

**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)

**REPLY COMMENTS OF THE GREENLINING INSTITUTE**

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**I. INTRODUCTION**

The Greenlining Institute (“Greenlining”) respectfully submits the following reply 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.<sup>1</sup> By instituting this rulemaking the Commission has laudably recognized the unique needs of small businesses in the current economic crisis.

**II. THE DEFINITION OF ‘SMALL BUSINESS’S HOULD NOT BE BASED SOLELY ON ENERGY UTILIZATION**

A primary inquiry is whether a small business customer, defined as a “micro-business” under the Government Code,<sup>2</sup> should be treated the same as residential customers. A number of the regulated investor owned utilities (“IOUs”) argued that this definition was unworkable because the Department of General Services list of certified “micro-businesses” is under-

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<sup>1</sup> OIR at 1, 6.

<sup>2</sup> CAL.G OV'T CODE § 14837 (Deering 2010).

inclusive, self-certification is unlikely to be effective, and the utilities do not generally maintain the data required by the government definition because it is not relevant to the utility business.<sup>3</sup> As an alternative San Diego Gas & Electric and Southern California Gas Company (collectively “Sempra”) and Southern California Edison (“SCE”) proposed defining small business customers based on energy usage.<sup>4</sup> Pacific Gas and Electric (“PG&E”) was the outlier as they did not recommend this, or in fact any, workable approach.<sup>5</sup>

Greenlining is not *per se* opposed to defining small businesses based on energy usage, but does have concerns related thereto. First, the issue that we should be focusing on here is affordability, budget and energy costs. This is not the same as mere usage. Usage may be a useful tool to identify customers, however Greenlining is concerned about the impact that a usage definition would have on small businesses that would qualify as a small business but for a disproportionately high energy usage (e.g. a small manufacturer).

Second, the IOUs differed in the level of energy utilization that a customer must not exceed in order to qualify as a small business. Greenlining would like to commend Sempra for suggesting the highest levels of 40,000k Wh/year and 10,000 therms/year.<sup>6</sup> However, all the IOUs should be held to the same thresholds; whether a customer qualifies as a small business should not turn on who provides their energy.

Finally, it is not clear what types of customers would fall within the parameters; would a small grocery store, a community bank or an urban youth center qualify? Both Sempra and SCE indicated that a large number of their small commercial accounts would fall within their respective parameters.<sup>7</sup> These explanations are helpful, but incomplete. Greenlining respectfully requests that the IOUs provide further information in this regard in order to contextualize these raw utilization figures. Clarification is necessary in order to evaluate what types of businesses will benefit and what types will be harmed by drawing the line at one level versus another.

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<sup>3</sup> See Pacific Gas and Electric Company’s Opening Comments 1-2 (June 14, 2010) (hereinafter *PG&E Opening Comments*); Opening Comments of San Diego Gas & Electric Company (U 902 E) and Southern California Gas Company (U 904 G) 4-6 (June 14, 2010) (hereinafter *Sempra Opening Comments*); and Southern California Edison Company’s (U 338-E) Opening Comments on the Order Instituting Rulemaking to Consider Revising Energy Utility Tariff Rules Related to Deposits and Adjusting Bills as they Affect Small Business Customers 5-7 (June 14, 2010) (hereinafter *SCE Opening Comments*).

<sup>4</sup> *Sempra Opening Comments* at 6-7 (specifying a level of 40,000 kWh/year or 10,000 therms/year); *SCE Opening Comments* at 7-8 (specifying customers in the GS-1 rate group with actual or expected demands of 20kW or less).

<sup>5</sup> *PG&E Opening Comments* at 2-3.

<sup>6</sup> *Sempra Opening Comments* at 7.

<sup>7</sup> *Sempra Opening Comments* at 7, n. 13-14; *SCE Opening Comments* at 7-8.

Greenlining would like to propose a hybrid approach which will hopefully ameliorate the IOUs concerns and also fully protect small businesses. Specifically, Greenlining proposes that a customer would qualify as a small business if either: (i) it was included on the Department of General Services list certifying its status as a micro-business; (ii) self-certifies, by providing tax returns to the utility; or (iii) falls within the established energy usage parameters. This should not impose an undue burden on the IOUs because the onus is on the customers to either get certified by the state or provide the requisite information if they exceed the approved energy levels. Moreover, it addresses the privacy concern regarding disclosure of potentially sensitive information because ultimately the choice to do so is left up to the customer, rather than required by the CPUC or IOUs.

### **III. SMALL BUSINESSES SHOULD BE TREATED SIMILARLY TO RESIDENTIAL CUSTOMERS FOR THE PURPOSES OF ADJUSTMENT TO BILLS AND DEPOSITS**

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.”<sup>8</sup> 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 similarly to residential customers.

Greenlining agrees with the comment of the Division of Ratepayer Advocates that small business customers have different life and safety considerations.<sup>9</sup> In the case of residential accounts, these life and safety concerns justify a more protected status. Here, the justification differs, but the result should be the same. Small businesses are worth protecting due to their ability to drive economic growth, higher levels of employment and ensure community stability. As the Commission recognized, they “are the backbone of our economy and especially in these tough economic times are trying their best to stay afloat.”<sup>10</sup> This is of particular importance to Greenlining because small businesses in California are often minority owned and are the

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<sup>8</sup> OIR at 5.

<sup>9</sup> Opening Comments of the Division of Ratepayer Advocates on Rulemaking to Consider Revision Energy Utility Tariff Rules Related to Deposits and Adjusting Bills as they Affect Small Business Customers 3 (June 14, 2010).

<sup>10</sup> OIR at 5.

predominant employer in communities of color.<sup>11</sup> By affording small business the same protections as residential customers it will promote job creation and economic recovery.

Finally, as noted above the IOUs are willing to define small business based on usage levels that allegedly encompass broad swaths of their commercial customer base. If this is true, it implies that the proposed changes will not have a significant negative impact on their revenue stream. As such, many of their objections to treating small businesses like residential customers ring hollow.

**A. Small business customers should be treated like residential customers for the purposes of back billing.**

Irrespective of the definitional issues surrounding ‘small businesses,’ Greenlining was pleased to note that both Sempra and SCE proposed to limit back-bills to three months for those customers that qualified under their respective definitions.<sup>12</sup> Again, PG&E was the outlier in this regard, advocating for blind adherence to “long standing precedent” and citing a regrettable experience regarding the re-definition of agricultural eligibility over twenty years ago.<sup>13</sup> Neither precedent nor apprehension should dictate how the Commission acts in this instance. An agricultural eligibility debate that occurred three presidents and four governors ago should hardly be relevant, much less controlling, today. The Commission should limit the IOUs ability to back-bill for metering or billing errors to three months for small business customers.

**B. It is not clear how the IOUs will classify smart meter errors.**

As Greenlining detailed in their Opening Comments to this rulemaking, there is uncertainty surrounding how the IOUs will classify various types of smart meter errors: billing or metering. How the IOUs classify these errors will have significant real world costs because it determines the period for which the IOU may back-bill or issue a refund. Greenlining urges the CPUC to investigate the current practices of the IOUs and the different types of errors to determine whether smart meter errors should be defined as a billing error, a metering error, or a completely separate classification.

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<sup>11</sup> According to the most recent U.S. Census Survey of Business Owners, in 2002 there were 915,514 minority-owned businesses in California. The most recent Survey was completed in 2002 and is *available at* <<http://www.census.gov/econ/sbo/#cb>>. Greenlining has projected these figures and estimates that there are currently between 1 and 1.5 million minority-owned businesses in California.

<sup>12</sup> *Sempra Opening Comments* at 8; *SCE Opening Comments* at 7.

<sup>13</sup> *PG&E Opening Comments* at 3-4.

**C. The discrepancy between the treatment of refunds for metering and billing errors should be corrected.**

As the Commission noted, a customer may receive a refund of up to three years for a billing error but only six months for a metering error.<sup>14</sup> The only IOU to address this issue was SCE, who argued that the rule was logical because customers could receive a meter test, free of charge, once every six months.<sup>15</sup> In contrast, they argued that billing errors could “span a longer period without the customer’s or the utility’s knowledge, which justifies a refund policy allowing credits to issue for up to three years.”<sup>16</sup> Simply put, this justification is not persuasive. Relying on customers to first, know they are entitled to a meter test, and second to request one every six months is unrealistic. Moreover, many of the errors related to smart meters were unknown to both the customer and the IOU for well over six months.<sup>17</sup> Customers should receive a refund for both types of errors for a period of up to three years.

**D. The current rules regarding deposits are too onerous for small businesses.**

Both PG&E and Sempra indicated they would eliminate re-establishment of credit deposits caused by slow payment or no-payment of a back-bill.<sup>18</sup> This is a commendable first step and should be required of all IOUs. However, this is only an initial step.

With respect to establishment of credit rules, small business should be treated like residential customers in that the deposit can be only twice the *average* monthly bill and not the *maximum* monthly bill. The IOUs have presented no justification for why a small business customer is charged twice the maximum bill, whereas a residential customer is charge twice the average in order to initially establish credit. Moreover, requiring a deposit based upon average bills is justifiable for small business customers. Many may have seasonal spikes in usage. For example, an accounting firm is likely to have higher usage during tax season than during the rest of the year. A garden store will likely have higher usage during the spring and summer, than during the winter. Therefore, deposits for small businesses should be based on the average, not maximum bill.

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<sup>14</sup> OIR at 7.

<sup>15</sup> *SCE Opening Comments* at 11.

<sup>16</sup> *Id.*

<sup>17</sup> Opening Comments of the Greenlining Institute 7, n. 23 (June 14, 2010).

<sup>18</sup> *PG&E Opening Comments* at 6; *Sempra Opening Comments* at 8.

With respect to re-establishment of credit deposits small businesses should also be treated like residential customers. Specifically, the Commission recently proposed two alterations in reestablishment of credit rules for residential customers.<sup>19</sup> First, in the case of a late payment, no additional deposits will be required; and second, in the case of a disconnection, the maximum deposit is limited to twice the average monthly bill.<sup>20</sup> These measures should also apply to small businesses.

The IOUs argue there should be no revisions to the deposit rules in general because they protect other ratepayers as well as mitigating the IOUs exposure to default risk.<sup>21</sup> Both PG&E and SCE explicitly claim that when a small business customer's credit or financial position deteriorates, this entitles them to an additional deposit.<sup>22</sup> It is unclear how forcing a customer, who may be on the eve of bankruptcy, to pay an additional deposit helps anyone other than the IOU. The Bankruptcy Code attempts to protect customers from disconnections or repercussions related to a bankruptcy proceeding.<sup>23</sup> By requiring exorbitant deposits the IOUs are attempting to frustrate this statutory intent. The IOUs must show why this additional up-front consideration is warranted.

#### IV. CONCLUSION

There is no dispute that there is more that can and should be done to assist small businesses who are suffering in this economic recession. As such, Greenlining commends the Commission for taking initiative with this Rulemaking to alleviate the burden of excessive and unanticipated back bills and credit deposits. During the course of this Rulemaking, Greenlining urges Commission and IOUs to focus on the value of small business to California and the loss sustained when they are forced out of business, rather than merely the bottom-line of the IOUs.

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<sup>19</sup> This refers to residential but non-CARE (California Alternate Rates for Energy) customers, to whom additional protections were extended in the Proposed Decision in Rulemaking 10-02-005.

<sup>20</sup> Proposed Decision of Commission Grueneich in Rulemaking 10-02-005, Interim Decision Implementing Methods to Decrease the Number of Gas and Electric Utility Service Disconnections 13 (June 17, 2010).

<sup>21</sup> *SCE Opening Comments* at 11-13; *Sempra Opening Comments* at 8; *PG&E Opening Comments* at 5-6.

<sup>22</sup> *SCE Opening Comments* at 13; *PG&E Opening Comments* at 6.

<sup>23</sup> 11 U.S.C. § 366 (providing that utilities may not “alter, refuse, or disconnect service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case”); 11 U.S.C. § 548(1)(1)(B) (a trustee may avoid a transfer made by the debtor within 2 years of filing the petition if the debtor received less than a reasonably equivalent value in exchange for such transfer and was insolvent on the date of the transfer or became insolvent as a result thereof).

Dated: June 28, 2010

Respectfully submitted,

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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 the "Reply 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 28, 2010

/s/ Alicia Miller  
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