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Decision 04-10-001 October 7, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Fred A. Patzke and Josephine Patzke, Complainants, vs. Valley Breeze Mobilehome Park, Defendant.	Case 04-04-030 (Filed April 26, 2004)

OPINION GRANTING IN PART AND DENYING IN PART COMPLAINT AGAINST MOBILEHOME PARK

1. Summary

Fred and Josephine Patzke (Complainants) are residents of Valley Breeze Mobile Homes Park (Valley Breeze) in Yucaipa. They complain that the owners of the park have not correctly provided gas service rates and rebates. Based on pleadings filed by the parties and on an analysis filed by Southern California Gas Company (SoCalGas), we conclude that Valley Breeze is in compliance with SoCalGas tariffs and with Pub. Util. Code § 739.5, with the exception of the Valley Breeze policy on gas company rebates. We direct Valley Breeze to recalculate rebates it has received from SoCalGas in the past three years and to credit the accounts of submetered tenants in the manner set forth in § 739.5(b) and SoCalGas Schedule GM, Rule 24(B)(2)(a). This proceeding is closed.

2. The Complaint

Valley Breeze is a seniors' mobilehome park located in Yucaipa. Gas service is partly submetered and partly flat rate, with service provided to the park through one meter by SoCalGas. Complainants seek to take advantage of the California Alternate Rates for Energy (CARE) program, which offers a discount to low-income households. Complainants allege that provision of the CARE discount is the responsibility of the park owners pursuant to Pub. Util. Code § 739.5.

While not altogether clear, the complaint appears also to allege that (1) the park owners are required to submeter gas service to all tenants in the park, and (2) the park has not properly handled gas SoCalGas rebates, and that these alleged infractions also violate § 739.5.

As relevant to this complaint, § 739.5 provides:

> 739.5(a) The commission shall require that, whenever gas or electric service, or both, is provided by a master-meter customer to users who are tenants of a mobilehome park, apartment building, or similar residential complex, the master-meter customers shall charge each user of the service at the same rate which would be applicable if the user were receiving gas or electricity, or both, directly from the gas or electrical corporation. The commission shall require the corporation furnishing service to the master-meter customer to establish uniform rates for master-meter service at a level which will provide a sufficient differential to cover the reasonable average costs to master-meter customers of providing submeter service, except that these costs shall not exceed the average cost that the corporation would have incurred in providing comparable services directly to the users of the service.
>
> (b) Every master-meter customer of a gas or electrical corporation subject to subdivision (a) who, on or after January 1, 1978, receives any rebate from the corporation shall

> distribute to, or credit to the account of, each current user served by the master-meter customer that portion of the rebate which the amount of gas or electricity, or both, consumed by the user during the last billing period bears to the total amount furnished by the corporation to the master-meter customer during that period.

Complainants earlier had filed a similar "Request for Assistance" with the Office of the Mobilehome Ombudsman, State Department of Housing and Community Development, in Sacramento. The park's owners responded to that inquiry by contacting SoCalGas. According to the owners, SoCalGas replied that tenants in a partially submetered park are required to complete a SoCalGas application for CARE service and apply for qualification from the utility.

3. The Park's Answer

Arthur Emerson and Mitchell Emerson responded to the complaint in this case. They stated that they have been the owners of Valley Breeze for 44 years. Originally, they said, the gas and electric service was submetered to all tenants. They added:

> In the early '70s we were approached by a group of tenants who knew of parks that were on a seasonal flat-rate billing system. It was brought to our attention that the Gas Company would come out and measure the square footage of each coach and apply a formula to arrive at a winter/summer flat rate.
>
> We agreed to this because it would offer protection to many of the tenants with fixed incomes. These tenants were experiencing "spiking" of their gas bills in the cold winter months.
>
> [T]he plan took into account a winter rate (November through April) and a summer rate (May through October). The original plan covered basic monthly gas billings successfully. However, as add-on rooms and covered porches became the vogue, the

> Park has been losing significant monies during the winter months. (Answer to Complaint, at 2.)

Valley Breeze states that approximately 48% of tenants have metered gas, and that management will install gas meters on request. The owners state that each tenant has always had the option to be on metered gas or flat rates, and that the park would prefer to have 100% submetered tenants in its gas service.

The owners added:

> In regard to the Commission Code 739.5 to which Mr. Patzke refers repeatedly, we have read that detailed excerpt and we comment thusly: (1) Re: any rebate received by the Park, it only has helped to allay losses incurred by Management on utility billings, and (2) Re: appropriate rates, we stated earlier that we bill according to the Gas Company formula, based on coach size and/or meter reading. (Answer to Complaint, at 3.)

According to the owners, utility billing for the park is handled by an outside accounting firm. In response to a ruling by the Administrative Law Judge (ALJ) in this matter, the owners met with the Complainants and other tenants in an effort to resolve the complaint. No resolution of the matter was reached.

4. SoCalGas Comments

By ALJ Ruling dated July 13, 2004, SoCalGas was added to this proceeding as a necessary party[1] for the limited purpose of examining the underlying gas service practices of Valley Breeze in light of SoCalGas tariffs and SoCalGas information provided to the park. Under § 739.5, SoCalGas is required to

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[1] *See* West's Ann. CCP. § 389(a); *see also* Rule 63 of the Commission's Rules of Practice and Procedure.

establish tariffs governing its provision of service to a master-meter mobilehome park operator and to notify the park owner of its responsibilities in providing submetered service to tenants.

SoCalGas was asked to examine the procedures described by Valley Breeze in providing and charging for gas service and to respond within 30 days with an analysis of (1) tariffs and other governing authority applicable to the complaint and answer, (2) instructions that SoCalGas had provided to Valley Breeze about rates and rebates, and (3) corrections, if any, in Valley Breeze procedures mandated by SoCalGas tariffs.

SoCalGas responded on August 12, 2004. It stated that Valley Breeze takes service under SoCalGas Schedule GM (Multi-Family Service) because the gas service is provided through one meter to a park that is partially submetered. The utility added that Valley Breeze does not qualify for service under SoCalGas Schedule GS (Multi-Family Service Submetered) because it is only partially submetered. The applicability section of Schedule GS states, in pertinent part: "Applicable to natural gas service for multi-family dwelling units and mobile home parks supplied through one meter on a single premises and submetered to *all* individual units…." (Emphasis added.)

SoCalGas added:

> Based on SoCalGas' assessment of the park's provision of gas service and related charges and rebates, it appears that the park is complying with SoCalGas' tariffs. Accordingly, SoCalGas has no corrections to recommend. This account is correctly coded as a master meter account and billed under Schedule GM. As discussed in the response to Q1, the Valley Breeze Mobilehome Park is not 100% submetered and, therefore, does not meet the criteria for service under Schedule GS. (Response of SoCalGas, at 3.)

5. Analysis

We agree with SoCalGas that Valley Breeze is in compliance with the utility's tariffs, which in turn have been authorized by this Commission. The park is billing submetered tenants pursuant to § 739.5, and it is billing flat-rate tenants based on a measured-space basis put in place some years ago. Section 739.5 appears to assume that a master-meter mobilehome park will submeter all tenants and, while that might be preferable in situations like this one, we find nothing in the statute that requires a park to do so.

It follows that, to the extent the complaint alleges a § 739.5 violation because Valley Breeze has not submetered all tenants, the complaint fails in its proof and is denied.

Similarly, we are not persuaded that a § 739.5 violation has occurred because the park has not offered a CARE discount to its tenants. Nothing in the statute requires the park owners to discount what they charge tenants unless that amount is reflected in the discount that SoCalGas offers to the park. Based on the uncontested filings of both Complainants and Valley Breeze, it appears that tenants who seek a CARE discount should apply directly to SoCalGas, which in turn would determine eligibility and adjust its billings to Valley Breeze, which then would be required to pass those discounts on to eligible customers. For reasons beyond the scope of this complaint, that process has not taken place.

With that said, we also conclude that the complaint should be granted to the extent that it challenges the park's policy on gas company rebates. Valley Breeze admits that it has retained gas company refunds as a kind of offset against losses it believes it has incurred because of flat-rate tenants who have enlarged their heating space without change in their heating costs. The park's retentation of rebates is specifically prohibited by § 739.5(b), which in pertinent part states:

> Every master-meter customer [Valley Breeze] of a gas…corporation…who…receives any rebate from the corporation shall distribute to, or credit to the account of, each current user [submetered tenant] that portion of the rebate which the amount of gas…consumed by the user during the last billing period bears to the total amount furnished…during that period.

That provision is mirrored by SoCalGas Rule 24(B)(2)(a), which in pertinent part states:

> In the event that any rebate is provided the master meter customer, such customer shall distribute, or credit, to the account of each current sub-customer that portion of the refund which the volume of gas used during the preceding billing period bears to the total volume of gas used by the master meter customer.

In view of these requirements governing disposition of rebates, our order today directs Valley Breeze to refund to submetered tenants, or credit their accounts, with a proportionate share of all rebates received by Valley Breeze from SoCalGas during the three-year period prior to April 26, 2004, the date of filing of this complaint. We apply the three-year statute of limitations set forth in Pub. Util. Code § 736. The refund or credit should be accompanied by an explanation to each affected tenant of how the tenant's volumetric usage was calculated.

In summary, the complaint in this case is affirmed to the extent it alleges violation of § 739.5 with respect to Valley Breeze's treatment of SoCalGas rebates; the complaint is denied in all other respects.

6. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Complainants filed comments, stating that they believe that Valley Breeze should do more in obtaining CARE discounts from SoCalGas on behalf of eligible tenants. We conclude that the responsibility for applying for a CARE discount is on each eligible tenant, not on the park. The park has filed comments stating that its billing company is at work on the ordered refunds.

7. Assignment of Proceeding and Other Procedural Matters

Geoffrey F. Brown is the Assigned Commissioner and Glen Walker is the Assigned ALJ in this proceeding.

In the Instructions to Answer notice dated May 6, 2004, this proceeding was deemed adjudicatory, and a hearing was deemed necessary. As explained above, a hearing became unnecessary because the parties' written submissions provided sufficient information to resolve the disputed issues.

Findings of Fact

1. Valley Breeze is partly submetered and partly flat rate in its provision of gas service to tenants.
2. Complainants seek a CARE discount on their gas service.
3. Valley Breeze has retained SoCalGas rebates as an offset against losses attributed to its flat-rate gas service.
4. The parties' written submissions provide an appropriate basis for resolving this complaint without an evidentiary hearing.

Conclusions of Law

1. Valley Breeze is in compliance with SoCalGas tariffs.

2. Valley Breeze is not responsible for providing a CARE discount until such discount has been put into effect by SoCalGas upon application to SoCalGas by the tenant(s) seeking the discount.

3. Valley Breeze is required to refund or credit to tenants their proportionate share of any SoCalGas rebate.

4. Today's order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The complaint is granted to the extent it alleges violation of Pub. Util. Code § 739.5 with respect the treatment of gas utility rebates by Valley Breeze Mobile Homes (Valley Breeze); the complaint is denied in all other respects.

2. Valley Breeze shall refund to utility gas submetered tenants, or credit their accounts, with a proportionate share of all rebates received by Valley Breeze from its gas utility during the three-year period prior to April 26, 2004. The refund or credit should be accompanied by an explanation to each affected tenant of how the tenant's volumetric usage was calculated.

3. An evidentiary hearing is not required.

4. Case 04-04-030 is closed.

This order is effective today.

Dated October 7, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY

Commissioners