

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

Order Instituting Rulemaking on the
Commission's Own Motion to Consider
Revising Energy Utility Tariff Rules Related to
Deposits and Adjusting Bills as They Affect
Small Business Customers.

R. 10-05-005
(filed May 6, 2010)

**PACIFIC GAS AND ELECTRIC COMPANY'S
OPENING COMMENTS**

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I. INTRODUCTION

Pursuant to Rule 6.2 of the Commissions Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) provides the following opening comments on this Order Instituting Rulemaking (OIR).

On May 6, 2010, the Commission opened this rulemaking to "determine whether any revisions and/or updates are necessary to utility tariff rules governing adjustments of customer bills due to meter and/or billing errors and whether utility deposit rules need to be revised." (OIR, p. 1).

PG&E supports the development of criteria that can be used for identifying and implementing a policy that provides additional assistance to small business customers. However, changing the back billing and deposit rules for small business customers may result in benefits to those customers at the expense of other customers. Based on prior experience with changing the definition of agricultural customers, PG&E urges the Commission to review carefully all potential consequences before making these policy changes.

**II. DEFINING SMALL BUSINESS CUSTOMERS THROUGH GOVERNMENT
CODE SECTION 14837**

While PG&E supports the definition of small business customers in Government Code section 14837 as an appropriate delineation for ratemaking purposes, it is difficult to implement.

Government Code Section 14837 (c) and (d) provide that a micro-business is a small business when, together with affiliates, it has an average gross receipt of \$2,500,000 or less over the previous three years, or is a manufacturer as defined in subdivision (c) with 25 or fewer employees. Only a small percentage of the businesses that qualify as a micro-business have actually applied for and been certified for such status by the State.

For purposes of utilities implementing this definition, there are two methodologies identified below to consider: (1) utilities could consult with the state list of micro-businesses before issuing back-bills, or (2) utilities could provide customers with an opportunity to self-certify under penalty of perjury that they qualify as a micro-business. Neither option is ideal.

Utilizing the California list of micro-businesses on the state website may not represent the most current information. In addition, it is likely that the utilities are not going to be able to efficiently update this list because of technology limitations.

Relying on self-certification allows the utilities to avoid micro-auditing businesses within its service territory and will allow for a much greater level of participation, since many eligible businesses will never become certified with the State and thus would not qualify under criteria 1 above. However, the down side to self-certification is the potential for unqualified customers receiving more lenient back-billing treatment since the utilities will have limited ability to ensure compliance with the small business criteria.

III. ADDITIONAL QUALIFICATION THROUGH LOW LEVELS OF CONSUMPTION

Another approach that the utilities have considered is utilizing a 20kw demand criteria which would allow all customers with demand below that level to be automatically enrolled as a micro-business. If this approach were adopted, there would need to be a surrogate for customers whose demand information is unavailable. For such customers, the utilities have considered utilizing the 12,000kwh consumption per month. This equates to an electric utility charge in PG&E service territory of approximately \$26,000 per year.

While PG&E is not advocating for inclusion of a low usage criterion at this time, if such criterion is adopted, the gas utilities will require a separate therm component to the micro-business qualification. The therm component would likely be set at 4,000 therms, one-third of the kwh referenced above. If therm usage were employed, there would need to be a determination as to how to treat, in a dual commodity service territory, a customer who meets the micro-business criteria with one commodity, but not the other. It is PG&E's initial perspective, if the usage threshold is adopted, that a dual commodity customer should only qualify if it meets both the gas and electric component of the definition.

IV. BACK-BILLING LIMITATIONS

Decision 83-11-018 (*Perez v. PG&E*) and Decision 86-06-035 (*Re: Retroactive Billing by Gas and Electric Utilities to Correct Alleged Meter Underbillings Due to Meter Error and Meter Fraud*) established statewide parameters which have been utilized for 23 years for determining appropriate levels of back-billing. The concept of these rules is as follows: "Where the utility overcharges or undercharges a customer as the result of a billing error, the utility may render an adjusted bill for the amount of the undercharge, and must issue a refund or credit to the customer for the amount of the overcharge for the period of the billing error, but not exceeding three years in the case of an overcharge, and, in the case of an undercharge, not exceeding three months for residential service, and three years for all other service." (OIR, p. 4).

The new OIR states: "we begin this OIR from the premise that these micro-businesses should be treated the same as a residential customer for billing purposes and that utilities should only be able to back-bill micro-business customers for three months rather than three years." (OIR, p. 7).

Before the Commission deviates from its long standing precedent, it should take a long hard look to determine whether it is equitable and reasonable to have other customers shoulder the burden of energy consumed, and not paid for, by qualifying small businesses.

In 1986, a dividing line was drawn between residential and all other classes of customers. Residential customers were deemed to be entitled to more lenient back-billing parameters.

Moving this line to another place in the continuum of energy usage could create more problems than it is solving. The dividing line between residential and all other classes of service is a very clear line, and certainly much clearer than the dividing line between micro/small business and other classes of non-residential service.

By placing this line in a new location, the Commission runs the risk that new, unexpected, problems will arise. PG&E's experience in re-defining agricultural eligibility in 1988 serves to illustrate the point. In Decision 88-12-031, the Commission redefined agricultural rate entitlement from only those customers performing agricultural activities on the farm to all agricultural customers involved in agricultural end use. Over a subsequent 10 year period, PG&E experienced significant litigation concerning the boundary lines between agricultural and non-agricultural tariff applicability. (*Producers Dairy Food v. PG&E*, Decision 97-09-043; *Air-Way Gins v. PG&E*, Decision 03-04-059; *Almond Tree Hulling v. PG&E*, Decision 05-05-048). It would be unfortunate if this rulemaking causes similar litigation to ensue across the state. Therefore, before the Commission decides to make a determination as to whether a new dividing line should be drawn, it should carefully consider whether the benefits to small businesses are enough to offset the potential risks of ambiguity and uncertainty around back-billing limitations and appropriate levels of deposit.

V. APPROPRIATE DEPOSIT CRITERIA

Below, PG&E considers three components of the deposit parameters: a) for slow and non-paying customers who have had PG&E service for less than 5 years, b) for customers who continue to pay utilities in a timely manner, but whose financial condition has deteriorated, and c) for customers who are subject to a deposit, at least in part, because of a back-bill which has been issued by a utility.

Before making any modifications, the Commission and parties should consider that the only two tools the utilities have to effectively prevent mass subsidization of non-paying

customers are deposits¹ and the ability to terminate service. However, a significant number of small businesses fail in the first few years, and the downturn in the economy has only exacerbated the plight of these business customers.² For this reason, the Commission has, in the Disconnection OIR (R.10-02-005) and this proceeding, considered whether modifications to existing credit practices are required. PG&E and the other utilities have worked closely with the Commission and other interested parties, sharing data and otherwise exploring additional outreach and other measures that might be taken to assist customers during this difficult economic time.

A. Slow-paying and Non-paying customers

With respect to slow-paying and non-paying customers, deposits have proven a very important tool in limiting the write-off caused by a defaulting customer. While PG&E does not have sufficient deposit to be made whole, if a customer ultimately fails to restore service following a service termination, the deposit significantly reduces the subsidization required. Without the ability to charge deposits on slow-pay or no-pay micro/small business customers, PG&E will experience an increase in uncollectibles. Slow-paying business customers are generally sent letters advising them that the account must be brought current or the customer faces a deposit. These letters have significantly reduced the number of customers ultimately subject to deposit because customers generally re-prioritize their payment obligations. Therefore, eliminating these deposits could have a negative impact on the ultimate levels of

¹ The OIR summarizes “Deposits” as follows: “When a customer opens a new account for service, they must establish credit with the utility. For non-residential accounts, the amount of the deposit required may be twice the maximum monthly bill as estimated by the utility. If the customer must reestablish credit, the same amount of deposit is required.” (OIR, p. 4).

² “The first five months of this year have shown a 52% increase in the total number of commercial bankruptcy filings (36,106) compared with the same period last year (23,829), according to the Automated Access to Court Electronic Records.” (“Small businesses vital to economic recovery go bankrupt”, USA Today, July 2, 2009). Furthermore, David Birch, a former head of a research company that investigated small businesses, formulated the following percentage rates for small business success in the first through tenth year: first year – 85% success, second year – 70% success; third year – 62% success, fourth year – 55% success, fifth year – 50% success, sixth year – 47% success, seventh year – 44% success, eighth year – 41% success, ninth year – 38% success, tenth year – 35% success. (“Focus on success, not failure”, USA Today, May 6, 2004).

service termination and write-offs.

B. Financial Deterioration Deposits

With respect to Financial Deterioration Deposits, the argument in support of retaining such deposits is even stronger. Under PG&E's Rule 6.B.2: "A customer using nonresidential service may be required to reestablish credit in accordance with Rule 6.A.2 in case the conditions of service or basis on which credit was originally established have, in the opinion of PG&E, materially changed." These customers' entire credit portfolio has deteriorated, which is an indication that insolvency may be very near. While a deposit will not prevent a loss in the event of insolvency, it will certainly mitigate the risk to the utilities and other ratepayers.

C. Deposits Due To Issuance of Back-Bill

Deposits caused in whole or in part from the issuance of a back-bill should be eliminated. In other words, if a customer only receives a deposit request because they were slow in repaying amounts due, at least in part, from a back bill, such customer should not be subject to a deposit during the repayment of the back bill. If a back-bill adversely impacts a customer in such a manner to cause late payments, and thereby triggering a deposit request, this should be within the scope of any potential modification. However, if a customer has not received a back-bill, then from PG&E's perspective, there is no clear need to change deposit practices applied by the IOUs.

Before a decision is made to alter the deposit parameters for this customer class, PG&E suggests the Commission should first determine that such change is warranted and that the benefits will outweigh the potential risks associated with the ambiguity and uncertainty that could be created in establishing and implementing a new process. In the event the Commission makes major changes limiting the collection of deposits, PG&E would seek to recover the incremental write-off costs.

VI. CONCLUSION

PG&E appreciates the opportunity to comment on rules which could potentially provide assistance to a very important constituency in this state, the small businesses, which are truly the

creative engines of our society. However, PG&E is concerned that without careful planning, problems could be created that could outweigh the benefits associated with the proposed changes. PG&E looks forward to actively participating in this proceeding to ensure that all customers' interests are considered before the CPUC changes back billing and deposit policies for small business customers.

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