

ORIGINAL

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Decision 99-07-016 July 8, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into whether the current income-based criteria for the Low Income Ratepayer Assistance Program and for Universal Lifeline Telephone Service should be changed.

Rulemaking 94-12-001
(Filed December 7, 1994)

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O P I N I O N

1. Summary

56.16 In this decision, we take the following actions concerning the California Alternate Rates for Energy (CARE) program and the Universal Lifeline Telephone Service (ULTS) program. First, we specify what income from self-employment should be used to determine eligibility for the CARE and ULTS programs. Second, we conclude that liquid assets should not be used to screen applicants for the CARE and ULTS programs. Third, we conclude that customers should not be admitted into the CARE and ULTS programs by showing proof of participation in another social program. Finally, we require all customers participating in the CARE and ULTS programs to provide upon enrollment in these programs, and periodically thereafter, a signed statement indicating that (1) the utility may verify the customer's eligibility to participate in the program, and (2) if the verification establishes that the customer is ineligible, the customer will be removed from the program and may be billed for discounts which the customer should not have received.

2. Background

56.16 The ULTS and CARE programs were established in 1984 and 1988, respectively. The purpose of the CARE program is to provide affordable electric and gas service to low-income households, while the purpose of the ULTS program is to provide affordable basic exchange telephone service to low-income households. The CARE program is mandated by Pub. Util. Code §§ 739.1 and 739.2.¹ The ULTS program is mandated by § 871 et seq.

¹ All statutory references are to the Public Utilities Code.

To participate in the CARE and ULTS programs, a customer must meet the eligibility criteria set forth in General Order (GO) 153, including the requirement that the customer reside in a household whose members collectively earn less than a prescribed amount of "income." For the purpose of determining eligibility for the CARE and ULTS programs, GO 153 defines "income" as follows²:

All revenues, from all household members, from whatever sources derived, whether taxable or non-taxable, including, but not limited to: wages, salaries, interest, dividends, spousal support and child support payments, public assistance payments, social security and pensions, rental income, income from self-employment, and all employment-related, non-cash income. (GO 153, Section 1.3.7)

During the early 1990s, the Commission adjudicated three complaint cases which involved low-income customers who had been denied access to the CARE program because other financial resources (i.e. borrowed monies or funds transferred from a savings account).³ In D.94-05-025 the Commission states "[o]ur broad interpretation of income emphasizes that the purpose of the LIRA program is to assist the truly needy, not to assist those who may have a low taxable income but have other financial resources instead."⁴ These decisions represented a sharp departure from the Commission's long-standing policy that only household income, and not assets, should be used to determine a customer's eligibility for the CARE program. However, each of these decisions was in response to a particular set of facts in a specific complaint case and not a general statement of policy.

² Although GO 153 expressly applies only to the ULTS program, the Commission in Decision (D.) 89-07-062 adopted ULTS program eligibility criteria for the CARE program. (32 CPUC 2d 334, at 347)

³ See, for example, D.93-06-085, and D.93-07-023.

⁴ (54 CPUC 2d 464, at 465)

In order to fully consider the implications of using assets as an eligibility criterion for the CARE and ULTS programs, the Commission issued Order Instituting Rulemaking (OIR) 94-12-001.⁵ Fourteen energy utilities and 23 local exchange carriers were made respondents to the OIR. Opening comments were filed in March 1995, and reply comments in April 1995.⁶

Following the receipt of reply comments in April 1995, there was no further activity in this docket. In light of this inactivity, assigned Administrative Law Judge (ALJ) Kenney issued a ruling on October 8, 1998, which asked parties to comment on whether this proceeding should be closed.

Comments in support of closing this proceeding were filed by GTEC, Pacific, Edison, and SWG. Comments in support of keeping this proceeding open were filed by Patric Barry, PG&E, and SDGE/SoCalGas. According to the latter parties, the Commission should issue a decision in this proceeding that:

(1) Defines what "income" should be used to determine eligibility for the CARE and ULTS programs, particularly the definition of "income" from

⁵ OIR 94-12-001, mimeo., page 3.

⁶ Comments were filed in 1995 by: The American Association of Retired Persons, Association of Southern California Environment and Energy Programs, Patric Barry, California/Nevada Community Action Association, Citizens Utilities Company, Consumer Action, The Office of Ratepayer Advocates (ORA), Ed Dollak, GTE California Incorporated (GTEC), Pacific Bell (Pacific), Pacific Gas & Electric Company (PG&E), Roseville Telephone Company (Roseville), San Diego Gas and Electric Company (SDGE), Southern California Edison Company (Edison), Southern California Gas Company (SoCalGas), Southwest Gas Corporation (SWG), The Utility Reform Network, and WP Natural Gas. Joint comments were filed by: (1) Calaveras Telephone Company, California-Oregon Telephone Co., Ducor Telephone Company, Foresthill Telephone Company, Happy Valley Telephone company, Hornitos Telephone Company, The Ponderosa Telephone Co., Sierra Telephone Company, Inc., and Winterhaven Telephone Company; (2) CP National, GTE West Coast Incorporated, Kerman Telephone Co., Pinnacles Telephone Company, The Siskiyou

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self-employment; (2) Adopts "liquid assets" as an eligibility criterion; (3) Adopts a standardized method to screen customers for the CARE program; and (4) Rules on the use of "categorical eligibility" (i.e., qualifying for the CARE and ULTS programs by showing proof of participation in another social program). Most parties in favor of keeping this proceeding open believe they should be allowed to submit additional comments due to the passage of time.

3. Discussion

A. Eligibility Criteria

We agree with Edison, GTEC, Pacific, and SWG that this proceeding should be closed; but we also agree with Patric Barry, PG&E, and SDGE/SoCalGas that we should address the four issues identified in the previous paragraph prior to closing this proceeding. However, we see no need for additional comments on these four issues since the extensive written comments submitted in 1995 provide an ample basis for deciding these issues.

56.126 The first issue the parties ask us to address is the definition of "income" that should be used to determine eligibility for the CARE and ULTS programs. We agree with the assessment of most commentators⁷ that the existing definition of "income" set forth GO 153 has worked well and should continue to be used.⁸ The only matter for which additional guidance is needed concerns what "income from self-employment" should be used to determine eligibility for the CARE and

Telephone Company, Toulume Telephone Company, and The Volcano Telephone Company; and (3) The Greenlining Institute and Latino Issues Forum.

⁷ This decision shall refer to those who filed comments in 1995 as "commentators," and those who filed comments in 1998, as "parties."

⁸ Today's decision in no way predetermines the outcome of Rulemaking (R.) 98-09-005 where we are considering, among other things, whether to make minor revisions to the definition of "income" in GO 153 (see R.98-09-005, Appendix C, Section 1.3.12).

ULTS programs. In considering this matter, we shall rely on our previous finding in D.92-04-055:

[W]e are concerned about the business person who has a sole proprietorship, such as a gardener. That person has legitimate business expenses such as upkeep on a truck, insurance, gasoline, gardening tools, etc., all of which are out-of-pocket expenses and, if permitted as a deduction, could easily bring that person's household within the criteria for [CARE] eligibility. That person's family should not be found ineligible for the [CARE] program because the income provider has a sole proprietorship rather than a wage-paying job. (44 CPUC 2d 93, at 96)

Edison, PG&E, and ORA recommended that "income from self-employment" should be based on IRS Form 1040, Schedule C, Line 7 ("Line 7"), which shows gross business income less costs of goods sold. We shall not adopt this recommendation since Line 7 does not include any of the out-of-pocket business expenses that we found reasonable in D.92-04-055. Instead, we shall use the "income from self-employment" shown on IRS Form 1040, Schedule C, Line 29 ("Line 29") to determine eligibility for the CARE and ULTS programs since Line 29 does include the out-of-pocket expenses described in D.92-04-055.⁹ 56.16

The second issue parties ask us to address is whether "liquid assets" (e.g., cash in a checking account) should be used as a criterion to screen applicants for the CARE and ULTS programs.

⁹ Line 29 shows the net profit or loss from self-employment (excluding any costs for the use of one's home). If the income from self-employment shown on Line 29 is a net loss, this loss should not be subtracted from other income when determining eligibility for the CARE and ULTS programs. For example, if an applicant to the CARE or ULTS programs earns an annual wage of \$25,000, but also has a net loss from self-employment as shown on Line 29 of \$10,000, then the applicant's income for the purpose of CARE and ULTS eligibility would be \$25,000.

56/16 We agree with the opinion of most commentators that the liquid assets criterion would be burdensome to administer and provide little benefit over our current income-only criteria. Accordingly, we shall retain our existing practice of not using liquid assets as a criterion to screen applicants.

We clarify that the income used to determine eligibility for the CARE and ULTS programs does not include borrowed monies. Borrowed monies are not income, but a liability. We find it contrary to the objectives of the CARE and ULTS programs to create a situation where a truly needy family that borrows money to make ends meet could find itself in a situation where the act of borrowing such funds would make the family ineligible for the very programs that are meant to help the truly needy.

56/16 We also clarify that funds transferred from one account to another, such as from a savings account to a checking account, does not count as "income," even if those funds are used to meet living expenses. Again we do not believe it is consistent with the policy objective of the CARE and ULTS programs if truly needy families were to be excluded from these programs just because they may occasionally draw from whatever savings they may have in order to make ends meet.

56/16 Finally, we clarify that income produced by assets, such as dividends or interest payments, is appropriately counted as income, regardless of whether such income is taxable. In addition, should the sale of the asset result in substantial gain, such gain would be appropriately considered income.

The third issue parties ask us to address is whether energy utilities should be required to use a standardized method to screen applicants for the CARE program. We believe a more appropriate forum to address this issue is R.98-07-037 where we are considering, among other things, how the CARE program will be administered in the future. Therefore, we will consider in that

proceeding, or its successor, whether energy utilities should use a standardized method to screen applicants for the CARE program.¹⁰

The final issue parties ask us to address is whether customers should be admitted into the CARE and ULTS programs based on categorical eligibility (CE), that is, by showing proof of participation in other public assistance programs such as Aid to Families with Dependent Children (AFDC).¹¹ We agree with the assessment of many commentators that CE would be costly to implement. For example, utility personnel would have to be trained to handle CE, and all existing outreach materials and certification forms would have to be rewritten and reprinted. In addition, PG&E's experience with CE suggests that CE could result in thousands of ineligible customers enrolling in the CARE and ULTS programs, thereby causing a significant increase in program costs. Specifically, from 1989 to 1994, PG&E granted the CARE discount to customers receiving benefits from one or more of the following programs: AFDC, SSI, SSP, Food Stamps, Veteran's Benefits, and Survivor's benefits. According to PG&E, a study conducted by the Department of Economic Opportunity found that PG&E's use of CE had resulted in 70,000 customers participating in the CARE program who did not meet the income-eligibility criteria for the CARE program. PG&E believes one reason for so many ineligible participants is that the public assistance programs had different eligibility criteria than the CARE program.¹² 56.16

¹⁰ In R.98-09-005, we will consider the adoption of standards to govern the practices used by telephone carriers to screen customers for the ULTS program. (R.98-09-005, Appendix B, Section IV.5)

¹¹ Under categorical eligibility, the eligibility criteria for the CARE and ULTS programs do not change. Rather, there is an assumption that those participating in another social program meet the eligibility criteria for the CARE and ULTS programs.

¹² PG&E 1995 Opening Comments, pp. 16-17.

66.16 Higher costs due to CE might be justified if CE were to somehow allow the CARE and ULTS programs to reach eligible customers who do not currently participate in these programs, but we are not persuaded that CE would provide this benefit. Therefore, due to the prospect of higher costs and little, if any, additional benefit, we shall not adopt categorical eligibility.¹³

B. Customer Statement of Responsibility

In Resolution E-3586, issued on January 20, 1999, we required PG&E, Edison, SDGE, and SoCalGas ("the energy utilities") to obtain from every customer seeking to enroll in the CARE program a signed statement indicating that (1) the utility may verify the customer's eligibility to participate in the CARE program, and (2) if the verification establishes that the customer is ineligible, the customer will be removed from the program and may be billed for previous discounts which the customer should not have received.¹⁴ To maintain consistency between the CARE and ULTS programs, we shall require telecommunications carriers to have their customers sign a statement upon enrollment in the ULTS program that is similar to the statement used in the CARE program.¹⁵ Customers who refuse to sign such a statement should not be admitted into the CARE or ULTS programs.

Once customers are enrolled in the CARE and ULTS programs, they are required to periodically re-certify that they remain eligible to participate in these

¹³ We do not preclude the possibility of customers being admitted into a "low-income" program administered by one utility based on the customers' having been admitted into a different low-income program administered by another utility, provided that both low-income programs have the same eligibility criteria.

¹⁴ E-3586, Ordering Paragraph 1.i.

¹⁵ Since customers will not be screened for "substantial liquid assets" when enrolling in the CARE and ULTS programs, the statements signed by customers do not have to provide notice that customers discovered with substantial liquid assets may be removed from these programs.

programs. We believe the CARE and ULTS programs would benefit if customers were reminded during the periodic re-certification that (1) the utility may verify the customer's eligibility to participate in the CARE or ULTS program, and (2) if the verification establishes that the customer is ineligible, the customer will be removed from the program and may be billed for discounts the customer should not have received. To this end, we shall require utilities to obtain the same signed statement from customers when they periodically re-certify their eligibility for the CARE and ULTS programs that the utilities obtain from customers when they first enroll in these programs. Customers who refuse to sign such a statement should be removed from the CARE and ULTS programs. *gle/b*

4. Implementation of Decision

This decision modifies the CARE and ULTS programs in three key respects. First, utilities will have to file new tariffs and revise their CARE and ULTS customer education material to reflect the definition of "income from self-employment" adopted by this decision. Second, telecommunications utilities will have to revise the self-certification forms signed by customers enrolling in the ULTS program to indicate that (a) the utility may verify the customer's eligibility to participate in the ULTS program, and (b) if the verification establishes that the customer is ineligible, the customer will be removed from the program and may be billed for previous discounts which the customer should not have received. Finally, both energy and telecommunications utilities will have to revise the re-certification forms periodically signed by customers already enrolled in the CARE and ULTS programs to indicate that (a) the utility may verify the customer's eligibility to participate in the CARE or ULTS program, and (b) if the verification establishes that the customer is ineligible, the customer will be removed from the program and may be billed for discounts the customer should

not have received. We shall allow utilities 120 days from the effective date of this decision to complete these tasks.¹⁶

5. Service of Decision

This decision affects all competitive local exchange carriers (CLCs), incumbent local exchange carriers (ILECs), and energy utilities in California. Therefore, we shall require our Executive Director to cause a copy of this decision to be served on all CLCs, ILECs, and energy utilities in California.

6. Comments on Draft Decision

This is the draft decision of Commissioner Hyatt, and is subject to Pub. Util. Code Section 311(g). Parties to the proceeding may file comments on the draft decision as provided in Rules 77.2 - 77.5. When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify, or set aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Findings of Fact

1. There was no activity in this proceeding after parties filed comments in March and April of 1995. On October 8, 1998, the assigned ALJ issued a ruling which asked parties to comment on whether this proceeding should be closed. Comments in support of closing this proceeding were filed by Edison, GTEC,

¹⁶ This decision does not require utilities to immediately send the revised customer education material to their customers. Rather, the revised customer education material will replace the existing customer material that utilities provide to customers in the normal course of business beginning 120 days from the effective date of this decision. Likewise, the revised re-certification forms shall be applicable to customers who re-certify beginning 120 days from the effective date of this decision. Thus, utilities that re-certify all their customers at the same time (e.g., June 1st of each year) would not need to have revised re-certification forms ready until June 1, 2000.

Pacific Bell, and SWG. Comments in support of keeping this proceeding open were filed by Patric Barry, PG&E, and SDGE/SoCalGas.

2. Each party who supports keeping this proceeding open stated that the Commission should issue a decision in this proceeding that addresses one or more of the following matters: (i) the definition of "income" that should be used to determine eligibility for the CARE and ULTS programs; (ii) the definition of "income" for self-employed applicants; (iii) whether liquid assets should be used to screen applicants for the CARE and ULTS programs; (iv) whether energy utilities should use a standardized procedure to screen customers for the CARE program; and (v) whether persons should be allowed to enroll in the CARE and ULTS programs by showing proof of participation in another social program.

3. For the purpose of determining eligibility for the CARE and ULTS programs, GO 153, Section 1.3.7, defines "income" as follows: All revenues, from all household members, from whatever sources derived, whether taxable or non-taxable, including, but not limited to, wages, salaries, interest, dividends, spousal support and child support payments, public assistance payments, social security and pensions, rental income, income from self-employment, and all employment-related, non-cash income.

4. GO 153 does not specify what "income from self-employment" should be used to determine eligibility for the CARE and ULTS programs.

5. In D.92-04-055, the Commission indicated that the income from self-employment used to determine eligibility for the CARE and ULTS programs should reflect business expenses such as upkeep on a truck, insurance, gasoline, gardening tools, and other out-of-pocket expenses.

6. IRS Form 1040, Schedule C, Line 29 reflects the out-of-pocket business expenses which the Commission indicated should be used to determine the eligibility of self-employed persons for the CARE and ULTS programs.

7. Using liquid assets as a criterion to screen customers from the CARE and ULTS programs would be burdensome to administer and provide little benefit over the current income-only criteria.

8. In Decisions 92-04-055, 93-06-085, 93-07-023, and 94-05-025, the Commission was acting on specific facts in individual complaint cases and not articulating a general policy.

9. In R.98-07-037, the Commission is considering, among other things, how the CARE program should be administered in the future.

10. Categorical eligibility would be costly to implement and might result in customers with incomes in excess of the eligibility criteria for the CARE and ULTS programs being admitted into these programs.

11. In order to comply with this decision, utilities will have to revise their (i) CARE and ULTS tariffs, (ii) CARE and ULTS customer education and enrollment material, and (iii) customer certification and re-certification forms.

12. Resolution E-3586 requires each energy utility to obtain from every customer enrolling in the CARE program a signed statement indicating that (i) the utility may verify the customer's eligibility to participate in the CARE program, and (ii) if the verification establishes that the customer is ineligible to participate in the program, the customer will be removed from the program and may be billed for discounts which the customer should not have received.

13. Customers enrolled in the CARE and ULTS programs are required to periodically certify their continued eligibility to participate in these programs.

14. This decision affects all CLCs, ILECs, and energy utilities in California.

Conclusions of Law

1. The definition of "income" set forth in GO 153 should continue to be used to determine eligibility for the CARE and ULTS programs.

2. Net business income shown on IRS Form 1040, Schedule C, Line 29, should be used to determine whether a household with a self-employed person is eligible to participate in the CARE and ULTS programs. A loss shown on Line 29 should not be used to determine eligibility for the CARE and ULTS programs.

3. Liquid assets should not be used as a criterion to screen applicants for the CARE and ULTS programs.

4. Borrowed monies should not be considered income under the definition set forth in GO 153.

5. Monies transferred from one account to another should not be counted as income under the definition set forth in GO 153 even when such monies are used to meet living expenses.

6. It is appropriate to include income derived from assets, including gains realized from their sale, as income as defined in GO 153.

7. The issue of whether energy utilities should use a standardized method to screen applicants for the CARE program should be considered in R.98-07-037.

8. Persons should not be allowed to participate in the CARE and ULTS programs merely by showing proof of participation in another social program.

9. Telecommunications utilities should obtain from each customer seeking to enroll in the ULTS program a signed statement indicating that (i) the utility may verify the customer's eligibility to participate in the ULTS program, and (ii) if the verification establishes that the customer is ineligible to participate in the ULTS program, the customer will be removed from the program and may be billed for previous discounts which the customer should not have received.

10. Utilities should obtain from each participant in the CARE and ULTS programs a signed statement like that described in COL 8 when customers periodically certify their continued eligibility to participate in these programs.

11. Utilities should be allowed 120 days from the effective date of this decision to (i) revise their CARE and ULTS customer education and enrollment

material to reflect the requirements of this decision; (ii) revise their CARE and ULTS tariffs to reflect the requirements of this decision; and (iii) revise their customer certification and re-certification forms.

12. The utilities should be allowed to bill ineligible customers participating in the CARE or ULTS programs for prior discounts received by these customers.

13. The Executive Director should cause a copy of this decision to be served on all CLCs, LECs, and energy utilities in California.

14. This proceeding should be closed.

15. The following order should be effective on the date that it is signed.

O R D E R

IT IS ORDERED that:

1. The income used to determine whether a household with a self-employed person is eligible to participate in the California Alternate Rates for Energy (CARE) program and the Universal Lifeline Telephone Service (ULTS) program shall include the net business income shown on Internal Revenue Service Form 1040, Schedule C, Line 29 ("Line 29"). If a net loss is shown on Line 29, then Line 29 shall not be included as part of the income used to determine whether a household with a self-employed person is eligible to participate in the CARE and ULTS programs.

2. Liquid assets shall not be used as a criterion to screen applicants for the CARE and ULTS programs.

3. Household income used to determine eligibility for the CARE and ULTS programs shall not include (i) borrowed monies, or (ii) monies transferred from one checking, savings, or similar account to another account. Household income used to determine eligibility for the CARE and ULTS shall include income derived from such assets, such as interest and dividend, and income derived from the gain from their sale.

4. Telecommunications utilities shall obtain from each customer seeking to enroll in the ULTS program a signed statement indicating that (i) the utility may verify the customer's eligibility to participate in the ULTS program, and (ii) if the verification establishes that the customer is ineligible to participate in the ULTS program, the customer will be removed from the program and may be billed for previous discounts which the customer should not have received.

5. When customers periodically re-certify their eligibility to participate in the CARE and ULTS programs, the energy and telecommunications utilities shall obtain from each customer seeking to remain in the CARE or ULTS program a signed statement acknowledging that (i) the utility may verify the customer's eligibility to participate in the CARE or ULTS program, and (ii) if the verification establishes that the customer is ineligible to participate in the CARE or ULTS program, the customer will be removed from the program and may be billed for previous discounts which the customer should not have received.

6. The utilities may bill ineligible customers participating in the CARE or ULTS programs for discounts which these customers should not have received.

7. The Executive Director shall cause a copy of this order to be served on all competitive local carriers, incumbent local exchange carriers, and energy utilities in California.

8. The utilities shall take all steps necessary to implement the requirements of this order by no later than 120 days from the effective date of this order.

9. Rulemaking 94-12-001 is closed.

This order is effective today.

Dated July 8, 1999, at San Francisco, California

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

JOEL Z. HYATT

Commissioners

I abstain.

/s/ CARL W. WOOD

Commissioner