

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 DIVISION OF RATEPAYER ADVOCATES  
ON RULEMAKING TO CONSIDER REVISING ENERGY UTILITY TARIFF  
RULES RELATED TO DEPOSITS AND ADJUSTING BILLS AS THEY AFFECT  
SMALL BUSINESS CUSTOMERS**

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June 14, 2010

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**I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS**

On May 12, 2010, the California Public Utilities Commission (“the Commission”) issued an order instituting rulemaking (“Rulemaking”) to consider treating specified small business customers the same as residential customers for purposes of billing errors and deposits with regard to service provided by investor-owned energy utilities. The Rulemaking focuses on small business customers that fit within the definition of “micro-business” set out in Government Code section 14837. The Division of Ratepayer Advocates (“DRA”) offers these opening comments, in accordance with Rule 6.3 of the Commission’s Rules of Practice and Procedure.

DRA supports this rulemaking as an opportunity to better understand the impact of utility billing, credit and collections practices on micro-businesses. DRA responds to the following issues presented in the Rulemaking:

- Should micro-business customers uncharged or undercharged by utilities be responsible for no more than three months of backbilling, similar to residential customers, instead of the current three years?

- Should micro-business customers have the same deposit rules as residential customers, which would entail smaller deposit amounts and a current prohibition on deposits for re-establishment of credit?

DRA recommends:

- Utility credit and collections policies for micro-business need not be the same as utility credit and collections policies for residential dwellings because life, health, and safety are not affected in the same way for micro-business customers.<sup>1</sup> Nevertheless, small businesses may have unique needs that merit being addressed in this Rulemaking.
- Small businesses should not be liable for more than three months' worth of unbilled or underbilled charges, to give utilities an incentive to promptly detect and remedy billing errors, and because micro-business account errors should not be so complex that they require three years to resolve. The Commission used this logic when establishing a three-month liability period for residential customers and a three-year liability period for commercial customers, but did not distinguish among commercial customers at that time.
- Before pursuing changes to deposit policies for micro-business customers, the Commission should first consider data and analysis on the impacts of deposits and service termination on micro-businesses, and the impact of changing such policies on utility uncollectibles and on ratepayers. In order to do so, the Commission should gather and make available to all parties utility data on the number and average amount of deposits charged to micro-business customers.

## II. COMMENTS AND RECOMMENDATIONS

### A. **Micro-businesses may have unique needs specific to utility billing and deposit policies but should not necessarily be treated the same as residential customers.**

Small business is the lifeblood of the economy and should be subject to fair rules. Depending on the type of small business, utility charges (especially unexpected utility charges such as backbilling) could cause financial difficulty leading to the demise of the small business. Residential dwellings are dependent upon electricity and gas service for the basic necessities of life: sheltering themselves from the elements, bathing, cooking,

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<sup>1</sup> Except in cases where a residential dwelling has only a commercial utility account, if this situation exists. DRA later in these Opening Comments recommends the Commission determine whether this situation exists and if it does make a separate determination for this situation.

and relying on electronic technology to improve health and medical challenges. California law has for decades recognized the primacy of affordable energy.<sup>2</sup>

As for a threshold question of whether micro-business rules should generally align more with residential rules rather than established commercial customer rules, micro-business needs for electricity and gas service are different because they do not have the same life and safety considerations. Rather than a general determination that micro-business rules should be aligned with residential customer rules, DRA recommends that the Commission, for each specific rule, determine whether there are reasons that the micro-business rule should align with the residential customer rule.

Of course, if there are cases where a residential dwelling is billed only as a commercial utility account, the Commission should consider directing the utilities to address this unique situation differently, because then life, health and safety may be at stake. DRA in Section C, below, recommends that the Commission collect data to determine whether this situation exists for micro-business and then act accordingly.

**B. Micro-business customers should not be backbilled for more than three months of utility billing and metering errors.**

Currently, utilities by tariff can only backbill residential customers for no more than three months' worth of energy consumed but unbilled or underbilled, if the mistake is due to a metering or billing error. Utilities by tariff are permitted to backbill business customers, including micro-business customers, for no more than three years of such charges. The Commission rationale for this rule, as explained in Decision 86-06-035, is that since the utilities' procedures detect billing and meter errors promptly, there is no need to require repayment for unbilled or underbilled charges for more than three months for residential customers.<sup>3</sup> The Commission in the same Decision allows that billing for

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<sup>2</sup> See Public Utilities Code sections 739.1, 382(b), 379 (c)(2).

<sup>3</sup> See Re Retroactive Billing by Gas and Electric Utilities to Correct Alleged Meter Underbillings Due to Meter Error and Meter Fraud, Decision 86-06-035, 21 CPUC 2d 270, 278, 1986 Cal. PUC LEXIS 888 at \*22 (1986).

commercial customers is more complex and involves larger amounts, therefore commercial customers should be liable for backbilling for up to three years.<sup>4</sup>

In the case of backbilling for metering or billing errors, DRA agrees that micro-business customers should not be liable for more than three months' worth of underbilled charges. The rationale for a shorter, three months of backbilling for this subset of commercial customers is that the shorter period gives the utilities an incentive to promptly resolve metering and billing errors, and therefore protects this group of customers. Because micro-businesses may not be able to sustain the impact of an unexpectedly large backbill, it is critical that micro-business rules account for this subset of commercial customers differently. As the Rulemaking identified, Business & Community Outreach staff noted cases of small businesses being forced to be shut down and/or claim bankruptcy due to the high amount of back-billing by utilities.<sup>5</sup> DRA believes that the Commission's priority on prompt remedy for residential customers should extend to micro-business customers as well, as micro-businesses are unlikely to be able to manage three years' worth of backbilled undercharges even if the larger body of commercial customers generally appears to be able to do so.

**C. Relevant data is needed before changes to utility deposit policies for micro-business customers can be made.**

DRA recommends that the Commission collect relevant data prior to pursuing changes to utility deposit policies for micro-businesses. Deposits are part of typical credit and collections business practices and contribute to efficient operations, and defray the costs to other ratepayers of covering the amounts that other customers fail to pay. However, the deposit amounts must be carefully calibrated so as not to make energy service unaffordable or inaccessible.

Without having historical data on the number of micro-business customers for each investor-owned utility ("IOU") and their average monthly bill amounts, and the

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<sup>4</sup> *Id.*

<sup>5</sup> See Rulemaking, *mimeo.* at 5.

rates of disconnection and reconnection for these small business customers, it is difficult to know the effect the current deposit policy has on micro-business. Furthermore, DRA understands that the deposit amount is determined with consideration to the collections timeline (the time between which a customer is billed and service termination for non-payment occurs). As DRA explains in Section A, above, the decision to change utility tariffs for micro-business should be determined independently of residential policies, because life, health and safety concerns are generally not implicated as they are with regard to residential dwellings.

In the absence of this type of evidence, the Commission cannot adequately consider changing deposit policies for micro-business customers. The Commission can use the data it collects to weigh the impact on the overall body of ratepayers against the needs of the individual micro-business customers. If a given IOU does not collect adequate deposits from a micro-business customer, and then the micro-business fails to pay the outstanding utility charges and the amount becomes uncollectible, there is a risk that the utility's other ratepayers will suffer as they will have to cover the uncollectible amount. Depending on the amount of risk, the Commission would weigh the risk to the individual customer against the risk to the overall body of ratepayers.

Even if the Commission does not change the deposit policies for micro-business customers but does implement the shorter, three-month timeframe for backbilling for micro-business customers, these customers would still experience some relief from deposits because the shorter backbilling period would eliminate situations in which micro-business customers are required to pay re-establishment of credit deposits triggered by unmanageable backbilling.

Accordingly, DRA recommends that the following issues and associated data be addressed in the Commission's July 6 workshop:

1. Explain how utilities currently identify small business customers and how they identify the subset defined as micro-business.
2. Discuss the situation of a micro-business that is simultaneously a dwelling, and determine whether this type of customer should have the same protections afforded to residential customers.

3. What type of bill payment assistance and payment plans do utilities currently provide to small business customers overall and micro-business customers specifically, and are they adequate to give micro-business customers the opportunity to pay what they owe and avoid service disconnection and disruption to their business?
4. Are more flexible terms of re-payment offered for backbills due to utility error, to small business customers generally and micro-business customers specifically?
5. What is the collections timeline for small business customers generally and micro-business customers specifically?
6. For at least a three-year period, what is the average monthly bill of micro-business customers, for both electric and gas?
7. For at least a three-year period, how many backbills have the utilities issued to micro-business customers, for how many months of undercharges, and in what amounts?
8. For at least a three-year period, what are the rates of disconnection and reconnection for micro-business customers?
9. For at least a three-year period, how many micro-business customers are charged deposits due to failure to pay backbills?

### III. CONCLUSION

For the reasons set forth above, DRA respectfully requests that its recommendations in this Rulemaking be adopted.

Respectfully submitted,

/s/ MARION PELEO

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June 14, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of “**OPENING COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON RULEMAKING TO CONSIDER REVISING ENERGY UTILITY TARIFF RULES RELATED TO DEPOSITS AND ADJUSTING BILLS AS THEY AFFECT SMALL BUSINESS CUSTOMERS**” to the official service list in **R.10-05-005** by using the following service:

**E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

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Executed on **June 14, 2010** at San Francisco, California.

/s/ ROSCELLA V. GONZALEZ  
Roscella V. Gonzalez



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