

**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

Rulemaking 10-05-005
(Filed May 6, 2010)

OPENING COMMENTS OF THE GREENLINING INSTITUTE

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I. INTRODUCTION

The Greenlining Institute (“Greenlining”) respectfully submits the following opening comments to the California Public Utilities Commission (the “Commission”), as directed in the 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, filed May 6, 2010 (the “OIR”). In this rulemaking, the Commission must determine whether to treat small business customers the same as residential customers for revisions to: (i) utility tariff rules governing adjustments of customer bills due to meter or billing errors; and (ii) utility deposit rules.¹ The utility tariff² and deposit rules³ are imposed on Investor Owned Utilities (“IOUs”) by the Commission to regulate adjustments to bills in the form of back-billing, refunds, and reestablishment of credit deposits.

By instituting this rulemaking the Commission has laudably recognized the unique needs of small businesses in the current economic crisis. Greenlining supports the Commission’s opening premise that small businesses should in fact be treated the same as a residential

¹ OIR at 1, 6.

² The specific rules are as follows: PG&E Electric and Gas Rule 17, 17.1; SCE Rule 17; SoCalGas Rule 14, 16; SDG&E Electric and Gas Rules 17, 18; PacifiCorp Rule 9, 17; Sierra Pacific Power Company Rule 18; Southwest Gas Rule 17; Mountain Utilities Rule 18; Golden State Water Company (Bear Valley Electric) Rule 17; West Coast Gas Company Rule 17, 17.1; Alpine Natural Gas Operating Company Rule 18.

³ All deposit rules are Rule 7 in the various IOU Rules.

customers.⁴ Greenlining recommends that revisions should be made to the current tariff rules so that small businesses are treated the same as residential customers for purposes of billing adjustments and deposits for the following reasons.

II. ANALYSIS

The primary inquiry is whether a small business customer, defined as a “micro-business” under the Government Code,⁵ should be treated the same as residential customers. A “micro-business” is: a small business⁶ which, together with affiliates, has average annual gross receipts of two million five hundred thousand dollars (\$2,500,000)⁷ or less over the previous three years, or is a manufacturer⁸ with 25 or fewer employees. In order to determine whether small business should be treated as residential customers, the importance of small businesses in California must be fully appreciated and the impact of the current rules must be analyzed. Therefore this section proceeds as follows. Section A below will survey the current data and argue that small businesses form the backbone of the economy in California and hold the key to our state’s economic recovery. Section B argues first that there are significant unanswered questions related to treatment of smart-meter errors. Second, current rules regulating adjustments to customer bills to account for undercharges are unjustifiably harming small businesses. Third, the differences between the treatment of overcharges and undercharges for metering errors unjustifiably impact small businesses, particularly with respect to the current smart metering debacle. Fourth, Section B argues that in the context of adjustments for overcharges, it is unclear why metering and billing errors are treated differently. Finally, Section

⁴ OIR at 7.

⁵ CAL. GOV’T CODE § 14837 (Deering 2010).

⁶ A small business is also a defined term and means: an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 100 or fewer employees.

⁷ We note that the OIR stated cited this figure was \$2,750,000. However the most recent version of the CAL. GOV’T CODE § 14837 (Deering 2010) which is current through 2009-2010 Extraordinary Sessions 1-5, 7, and 8 and Urgency Legislation Through Ch. 21 of the 2010 Regular Session stated the figure was \$2,500,000.

⁸ Subsection (c) states: "Manufacturer" means a business that meets both of the following requirements:

(1) It is primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products.

(2) It is classified between Codes 31 to 33, inclusive, of the North American Industry Classification System.

C explains how the current rules regarding deposits place an undue burden on small businesses and how the reestablishment rules are predatory in nature.

A. Small Businesses are Crucial to California's Economy.

The success of small businesses is crucial not only to California's economic recovery but also to that of the nation. For example, in 2005 the U.S. Small Business Administration found that small businesses "comprise more than 99 percent of inner city business establishments and they generate 80 percent of the total employment in those areas. In all, America's inner city small businesses employ about nine million people, or eight percent of the U.S. private workforce."⁹ In March of 2010, the U.S. Small Business Administration found that "over a recent 15-year period, small businesses created some 65 percent of the net new jobs in the private sector, according to conservative estimates"¹⁰ The Commission has wisely recognized that "small businesses are the backbone of our economy and especially in these tough economic times are trying their best to stay afloat."¹¹

This is of particular importance to Greenlining because small businesses are often minority owned and are the predominant employer in communities of color. According to the most recent U.S. Census Survey of Business Owners, in 2002 there were 915,514 minority-owned businesses in California.¹² Greenlining has projected these figures and estimates that there are currently between 1 and 1.5 million minority-owned businesses in California.¹³ Unfortunately, California currently has a jobless rate of 12.6 percent, which far exceeds the national rate of 9.9 percent.¹⁴ This is not merely a local problem. It has national implications because the California economy "represents 13% of U.S. economic output, according to the

⁹ News Release, U.S. Small Bus. Admin. Office of Advocacy., Small Business Drives Inner City Growth And Jobs New Report Documents Dynamics Of Inner City Economies (October 11, 2005) (on file with author), *available at* <<http://www.sba.gov/advo/press/05-32.html>>.

¹⁰ News Release, U.S. Small Bus. Admin. Office of Advocacy, Where Do Jobs Come From? New Analysis of Job Gains and Losses from the Office of Advocacy (March 3, 2010) (on file with author), *available at* <<http://www.sba.gov/advo/press/10-03.html>>.

¹¹ OIR at 5.

¹² The most recent Survey was completed in 2002 and is *available at* <<http://www.census.gov/econ/sbo/#cb>>.

¹³ These projections are based on a growth rate of 31% for Latino-owned businesses, a growth rate of 45% for Black-owned businesses, and a growth rate of 24% for Asian-owned businesses.

¹⁴ Cari Tuna, *California Is Stuck in 1st Gear*, WALL ST. J., June 8, 2010 at A3.

California Department of Finance.”¹⁵ Ensuring the viability small minority owned businesses in California is particularly important to economic recovery and decreasing unemployment not only in California, but also nationwide.

However, as the Commission noted, under the current tariff and deposit rules many small businesses have been “forced to shut down and/or claim bankruptcy due to the high amount of back-billing by the utility.”¹⁶ If small businesses continue to be hamstrung by these debilitating rules it will severely impede job creation and economic growth. In order to provide some measure of relief, small businesses should be treated the same as residential customers.

B. The Current Rules Regulating Adjustments to Customer Bills Contain Unjustifiable Discrepancies and Disproportionately Affect Small Businesses.

There are two different types of errors which may result in a bill being adjusted: a meter error and a billing error. A meter error is an incorrect registration of a customer’s energy or gas usage resulting from a malfunctioning or defective meter.¹⁷ A meter error does not include billing errors, unauthorized use, or errors due to tampering. A billing error, on the other hand is an error by the utility that results in incorrect billing charges to the customer, including incorrect meter reads, failure to deliver a bill, or clerical errors, such as applying the wrong rate, wrong billing factor or an incorrect calculation.¹⁸

Though the various IOUs’ rules have differing language to describe the effects of overcharging and undercharging due to metering or billing errors, the effects are the same. The chart below summarizes the key elements of the adjustment provision of the IOUs’ rules.

¹⁵ *Id.*

¹⁶ OIR at 5.

¹⁷ Some Rules are more specific and state a meter error “is incorrect kilowatthour, kilovarhour, or demand registration resulting from a malfunctioning or defective meter.” *See e.g.*, SCE Rule 17; SDG&E Electric and Gas Rules 17. Others are more general, *see, e.g.*, PG&E Rule 17.

¹⁸ All the Rules noted *supra* note 3 have definitions similar to and consistent with this definition.

Type of Charge	Type of Error	Residential Customers	All Other Customers
Overcharge	Meter (fast)	Refund for period up to 6 months	Refund for period up to 6 months
	Billing	Refund for period up to 3 years	Refund for period up to 3 years
Undercharge	Meter (slow or non-registering)	Bill for period up to 3 months	Bill for period up to 3 years
	Billing	Bill for period up to 3 months	Bill for period up to 3 years

Figure 1: Effects of Over and Undercharges due to Billing and Metering Errors

- i. *It is unclear whether smart meter errors will be classified as billing errors or metering errors.*

There is uncertainty as to how to classify errors related to smart meters. As the Commission is aware, PG&E SmartMeter errors affected almost 45,000 homes.¹⁹ When PG&E finally admitted that the SmartMeters were malfunctioning, they identified four different types of errors: installation, data storage, communication failure, and measurement.²⁰ Installation errors are a type of billing error under PG&E Rule 17.1, which states: “Field error, including but not limited to, installing the meter incorrectly . . . is also considered billing error.” However, none of the other IOU rules contain this language and thus this type of error could be classified as either a billing or metering error.

Another type of error, communication failure, resulted in customers receiving estimated bills.²¹ Under the PG&E rules, communication failure, which occurs when the meter fails to deliver data, would seem to be a meter error. However, under Southern California Edison Rule 17(D) this would be a billing error.²² Thus, there is a discrepancy on how communications errors may be classified by the various IOUs.

It is also unclear how an IOU would classify a data storage error based on a software glitch: is this a metering error or a billing error? How a company classifies these types of errors

¹⁹ David R. Baker, *PG&E SmartMeters’ Problems, and how to fix them*, S.F. CHRONICLE, May 31, 2010 at A1.

²⁰ *Id.*

²¹ *Id.*

²² This rule states: “if estimated bills do not result from inaccessible roads, the customer, the customer’s agent, other occupant, animal or physical condition of the property preventing access to SCE’s facilities on the customer’s Premises, other causes within control of the customer, or a natural or manmade disaster such as a fire, earthquake, flood, or severe storms, the issuance of estimated bills shall be considered “Billing Error” for the purpose below.”

will have significant real world costs for small businesses because it determines the period for which the IOU may back-bill or issue a refund. This will be discussed in further detail below. The Commission needs to address whether the various types of SmartMeter related errors will be classified as billing or metering, or whether they should have a separate classification

ii. The differing treatment of residential and non-residential customers with respect to undercharges is unjustifiably harming small businesses.

Under the current rules regarding adjustment of bills, if a customer is undercharged due to either a metering or billing error, the IOU may bill the customer for the amount of the undercharge for the known period of error, up to certain prescribed limits. In the case of a residential customer, the relevant period is *three months*. In the case of a non-residential customer, the relevant period is *three years*. This means that a small business could be back-billed for up to three years. It is highly unlikely that a small business, especially one struggling to make ends meet during this recession, will have sufficient cash reserves to pay a bill of this magnitude. On the other hand, if the IOU could only back-bill a small business for three months the chances of payment default are significantly lower. It is unclear what justification the IOUs have for this discrepancy, especially in the case of small businesses. Therefore, small business should be treated as a residential customer for the purposes of back-billing to correct undercharges.

iii. The different treatment of overcharges and undercharges resulting from metering errors is unjustifiably harming small businesses.

In the context of metering errors, there is a wide discrepancy regarding the time period for which overcharges and undercharges may be adjusted. In the case of an overcharge, the IOU will issue a refund or credit for the known period or up to *six months*. This six month refund period applies to both residential and non-residential customers. In the case of an undercharge the periods are quite different. Currently, for small businesses, the IOU can back-bill for up to *three years*. It is not clear why the IOUs may treat overcharges and undercharges so differently for the same type of error. The impact on small businesses is drastic: if the meter malfunctions they have potential liability stretching back three years, but only get a refund for up to 6 months. This makes no sense and in fact provides no incentive for the IOUs to fix metering errors that

result in overcharges. If an IOU classifies something, such as a smart meter malfunction, as a meter error, it is allowed to profit from the overcharges to non-residential customers for three years but only has to offer refunds for six months. The Commission must address this situation. In order to encourage IOUs to quickly address metering errors, the period for refunds should be the same as *or longer* than the period for back billing.

iv. It is not clear why differences exist with respect to metering and billing errors resulting in overcharges.

The final issue also relates to refunds, specifically the discrepancy that exists between the treatment of metering and billing errors resulting in overcharges. If an IOU overcharges a customer (either residential or non-residential), it may issue a refund or credit for the known time of the overcharge, up to the specified limits. For metering errors, the limit is six months. For a billing error however, the relevant limit is three years. It is not clear why these two periods are so different. In the absence of an exceedingly persuasive justification for this discrepancy, it should be eliminated. This issue is particularly relevant today, as illustrated by the fact that the errors related to PG&E SmartMeters took vastly longer than six months to be discovered, investigated, and finally addressed publicly.²³ If the IOUs classify this type of error as a metering error, customers who have been overcharged for upwards of a year will only get a refund for six months. But, if these types of errors are classified as billing errors, the refund may be for a period as long as three years. In light of the impact that this had not only on individual residential consumers, but also small businesses, this discrepancy must be addressed. In both cases, metering and billing errors, the refund period should be three years. Therefore, Greenlining strongly urges the Commission to amend the tariff rules accordingly.

²³ PG&E has been installing smart meters throughout Northern and Central California since late 2006. *See, e.g.,* David R. Baker, *Customers say new PG&E meters not always smart*, S.F. CHRONICLE, Oct. 18, 2009, available at <http://articles.sfgate.com/2009-10-18/business/17185634_1_pg-e-pacific-gas-smartmeters>. In 2009 customer frustration with soaring bills finally came to a head. *Id.* Senator Dean Florez held public hearings in Bakersfield and Fresno to allow customer to voice their complaints, such as a farmer who was charged \$11,857 for running a piece of equipment that was never turned on and an attorney who was charged \$500 for usage when she was on vacation. Sen. Dean Florez, *'Smart meters' or cunning PG&E thieves?*, S.F. CHRONICLE, Oct. 25, 2009 at E-4. On May 10, 2010, almost four years after the initial smart meters were installed, PG&E finally released a public version of reports filed with the Commission that detailing the errors. David R. Baker, *Reports shed light on PG&E's digital meters*, S.F. CHRONICLE, May 11, 2010 at D-1. The reports can be found at www.pge.com/smartmetercpucreports

C. The Current Rules Regarding Deposits are too Onerous for Small Businesses.

In general, when a customer opens a new account with an IOU they must establish credit.²⁴ For residential accounts, the amount of the initial deposit is twice the *average* monthly bill. For non-residential accounts, the amount of the initial deposit is twice the *maximum* monthly bill. In order to re-establish credit following a default or disconnection, all customers must provide an additional deposit of twice the maximum monthly bill. The only IOU with significant market share that deviates from this standard is Southern California Gas Company, which requires only twice the average monthly bill for both residential and non-residential accounts for establishment or reestablishment of credit.²⁵

i. The establishment of credit rules are unduly burdensome on small businesses.

With respect to the establishment of credit, small businesses should be treated the same as residential customers. In other words, the deposit should be no more than twice the *average* monthly bill, not the maximum monthly bill. Moreover, consumer groups have expressed concern that even this is too high for certain residential customers. If the Commission finds that the credit establishment requirements for residential customers are too burdensome, they should likewise find that they are too burdensome for small business customers. Considering the economic hardship facing small businesses and the recognition that they are expected to drive job growth,²⁶ the Commission should limit the establishment of credit deposit to one average monthly bill for small businesses.

ii. The re-establishment of credit rules are predatory in nature and must be amended.

The reestablishment of credit rules requiring additional deposits have recently come under formal review with respect to residential customers.²⁷ In the R.10-02-005 proceeding, the Commission proposed and ordered on an interim basis, the following rule for residential customers:

²⁴ See, e.g., PG&E Rule 7; SCE Rule 7; and SDG&E Rule 7.

²⁵ SoCalGas Rule 7. Sierra Pacific Power Company uses the same language as SoCalGas. Southwest Gas Corp also deviates and charges twice the maximum bill for all deposits for all customers.

²⁶ OIR at 14.

²⁷ Order Instituting Rulemaking on the Commission's Own Motion to Address the Issue of Customer's Electric and Natural Gas Service Disconnection, R. 10-02-005, Filed February 4, 2010.

Once a customer has established credit as a customer of that utility, the utility must not require that customer to pay additional reestablishment of credit deposits with the utility for either slow payment/no-payment of bills or following a disconnection.

Greenlining urges the Commission to order the IOUs to implement the above practice with respect to small businesses and treat them the same as residential customers while this rulemaking is underway.

Irrespective of the Commissions decision in the R.10-02-005 proceeding, the rules as they relate to small businesses are predatory in nature and should be amended. A small business that is unable to pay an adjusted bill, which back-bills for three years based on an error by the IOU, should not be further penalized by outrageous deposit requirements. Requiring small businesses that fall behind on their bills because of IOU errors to pay an additional deposit of twice the maximum monthly bill, as determined by the IOU, will doom many to bankruptcy. We can scarce afford to lose any more businesses and jobs in California, particularly in communities of color, which have been hardest hit by this recession.

III. CONCLUSION

California has the unique opportunity to significantly participate in driving national economic recovery and decreasing unemployment. The benefits of rising employment rates and a stronger economy will be generated primarily by small businesses. Thus, small businesses should be nurtured and allowed to flourish. The predatory practices of the IOUs must be curbed by treating small businesses the same as residential customers and/or by amending the tariff adjustments and deposit rules. Greenlining respectfully submits these comments and requests that the Commission issue an order implementing the foregoing recommendations.

June 14, 2010

Respectfully submitted,

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VERIFICATION

I am an officer of the Greenlining Institute, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Berkeley, California on June 14, 2010.

/s/ Samuel S. Kang
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The Greenlining Institute

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CERTIFICATE OF SERVICE

I, Alicia Miller, am 18 years of age or older and a non-party to the within proceeding. I hereby certify that I have this day served a copy of "Opening Comments of the Greenlining Institute" on all known parties to R.10-05-005 transmitting an e-mail message with the document attached to each party named in the official service list and by faxing or mailing a properly addressed copy by first-class mail with postage prepaid to those whose e-mail address is not available.

I certify that the foregoing is true and correct.

Executed in Berkeley, California on June 14, 2010.

/s/ Alicia Miller

Alicia Miller

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