

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

Order Instituting Rulemaking Regarding
Policies, Procedures and Rules for the
California Solar Initiative, the Self-
Generation Incentive Program and Other
Distributed Generation Issues

Rulemaking 12-11-005
(Filed November 8, 2012)

**EVERYDAY ENERGY'S OPPOSITION TO SHOREBREAK ENERGY DEVELOPERS, LLC MOTION
TO STRIKE EXHIBITS IN THE COMMENTS OF EVERYDAY ENERGY FILED JULY 22, 2014**

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Date: August 18, 2014

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OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues

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**EVERYDAY ENERGY’S REPLY AND OPPOSITION TO SHOREBREAK ENERGY DEVELOPERS, LLC
MOTION TO STRIKE EXHIBITS IN THE COMMENTS OF EVERYDAY ENERGY FILED JULY 22,
2014**

Pursuant to Article 11 of the California Public Utilities Commissions Rule of Practice and Procedure, Everyday Energy hereby submits its reply and opposition to Shorebreak Energy Developers, LLC (“Shorebreak”) Motion to Strike Exhibits in the Comments of Everyday Energy filed on July 22, 2014.

As a matter of law, Shorebreaks’ Motion to strike must be denied.

In the Assigned Commissioner’s Ruling and Scoping Memo, for Rulemaking 12-11-005, published on June 9, 2014, President Peevey added to the scope of the proceeding, the ongoing review, and consideration of modification to policies of the MASH and SASH programs including the implementation of AB 217 (Bradford, Stats. 2013, ch. 609).¹ In the same Scoping Memo, President Peevey Categorized this proceeding as “quasi legislative,”² as that term is defined in Pub. Util. Code Section 1701.1(c)(1). Additionally, in paragraph five of the Scoping Memo, President Peevey adopted a schedule that did not include formal evidentiary hearings and added that “[i]t is anticipated that the record will be composed of all documents filed and served on parties.”³ In other words, the record of this proceeding does not yet completely exist and the

¹ See Assigned Commissioner’s Ruling and Scoping Memo file June 9, 2014 R. 12-11-005 at pages 5-6 (paragraph 1).

² See Id. At page 9 and paragraph 4.

³ See Id. At page 9, paragraph 5.

Assigned Commissioner expects that the record will be developed through the submission of all documents filed and served on parties.

In the Administrative Law Judge's Ruling (1) Incorporating Staff Proposal Into the Record; (2) Requesting Comments From Parties; and (3) Setting Comment dates, the Staff's Proposal specifically asked the question in Attachment B, Paragraph 2, "What additional factors, issues, or requirements (if any) should the Commission Consider with respect to low-income property eligibility standards in either Program?" Everyday Energy specifically answered this question by providing a discussion of Pub. Utilities Code Section 2852 and provided examples of MASH projects where it appears that the deed restriction that typically qualifies a property as low-income, does not comply with the rules. Additionally, on July 21, 2014, Everyday Energy requested leave to exceed the 15 page limit on opening comments and specifically asked Judge DeAngelis if it could file copies of the deed restrictions that are the subject of this Motion to Strike. Judge DeAngelis granted Everyday Energy's request on July 21, 2014.

Shorebreak's Motion to Strike is based on a proceeding being characterized as Adjudicatory and requiring evidentiary hearings. As stated above, this proceeding is "quasi-legislative" and it was ruled that evidentiary hearings are not necessary to develop the record. Accordingly, Shorebreak's argument that the "Commission must rely only upon the record evidence in these "adjudicatory proceedings," is wrong as a matter of law. The Commission should deny Shorebreak's Motion as a matter of law.

Shorebreak also argues that Everyday Energy relies on evidence that is outside the record. Again, Shorebreak is wrong. First, as mentioned above, Everyday Energy properly requested and was granted leave to file the deed restriction exhibits by Judge De Angelis on July 21, 2014. Next, the subject deed restrictions were filed as part of the Incentive Claim Process of the California Solar Initiative, the overall proceeding that has included the implementation of AB 217. Moreover, these subject deed restrictions were filed in the county recorders office and specifically provide Deed Restriction Declarations that are contingent on the receipt of a MASH rebate within a defined timeframe, which are publically available.

Shorebreak had an opportunity to respond and has responded to the deed restriction exhibits filed by Everyday Energy in its reply comments. Shorebreak contends that the deed restrictions for the mobile home parks where a MASH rebate has been paid are valid.⁴ Everyday Energy contends that the same deed restriction are invalid. It is important to note that CCSE, PG&E, and SCE filed Advice Letters 48, 4447-E, and 3063 E, which are effective as of July 23, 2014, respectively to update the CSI Handbook with the actual language of Pub. Util. Code Section 2852 and examples of its application. These advice letters make it even clearer that the deed restrictions at issue do not qualify their subject properties as low income for the purposes of the MASH Program. It is now up to the Commission to rule on this issue in response to Staff's Question #2 in Attachment B of the Staff Recommendations on the implementation of AB 217.⁵

Finally, Shorebreak alleges that Everyday's evidence is intended to solely prejudice the rights of its competition. First, Everyday Energy does not compete with Shorebreak.⁶ In the five years of providing solar PV to legitimately regulated affordable housing, Everyday Energy has never found itself in direct competition for work with Shorebreak.⁷ The only reason Everyday Energy provided copies of the deed declaration restrictions filed by Shorebreak's clients was in direct response to question 2 on Attachment B of the Staff Report and to shine a light on the issue of maximizing overall benefit to ratepayers. Part of the implementation process for AB 217 is to determine a way to maximize overall ratepayer benefit. Paying MASH rebates to properties that are not properly deed restricted, do not qualify as regulated affordable housing, and have no intention of sharing the benefits with tenants does not maximize overall ratepayer benefit. Instead, it undermines the confidence of ratepayers when rebates are paid to properties that do not appear to qualify for a MASH rebate and have successfully lobbied for rules that do not require them to share the benefits with tenants.⁸ The Western Manufactured Housing Communities

⁴ See Shorebreak's reply comments response to Recommendation 1 filed on August 1, 2014.

⁵ Everyone agrees that the Commission should administer programs that benefit low income properties and tenants. It is important that the programs benefit those it targets for benefit. Master metered mobile home parks that receive a CSI rebate are not required to share any benefits with tenants (See Pub. Util. Code. Section 739.5(i)).

⁶ Everyday Energy's clients are mission driven affordable housing property developers who are charged with providing regulated multi-family affordable housing to low income Californians.

⁷ Shorebreak markets its service to mobile home park Owners. Everyday Energy markets its services to properly deed restricted low-income multi family housing.

⁸ See Pub. Util. Code 739.5(i) lobbied for by the Western Manufactured Home Association.

Association, in conjunction with Shorebreak successfully lobbied the state legislature to pass SB 674. SB 674 amended Pub. Utilities Code Section 739.5 to allow mobile home park owners to receive a CSI rebate for their master metered electric service and not share the benefit with the tenants.⁹ The only regulation is that the master metered mobile home park owners cannot charge more for electricity to their tenants than the IOU in their service territory. It would appear that mobile home owners are not required to share the benefits received from a CSI rebate with their tenants.¹⁰

This motion to Strike is an attempt to suppress publicly available documentation that demonstrates invalid deed restrictions attempting to qualify mobile home park owners for a MASH rebate. It also provides documentation of a public advertisement that states, "When the incentives outweigh the cost..... **You get paid to install solar!**" These documents help to demonstrate that ratepayer benefit is not being maximized and are in direct response to Attachment B question 2 of the Staff Proposal.

Conclusion

For the reasons stated above, Shorebreak's Motion to Strike must be denied.

Respectfully submitted this 18th day of August 2014, Carlsbad California

By: _____/s/ Scott A. Sarem

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Everyday Energy

⁹ See Pub. Util. Code Section 739.5(i).

¹⁰ See Exhibit A. December 11, 2011 Edition of WMA Reporter talking about SB 674 and how mobile home park owners are not required to share the savings associated with receiving a CSI rebate with tenants. See also the article written by Renewable Energy Partner's lawyer, Edward Poole discussing how mobile home park owners are no longer required to share the benefits of a CSI rebate with their tenants as a needed change. This is problematic because roughly 88% of the rebates received by Shorebreak's mobile home clients are monetized base on tenant benefit.

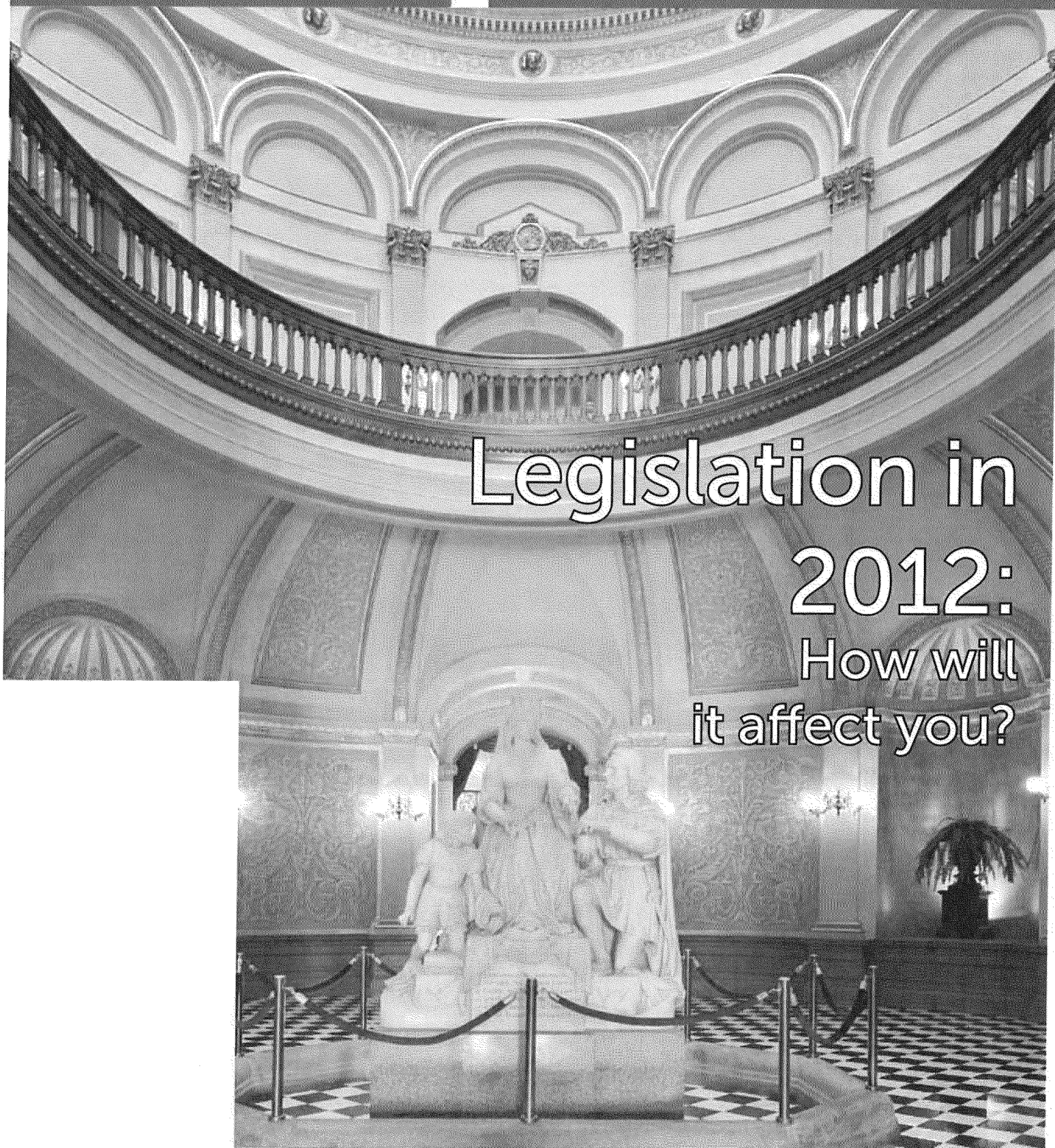
EXHIBIT A

DECEMBER 11, 2011
EDITION OF WMA REPORTER

reporter

December
2011

WMA



Legislation in
2012:
How will
it affect you?

required parkowners to pay legal costs to local governments in rent control and subdivision actions that are unsuccessful. AB 579 is still alive and we will know by the end of January if it survives the first policy committee. January 13, 2012 is the deadline for all bills that were introduced in 2011 to pass their first policy committees.

Another bill, Senate Bill 444 by Senator Noreen Evans, also failed thanks to WMA's efforts. SB 444 would have allowed local agencies to decide whether there is "adequate" support among the tenants before deciding to approve of a conversion.

These were hard fought, significant victories for the industry.

Articles highlight solar rebate, landlord/tenant bills that take effect

Several stand alone articles can be found in this issue regarding implementation of these new laws in your community and other pertinent topics.

Terry Dowdall's article highlights the SAFE Act. (A 12 Step Program to Compliance.) Paul Jensen's article discusses the application of several landlord tenant bills that were signed into law. Finally, don't miss Ed Poole's article regarding the practical application of Senate Bill 674 by Senator Alex Padilla. Signed into law, SB 674 clarifies that solar credits and rebates will be distributed to those mobilehome parkowners who choose to purchase solar devices to conserve energy in mobilehome parks. WMA believes this was important legislation to encourage parkowners to install solar systems and help the California Solar Initiative meet its goal of 1,940 megawatts of installed solar capacity by 2016.

No Significant Change to Mobilehome Residency Law for 2012

Civil Code Section 798.15 requires management to either provide all homeowners with a copy of the new Civil Code by February 1 of each year, or provide a written notice to all homeowners that there has been a change to the Civil Code and that the homeowner may obtain a copy of that code from management at no charge.

WMA and industry attorneys have reviewed the 2012 Civil Code and have determined that there is no "significant change" to the Mobilehome Residency Law for 2012. Therefore, we do not believe it is necessary that you provide either a copy of the new law or any notice that there has been a change.

However, we do recommend that

all community owners and managers have sufficient 2012 Civil Codes ready for the coming year so that they can be attached to and part of all new rental agreements entered into in the coming year.

We are scheduled to begin shipping MRL orders on December 1. Orders will be shipped in the order received. All complete orders received prior to December 15 will be shipped by December 24.

As always, we encourage members to sign up for the WMA MCM New Laws Seminar series. This year the course will also discuss developing your Annual Quick List of important tasks that need to be accomplished annually. Courses begin in January. A listing of the dates and locations can be found on WMA's homepage, www.wma.org.

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LEGISLATION SUPPORTED BY WMA (Continued)

STATUS

Senate Bill 376-
Real estate brokers.
(Fuller)

The Department of Real Estate submitted late opposition to allowing chattel lending activity under their statutes that deal with real property. *Position: Sponsored*

Two-Year Bill

Senate Bill 674-
Telecommunications:
master-metering:
data security. (Pa-
dilla)

Senate Bill 674 allows the master-meter owner to keep the "rebates" under the California Solar Initiative for a solar energy system installation instead of having to pass the savings on to the submetered tenants. *Position: Support*

Signed into Law-
Chapter 255

ADDITIONAL INDUSTRY LEGISLATION

STATUS

Assembly Bill 505-
Housing programs:
audits. (Harkey)

As amended, this bill would require the State Auditor's office to perform an audit of the Department of Housing and Community Development every four years. *Sponsored by the author. Position: Watch*

Two-Year Bill

Assembly Bill 818-
Solid waste: multi-
family dwellings.
(Blumenfeld)

This bill enacts the Renters' Right to Recycle Act and requires the owner of a multifamily dwelling with five or more units to make arrangements for recycling services. *Position: Watch*

Signed into Law-
Chapter 279

Assembly Bill 928-
Housing and Com-
munity Development:
mobilehome parks.
(Wieckowski)

This bill is currently a "spot" bill. A "spot" bill is a placeholder for legislation that is yet to be determined. This bill will likely be used as a vehicle to introduce housing related legislation. *Sponsored by the author. Position: Watch*

Two-year bill

Assembly Bill 1198-
Land use: housing ele-
ment: regional housing
need assessment.
(Norby)

Would repeal the requirement that the department determine the existing and projected need for housing for each region, as specified, and other specified provisions relating to the assessment or allocation of regional housing need. *Position: Favor*

Two-year bill

Senate Bill 44-
Public utilities: gas
pipeline emergency
response standards.
(Corbett)

Senate Bill 44 requires natural gas operators with high pressure transmission pipelines to improve communication and coordination with first responders by requiring the California Public Utilities Commission, in consultation with the Office of Emergency Services, the State Fire Marshall, and the California Fire Chiefs Association, to adopt stricter emergency response standards. *Sponsored by California Fire Chiefs Association. Position: Watch*

Signed into Law-
Chapter 520

Senate Bill 149- Mo-
bilehomes. (Correa)

This bill is currently a "spot" bill. A "spot" bill is a placeholder for legislation that is yet to be determined. This bill will likely be used as a vehicle to introduce housing related legislation. *Position: Watch*

Two-year bill

Senate Bill 184-
Land use: zoning
regulations. (Leno)

This bill overturns the *Palmer* decision and expressly authorizes a county or city to establish inclusionary housing requirements as a condition of development. [Note: The author moved the bill to the inactive file.] *Position: Watch*

Two-year bill

Solar Rebate under California Solar Initiative for Master-Meter Parks



Edward G. Poole is with the San Francisco law firm of Anderson & Poole and serves on WMA's Utility Task Force. He can be reached at 415.956.6413 phone; 415.956.6416 fax; and email: epoole@adplaw.com

Under the California Solar Initiative (CSI), a business can receive a cash rebate for installing solar on a home or business. To qualify, if a business buys electricity from one of California's main three investor-owned utilities – Pacific Gas & Electric Company, Southern California Edison or San Diego Gas & Electric Company – and it has roof or ground space that gets unobstructed sunlight from 11 a.m. to 6 p.m. year round, then it may qualify for cash back incentives through the CSI. Customers of municipal utilities may also qualify for incentives through their municipal service provider. CSI rebates vary according to utility territory, system size, customer class, and performance and installation factors. The rebates automatically decline in “steps” based on the volume of solar megawatts (MWs) with confirmed project reservations within each utility service territory.

Generally, to qualify, the owner has to complete an energy efficiency audit and make sure to take advantage of the cost-effective ways to save energy and money. Then, the owner must contract with a qualified contractor to install the solar energy system. As long as the

owner uses a qualified contractor, the contractor will handle the CSI application process and obtain the rebates. Once the owner receives a reservation confirmation letter, then the system is ready to install and interconnect to the utility's power grid. When the project is installed and operational then Incentive Claim Form may be filed.

The incentives are either an upfront lump-sum payment based on expected performance, or a monthly payment based on actual performance over five years. The Expected Performance-Based Buydown (EPBB) is the upfront incentive available only for smaller systems. The Performance Based Incentive (PBI) is paid based on actual performance over the course of five years. The PBI is paid on a fixed dollar per kilowatt-hour (\$/kWh) of generation basis and is the required incentive type for systems greater than 30 kW in size, although smaller systems may opt to be paid based on PBI.

There is a particular issue involving the installation of solar systems at master-metered mobilehome parks that recently-signed legislation is designed to address so that mobile-

home park owners receive the rebate under the CSI. Since the park owner is the customer of the utility, and is paying for the installation of the solar system, it is only fair that the park owner receive the CSI rebate. However, there is a provision in state law that provides that every master-metered customer who receives any rebate from the serving utility must distribute to or credit to the account of each current user (in other words, each resident) that portion of the rebate which the amount of electricity consumed by the resident during the last billing period bears to the total amount furnished by the serving utility during that billing period. See Section 739.5(b). Without further clarification, the law would seem to require that the CSI credit be given to the residents, not the park owner who expended the funds. This would be patently unfair and was not the intention of Section 739.5.

The rebates envisioned when Section 739.5 was originally enacted were rebates from the electric and gas companies related to electric and gas usage. While the "proportional rebate" idea makes sense when there is a credit based on park-wide savings in usage (such as the 20/20 rebate plan), it makes no sense with the CSI credit. Therefore, at the urging of WMA, Section 739.5 was amended so that it is clear that for the purposes of the legislation, "rebate" does not include the award of a monetary incentive under the CSI for a solar system that provides electrical generation to a mobilehome park. With this needed change, WMA believes that park owners will be encouraged to utilize alternative and renewable energy sources, which in turn will benefit the entire State of California. ■

Leading Team of Park Brokers

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320 Spaces, California Riverfront Park and Resort

105 Spaces, Northern California Coast on Ocean

211 Space 4 STAR MHC, Phoenix, AZ

231 Spaces with Marina (on the river), CA

70 Spaces Rare To Market Nor-Cal MHC, CA

110 MH & 10 RV Space Park, Southern Oregon

206 Spaces, So Cal 55+ MHP with huge upside

51 Space MHP Stable Occupancy, Hesperia, CA

83 Space Park & Marina on Ocean West of Portland

Approved 332 Space RV Resort Paso Robles, CA

117 Sites 5.5% Seller Carry, Northern Nevada

101 Spaces Newer 1990's RV Park, Susanville, CA

59 Space Newer RV Park, High Reviews in AZ

41 Space Cash Flow + Upside, Adelanto, CA

86 Space 55+ MH/RV, I-5, Siskiyou County, CA

85 Space MH/RV Park, Tuolumne, CA

51 Spaces, Northern Cal RV Park on Interstate 5

41 Spaces, San Diego County Trailer Park

21 New Approved Spaces, City of San Diego, CA

46 Space Park in San Diego, CA

32 MH Spaces in Tucson, AZ

Approved/Former MHP Land, Menifee (Canyon Lake), CA

23 MH spaces on 18 acres in Blythe, CA

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357 Spaces-Casa Grande, AZ

250 Spaces-Winterhaven, CA

260 Spaces-Ehrenberg, AZ

217 Spaces-St. David, AZ

147 Spaces-Camp Verde, AZ

286 Spaces-Desert Hot Springs, CA

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Newer Sedona Area Park - SOLD MAY, 2011

MHC 55+ Recently Built Park - SOLD APRIL, 2011

Palm Springs Market Resort - SOLD MARCH, 2011

Modern Quincy, CA Park (w/SBA Loan) - SOLD MARCH, 2011

Los Angeles County Park - SOLD JAN 2011

Cash Flow So-Cal Park - SOLD OCT 2010

High Desert Upside Park - SOLD OCT 2010

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5 Star 55+ Costal Oregon MHC - SOLD SEPT 2010

55+ SoCal MHC - SOLD 2010

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