENYING DEFENDANT'S APPLICATION FOR REHEARING OF D.97-07-009 AND DENYING COMPLAINANT'S MOTION TO STRIKE THE APPLICATION

I. SUMMARY

Palm Springs Mobilehome Properties, doing business as Sahara Mobilehome Park (referred to herein "Sahara Park"), has filed an application requesting rehearing of our Decision (D.) 97-07-009 wherein we granted the complaint against Sahara Park filed by Richard L. Steiner ("Complainant").[1] Complainant has filed a motion to strike Sahara Park's application for rehearing on procedural grounds, and Sahara Park has filed a memorandum of points and authorities in response to the motion to strike.

[1] Mr. Steiner 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."

We hereby deny the motion to strike since Sahara Park was newly aggrieved by D.97-07-009 and must seek rehearing pursuant to Section 1756 of the California Public Utilities Code.[2] However, because Sahara Park has failed to demonstrate legal error in D.97-07-009, as required by Section 1732, the application for rehearing is also denied.

In D.97-07-009 we concluded that a rent increase approved for Sahara Park on June 11, 1996 by the Rent Review Commission of the City of Palm Springs ("Rent Commission") was invalid under Section 739.5 and therefore not enforceable against Complainant and other tenants of Sahara Park to the extent the rent increase included a recovery for the costs of maintaining, operating, upgrading, or replacing the submetered natural gas system providing utility service to the Sahara Park tenants. (D.97-07-009, mimeo, pp.3, 4, 7, 12, 18, and Conclusion of Law No. 2.) By this decision, we reversed our initial order in this case, D.97-02-032, which had incorrectly dismissed the complaint. [3]

Our reversal of the dismissal order, and our decision finding the inclusion of Sahara Park's submeter system costs in the rent increase unlawful, is consistent with the findings and orders resulting from our prior investigatory proceeding ('OII") on mobilehome park charges for submetered utility service. The Commission affirmed in the OII that Section 739.5 mandates that mobilehome park owners may only recover their costs for the submetered utility system, including replacement costs, in a credit applied by the serving public utility

---

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

[3] In D.97-02-032, the Commission in error granted a motion filed by Southern California Gas Company ("SoCalGas") to dismiss the complaint against both Sahara Park and SoCalGas. The dismissal impermissibly delegated to the Rent Review Commission of the City of Palm Springs this Commission's mandate under Section 739.5 to determine the utility charges paid by tenants of mobilehome parks who receive natural gas service through a submetered distribution system owned and operated by the park owner.

company to the park owner's master-meter billing, and the credit must be set by this Commission based on the average cost recovery we would order if the utility company owned and maintained the submeter system. The Commission also recognized that as a corollary, Section 739.5 requires that the tenants of the park pay the park owner no more for their utility service through the submeter system than they would pay if served directly by the public utility company.[4] As a result, we concluded in the OII decision that no costs of the submeter utility system may be recovered through rent charges or rent surcharges imposed by the park owner utility charges. All utility charges paid by the tenants and the amount recoverable by the park owner for the submeter system costs are within the exclusive jurisdiction of this Commission. (D.95-02-090, 58 Cal. P. U. C. 2d 709, 717-718, and Ordering Paragraph 4; rehearing denied, D.95-08-056.) The OII decision and its conclusions became final when the California Supreme Court denied petitions for review filed by the Western Mobilehome Parkowners Association ("WMA"), representing several mobilehome park owners, including Sahara Park, and by an individual park owner, DeAnza Properties-X ("DeAnza").[5] (Western Mobilehome Parkowners Association and De Anza Properties -X v. Public Utilities commission of California, Case No. S048893; Order denying review issued October 2, 1996.)

In its present application, Sahara Park has failed to demonstrate that our orders in D.97-07-009 are inconsistent with or go beyond our interpretation of Section 739.5 and the conclusions of the OII decision as upheld by the California Supreme Court. Further, Sahara Park has not established new grounds to support a finding of legal error. After considering the arguments presented by Sahara

---

[4] In the implementation of Section 739.5, a mobilehome park owner collects from his tenants their individual charges for the utilities used. The money thus collected offsets the total utility charges registered by a master-meter and paid for by the park owner. However, the master-meter bill paid by the park owner is discounted by a credit. The credit provides the revenue recovery for the park owner for operating the submetered distribution system between the master-meter and the individual tenants.

Park in its present application, therefore, we hereby deny rehearing of D.97-07-009.

We will, however, order a limited hearing regarding the enforcement of our orders in D.97-07-009. Complainant has submitted to the Commission, pursuant to Ordering Paragraphs 4 and 5 of D.97-07-009, copies of documents which convince us that a limited hearing will be necessary to properly account for the submeter system costs impermissibly incorporated into the rent increase and collected from tenants. As we stated in D.97-07-009, Sahara Park's costs for maintaining or replacing the natural gas submeter system are only recoverable through the credit received by the park owner from Southern California Gas Company (SoCalGas), not from rent charges or surcharges unauthorized by this Commission. [6] The amount collected in rent by Sahara Park from tenants, therefore, for the costs of maintaining, operating, upgrading, or replacing the natural gas submeter system which exceed the charges authorized by this Commission in SoCalGas's residential tariff, Schedule GS, is to be returned to the tenants. [7]

II. DISCUSSION

A. Sahara Park's Arguments Opposing Our Decision Have Already Been Considered and Rejected By A Final Order of This Commission.

Sahara Park's application for rehearing asserts that our orders in D.97-07-009: 1) constitute a taking of property and a denial of substantive due

---

[5] In its answer to the complaint, at paragraph 6, Sahara Park admitted that it is a member of WMA.
[6] As we discussed in D.97-07-009, Sahara Park's submeter system credits are incorporated by SoCalGas in the master-meter bill paid by Sahara Park, and the amount of that credit is specifically stated in the master-meter bill. (See D.97-07-009, mimeo. pp.4-5, 8-10.)
[7] In its application for rehearing, at page 3, Sahara Park refers to the submeter system credit as a "differential." It is also referred to in various filings as a "discount."

process in violation of the Fifth and Fourteenth Amendments of the United States Constitution and Article 1, Section 19 of California Constitution in that the Commission's decision denies Sahara Park a fair return on its capital investment in new gas utility facilities, and Sahara Park allegedly has no recourse for "uncompensated" costs;[8] and 2) misconstrue and misinterpret Section 739.5 and prior decisions of the Commission by not recognizing that the Commission has no rent control jurisdiction over mobilehome parks and park owners and by not recognizing that the credit provided to park owners for the submetered system is not the only permissible source of recovery for cost items not calculated into the credit.[9]

We find neither of these claims persuasive. First, conspicuously absent from Sahara Park's claim of an unconstitutional taking, is any acknowledgment of the California Supreme Court's October 2, 1996 ruling in Civil Case SO48893, which denied the petitions filed by WMA and DeAnza seeking review of our OII decision, D.95-02-090. The petitions denied by the Supreme Court made the same claims as Sahara Park has made in the present case. WMA claimed that the Commission's interpretation of Section 739.5 improperly denied park owners recovery of submeter system costs through rent charges and thereby left the parkowners with "unreimbursed utility costs" and without "recourse" to recover "losses." (WMA's Petition for Writ of Review With Supporting Memorandum of Points and Authorities, at p.2 , filed September 13, 1995 in California Supreme Court Civil Case SO48893.) DeAnza claimed that the takings clause of the Fifth Amendment of the U.S. Constitution was violated by this Commission's determination that the recovery of the submetering costs is necessarily limited to the reimbursement provided by the master-meter credit received by park owners under Section 739.5. (DeAnza's Petition for Review of Decisions of the Public

[8] Sahara Park's Application for Rehearing, pp.2, 16, 23.
[9] Sahara Park's Application for Rehearing, pp.2, 26, 28.

Utilities Commission of the State of California, at pp.14-15, filed September 13, 1995 in California Supreme Court Civil Case SO48893.)

Sahara Park's present application to the Commission sheds no new legal light on the issues and fails to distinguish the failed arguments of WMA and DeAnza. In denying review of this Commission's interpretation of Section 739.5 in the OII decision, the Court rejected the claim that there is an unconstitutional taking or a violation of substantial due process when the Commission orders, that a mobilehome park owner is limited to recovering the costs of the submeter utility system in a credit duly established in the tariff of public utility serving the mobilehome park. In D.97-07-009, we did nothing more than apply the conclusions and orders of the OII decision, as upheld by the Supreme Court. There is no basis, therefore, to find legal error in D.97-07-009.[10]

Second, Sahara Park seeks rehearing on the broad claim that the Commission has misinterpreted Section 739.5 with respect to the scope of the jurisdiction granted the Commission therein and with respect to the exclusivity of the source of recovery for a park owner's submeter system costs. WMA

[10] To avoid needlessly inflating the record of this proceeding with reiterations of our legal analysis appearing in other documents, we hereby adopt and incorporate by reference this Commission's response in D.95-08-056 to the applications for rehearing of the OII decision, D.95-02-090, and the Answer filed by this Commission with the California Supreme Court to the petitions of WMA and DeAnza for review of both the OII decision, D.95-02-090, and the decision denying rehearing, D.95-08-056.

presented the same arguments to the California Supreme Court, and they were rejected by the Court's denial of WMA's petition for review.[11] Here again Sahara Park fails to distinguish the conclusions reached in D.97-07-009 and those of the OII decision, D.95-02-090. Sahara Park also fails to offer any new argument or case law on the matter to establish legal error in D.97-07-009 or to justify a rehearing of the findings and orders in that decision.

In an attempt to assure the Commission's position is clear to Sahara Park, we will, nonetheless, summarize the statutory basis for prohibiting Sahara Park from collecting or retaining rent charges attributable to the operation, maintenance, upgrade or replacement of the natural gas submeter system.

First and foremost, the plain language of Section 739.5(a) states that "...the master-meter customer [e.g., Sahara Park] 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 [e.g. SoCalGas] or electrical corporation." Under the statute, the tenants are not to pay Sahara Park for their natural gas service delivered through the submetered system any more than they would pay SoCalGas, and the exclusive authority to determine what would be paid to SoCalGas is with this Commission.

The plain language of Section 739.5(a) also provides that the submeter system costs recoverable by the park owner in the master-meter credit (or, differential) "...shall not exceed the average cost that the corporation [i.e., utility

---

[11] See WMA's Petition for Writ of Review With Supporting Memorandum of Points and Authorities filed with the California Supreme Court September 13, 1995 in Civil Case No. S048893, pp.11-20. For example, WMA unsuccessfully argued: "Thus, the Commission is simple in error when it states that § 739.5(a) 'expressly' limits cost recovery to the submetering discount...." WMA's Petition for Writ of Review, supra, p. 13, citation omitted. WMA also unsuccessfully argued the Legislature was remiss in drafting Section 739.5: "The bottom line is that the Legislature in enacting Section 739.5(a) was aware of possible unreimbursed costs to park owners and provided no specific guidance to resolve that issue." (See Reply of Petitioner Western Mobilehome Parkowners Association to Answer of Respondent [CPUC] to Petitions for Writ of Review, p. 3, filed in the California Supreme Court Case No. S0048893.

company] would have incurred in providing comparable services directly to the users of the service [i.e., the tenants]."

There is no dispute, and Sahara Park does not attempt one, that this Commission has exclusive jurisdiction to determine SoCalGas's recovery of costs, and to calculate the average cost SoCalGas would incur in providing service through the submetered system. Pursuant to the Commission's general ratemaking authority and the mandates expressed in Section 739.5, this Commission hears testimony and considers evidence relevant to mobilehome submetered natural gas systems in the rate case proceedings of SoCalGas. Based on our review of the testimony and evidence submitted by parties to the proceedings, we establish the tariffs for natural gas end-users in SoCalGas's service territory, including end-users in submetered mobilehome parks as set forth in SoCalGas's GS tariff schedule.

As part of our deliberations, we also determine the credit the park owners are to receive based on the average cost we determine SoCalGas would have incurred for the submeter system. The amount of the credit is developed consistent with our regulatory ratesetting rules, and includes a just and reasonable recovery for maintenance and operations expenses, depreciation (or, a return of capital), and a return on equity (or, profit). The park owner's 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, incomes 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 Cal. P.U.C. supra, Finding of Fact No. 4, at 720.

Sahara Park also cannot claim that it is without recourse with respect to the credit established by the Commission. As any other member of the public, Sahara Park has the opportunity to participate in the rate cases and present evidence on the appropriate credit required for maintaining the submetered system. We further note that Sahara Park did not indicate in its filings with us that it has taken the initiative to testify or offer evidence with regard to its submeter system costs in the Commission's ratesetting proceeding in which the tariffs of SoCalGas are established. We also have found that the official records of our Utility Safety Branch show that Sahara Park did not report, as required, in its required annual filing with us for 1995 that there was any "catastrophic" failure of the natural gas submeter system, as it has professed to the Rent Commission and to us. [12] Sahara Park only indicated that it had replaced the gas pipelines without any comment as to leaks or any other "catastrophic" failure of the submetered pipeline system. [13]

To summarize then, as the law stands now, Sahara Park's submeter system costs are recoverable only from the master-meter billing credit we determine in the tariff of SoCalGas. The tariff is established in the Commission's regular pursuit of its constitutional and statutory ratemaking authority, and specifically in accordance with the mandate of Section 739.5. The tariff provisions setting out both the charges to be collected by the park owner from the mobilehome tenants for their portion of the utility charges appearing on the master-meter bill for the entire park, and the

---

[12] See Sahara Park's application for rehearing, filed August 20, 1997, p.6 ,and the Rent Commission's rent increase order of June 11, 1996, at paragraph 76 where the Rent Commission, presumably upon information provided by Sahara Park, concluded that the gas system costs submitted by Sahara Park to justify the rent increase were caused by "a catastrophic failure of the water and gas transmission facilities" at the park in 1995, and that the catastrophic failure had been "preceded by a series of ongoing partial system failures...." The catastrophic failure was not reported to us by Sahara Park either in proceedings establishing the credit for mobilehome park owners in SoCalGas's service territory or in the annual safety report for 1995 required by law.

[13] Section 4354(a) requires each mobilehome park owner to submit to this Commission an annual report describing the master-metered gas distribution system. This requirement is part of the Commission's safety program for gas distribution systems in conjunction with federal pipeline safety standards for mobilehome parks.

credit received by the park owner on the master-meter billing for his submeter system cost have 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.)

We further note that Sahara Park attempts to bolster the arguments of its application with cost and income data, and calculations comparing its costs and the master-meter credit.[14] The data and calculations proffered are not in the record of this Commission, and so far as we are aware, have not been subject to cross-examination or other safeguards that would be available at a hearing. In addition, Sahara Park fails to show that such data or calculations have been adopted in any official decision of which administrative or judicial notice must or may be taken. At this juncture, therefore we must disregard Sahara Park's references to its alleged costs and income, and the calculations regarding the master-meter credit.

B. A Limited Hearing Shall Be Established to Assure Compliance With Our Order In D.97-07-009.

Sahara Park contends in its application for rehearing that in D.97-07-009 we contradictorily delegated to the Rent Commission and the Superior Court, the power to determine "jurisdictional facts, i.e., what items of expense constitute gas submeter system replacement costs and in what amounts."[15] Sahara Park mischaracterizes our statements. We had considered the most expeditious method to resolve this matter would be for the Rent Commission to modify the June 11, 1996 rent increase by extracting those costs not associated with the claimed "catastrophic" failure of the natural gas submetered system in 1995. The Rent Commission, we assumed, had collected evidence of the various costs to justify the rent increase, and had accounted for those costs in calculating the rent increase.

---

[14] See e.g., Sahara Park's Application for Rehearing, pp. 20-22.
[15] Sahara Park's Application for Rehearing, pp. 3, 29.

For example, the Rent Commission refers in its order to such costs as pool expenses, rent control registration fees, real property taxes, business license fees, postage expenses, landscape expenses, and other such non-submeter system costs. (See e.g. paragraphs 56 to 67 of the June 11, 1996 Rent Commission order.) When we issued D.97-07-009, we believed that since the Rent Commission computed the rent increase on the basis of Sahara Park's costs, the Rent Commission could readily recalculate the rent increase to reflect only the non-submeter system costs.

We can only conclude at this time, however, from the information we have received, as described more fully below, that the Rent Commission does not intend to modify its rent order for Sahara Park. We will, therefore, undertake an accounting of those costs included in the rent increase which can only be recovered through the master-meter credit we authorize and determine the amount due Complainant, and similarly situated tenants of Sahara Park, consistent with Section 739.5.

In D.97-07-009, Ordering Paragraph 4, we stated that the present docket would remain open for further consideration of the matter as may be required by a supplementary filing of Complainant depending on the future actions of Sahara Park. In response, counsel for Complainant submitted to the assigned Administrative Law Judge in this matter and to the Commission, a copy of a letter dated August 29, 1997 addressed to the tenants of Sahara Park from the managing general partner of Sahara Park.[16] The letter to the tenants indicates that in

[16] The copy of the August 29, 1997 letter of Sahara Park's manager to the tenants was submitted by counsel for Complainant accompanied by a copy of a letter by counsel for Complainant to counsel for Sahara Park dated September 16, 1997. A proof of service of these letters is also attached showing service on counsel for Sahara Park, counsel for Southern California Gas Company, the Commission's assigned Administrative Law Judge, an Assistant General Counsel of the Commission, and the Commission's docket office.

response to D.97-07-009, Sahara Park would cease to collect or retain $11 of the $18 rent increase in question as of the August 1, 1997 rent payment. The letter further indicates, however, that the $11 portion of the rent increase paid prior to August 1, 1997 would be withheld pending a final ruling in this case. We note especially that Sahara Park has not committed itself to the accuracy of the $11 refund. The letter states, at page 2: "Please be advised that, while we presently believe that the $7.00 ($18 -$11) hardship rent increase recalculation in accordance with the CPUC ruling is accurate, that recalculation could change as we refine it, or if we are instructed by the CPUC, the Rent Commission, or the Court to alter our method of recalculation."

In addition, pursuant to Ordering Paragraph 5 in D.97-07-009, complainant submitted a copy of a filing by counsel for the Rent Commission with the Superior Court, dated September 19, 1997, opposing a motion by Sahara Park's tenants to vacate the June 6, 1997 minute order of the Superior Court which upheld the Rent Commission's ordered rent increase, including that part of the rent increase attributable to the natural gas submeter system costs. [17] (Response of the Rent Review Commission of the City of Palm Springs to Motion to Vacate Minute Order, p. 3, filed September 19, 1997 in the matter of Sahara Mobilehome Park Homeowners Association v. Rent Review Commission of the City of Palm Springs, Consolidated Superior and Municipal Courts of the County of Riverside, Desert Judicial District, Case No. 091299.) The Rent Commission apparently

[17] The Superior Court for the County of Riverside became involved when the tenants' association of Sahara Park appealed the Rent Commission's decision in order to preserve their rights, as required by Code of Civil Procedure Section 1094.6, pending this Commission's review of the complaint filed with us against Sahara Park. See Sahara Mobilehome Park Homeowners Association v. Rent Review Commission of the City of Palm Springs, Case No. 091299. The tenants' association has filed a motion to vacate the court's minute order of June 6, 1997.

insists in its pleading that it is authorized to award the hardship rent increase in the amount that it determined was appropriate.[18] The Rent Commission's statements, however, are not supported by any jurisdictional analysis and do not address our discussion of the applicable constitutional, statutory, and case law set forth in D.97-07-009, at pp. 12-18. [19]

Thus, it appears that the contingency for which we had provided with respect to compliance with our decision has materialized. We will therefore establish a hearing to determine the portion of the rent increase ordered by the Rent Commission in its June 11, 1996 order which is attributable to the natural gas submeter system costs. We will also determine the amount due tenants from whom that portion of the rent increase was collected .

C. Sahara Park's Allegations of Rule 1 Violations by Complainant Are Without Merit.

Complainant filed a motion to strike Sahara Park's present application for rehearing. As indicated, we will deny the motion. Sahara Park was newly aggrieved by our reversal of the dismissal of the complaint. The case law cited by Complainant in its motion does not allow Sahara Park to petition for review of D.97-07-009 before the California Supreme Court without first seeking rehearing of the decision pursuant to Section 1756.

In responding to Complainant's motion to strike, however, Sahara Park additionally alleges that Complainant misled us where he stated that Sahara Park misrepresented to the Rent Commission and the Superior Court that Sahara Park has not been receiving the credit for its submeter system costs. (See Complainant's

---

[18] The Rent Commission makes the argument that "the Rent Review Commission correctly awarded a hardship rent increase, and in the amount that it determined to be appropriate, and for the period of time specified therein," that "it also may be true, as the residents suggest, the CPUC's ruling(s) preclude(s) the petitioning landlord from collecting some or all of the hardship rent increase awarded by the [Rent] Commission. The [Rent] Commission expresses no opinion on that matter."

Motion to Strike Defendant's Application for Rehearing, p. 8, and Sahara Park's Memorandum of Points and Authorities opposing the motion to strike, dated September 17, 1997, pp.7-10.)

In fact, we noted in D.97-07-009 that according to a copy of the Rent Commission's order, which was provided as an attachment to SoCalGas's motion to dismiss the complaint, the Rent Commission erroneously found that Sahara Park had not been receiving the authorized credit for its submeter system costs . (See D.97-07-009, p. 9, and the Rent Commission's June 11, 1996 Order approving the rent increase, at paragraph 93 where the credit is referred to as the "submeter discount.") This error, moreover, was not corrected by Sahara Park, which presumably had the burden of justifying its request for a "hardship" rent increase. Furthermore, when the tenants submitted their petition to the Superior Court for a writ of mandate to overturn the Rent Commission's order, the court effectively ignored the significant, factual error, despite evidence of the master-meter billings showing clearly the amount of the credit (or, "discount") received by Sahara Park,

Sahara Park now attempts to support its Rule 1 accusation against Complainant by citing to a portion of the transcript of oral arguments before the Superior Court which preceded the issuance of the court's June 6, 1997 minute order approving the rent increase. Sahara Park points out that counsel for the tenants (not counsel for Sahara Park) informed the court that every single invoice in the administrative record shows the receipt by the park owner of the submeter system credit and that these invoices were submitted by Sahara Park. (See Sahara Park's Memorandum of Points and Authorities in Response to Motion of

---

19 We have also been provided by counsel for Complainant a copy of the Memorandum of Points and Authorities filed by counsel for Sahara Park which opposes on jurisdictional grounds the tenants' motion to vacate the court's June 6 order.

Complainant to Strike Defendant's Application for Rehearing of Decision No. 97-07-009., p.9, fn. 6. We note that the correct citation within the footnote to the transcript is page 15, not page 13.)

The referenced transcript shows that when the Superior Court asked for a reply to the tenants' comments on this issue, rather than acknowledge to the court that in fact Sahara Park has been receiving the credit for decades, counsel for Sahara Park appears to have remained silent, and counsel for the Rent Commission did not concede the credit as a matter of fact:

> (Transcript of the May 5, 1997 hearing before the Consolidated Courts of the Desert Judicial District for the County of Riverside, Indio Branch, Department 2 J, Sahara Mobile Home Park Homeowners Association v. Rent Review Commission, Case No. 091320, p.20, lines 6-12, emphasis added.

Perhaps for this reason, the Superior Court summed up the dispute by faulting the tenants:

> "The HOA [tenant's association] argues this finding is contrary to the evidence, relying on copies of the owner's gas bills which reference submetered credits. However, as the [Rent] Commission points out in their opposition page 12 and footnote 10 citing the Administrative Record (AR) the HOA "presented no evidence demonstrating that the Park owner actually received and/or retained a 'submeter discount' from the utility company." (Sahara Mobilehome Park Homeowners Association v. Rent Review Commission of the City of Palm Springs, Consolidated & Coordinated Superior & Municipal Courts of the County of Riverside, Desert Judicial District, Case No. 091299, Minute Order of June 6, 1997, mimeo, p. 2.)

Moreover, neither Sahara Park nor the Rent Commission acknowledged that that park owner has been receiving the credit when SoCalGas submitted,

pursuant to our order, a declaration to the court on Sahara Park's receipt of the credit. (See D.97-07-009, Ordering Paragraph 3.) This declaration was filed contemporaneously, we believe, with the tenants motion to vacate the June 6, 1997 minute order of the court. Sahara Park filed a memorandum of points and authorities and a declaration of counsel in opposition to the tenants' motion on or about September 2, 1997. We find no admission in this filing by Sahara Park as to its receipt of the monthly credit. Furthermore, the Rent Commission's filing in opposition to the tenants' motion to vacate further contends that the tenants are to blame for a failure of proof, and strenuously argues that the court should disregard SoCalGas's declaration which attests to Sahara Park's receipt of the credit. (Response of the Rent Review Commission of the city of Palm Springs to Motion to Vacate Minute Order, filed September 19, 1997, in the Consolidated and Coordinated Superior and Municipal Courts of the County of Riverside, Desert Judicial District, Sahara Mobile Home Park Homeowners Association v. Rent Review Commission of the City of Palm Springs, Case No. 091299, p. 2, 3.)

We believe the failure of Sahara Park to clarify the facts on this issue is a significant one. A linchpin of the statutory framework for compensating mobilehome park owners was removed from a proper evaluation of the rent increase. Under such circumstances, we consider Sahara Park's allegations of a Rule 1 violation on the part of Complaint to be without foundation. We further conclude that we were accurately informed by Complainant. Rule 1 of the Commission's Rules of Practice and Procedure provides that any person who signs a pleading or brief, enters an appearance at a hearing or transacts business with the Commission, must maintain the respect due the Commission and its members, and must "never mislead the Commission or its staff by an artifice or false statement of fact or law." With respect to these provisions, Sahara Park's allegations of a Rule 1 violation by Complainant is without merit.

THEREFORE IT IS ORDERED that:

1. The application filed by Sahara Park for rehearing of D.97-07-009 is denied.

2. The Complainant's motion to strike the application for rehearing filed by Sahara Park is denied.

3. Sahara Park's allegation of a Rule 1 violation by Complainant is denied.

4. A limited hearing shall be conducted in the above-captioned proceeding to determine the portion of the subject rent increase which is attributable to costs of maintaining, operating, upgrading, or replacing the natural gas submeter system delivering natural gas utility service to the tenants of Sahara Park, i.e., the costs which are solely within this Commisison jurisdiction to assess for recovery through the master-meter credit, and to determine the amount due to tenants who have paid that portion of the rent increase.

5. All parties to this proceeding shall be notified of the hearing schedule.

This order is effective today.

Dated November 5, 1997 at San Francisco, California.

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