

**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 UTILITY REFORM NETWORK
IN RULEMAKING 10-05-005**



June 14, 2010

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Pursuant to Rule 6.2 of the Rules of Practice and Procedure of the Public Utilities Commission (“Commission”) and the Commission’s Order Instituting Rulemaking 10-05-005, filed on May 6, 2010, The Utility Reform Network (“TURN”) hereby submits the following opening comments.¹

I. BACKGROUND

In Decision (D.) 08-06-035, the Commission placed time limits on the electric and gas utilities’ ability to correct undercharges caused by billing error and meter error through retroactive billing. The Commission separately considered the appropriately time limits for residential customers and non-residential customers, with the broad category of “non-residential” customers encompassing industrial customers, commercial customers of all sizes, and agricultural customers of all sizes. The Commission determined that the utility should be permitted to issue retroactive bills associated with billing error or meter error for residential customers covering a maximum of three months of undercharges. For non-residential customers, the Commission adopted a

¹ Opening comments were originally due June 7, 2010, but a letter sent from the Commission on May 27, 2010 to Southern California Edison Company and subsequently served on all parties adjusted the due date to June 14, 2010.

retroactive billing time limit of three years for undercharges caused by billing error or meter error.²

The Commission opened Rulemaking 10-05-005 on May 6, 2010 in order to determine whether utility tariff rules governing customer deposits and adjustments to customer bills due to meter or billing errors should be revised. This Rulemaking intends to consider whether it is a good and fair policy to treat small businesses defined as “micro-businesses” the same as residential customers for specific billing adjustment and customer account deposit purposes.³

The Commission is considering revisions to the rules regarding reestablishment of credit deposits for late or non-payment or after a disconnection for residential customers in Rulemaking 10-02-005 and proposed the following rule:

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.

Parties have filed opening and reply comments in that Rulemaking and a proposed decision is pending. Presumably the outcome of that Rulemaking will inform the Commission’s opinion in this Rulemaking with respect to small business customer deposits.

II. DISCUSSION

TURN applauds the Commission for opening this Rulemaking to protect small businesses through modifications to the rules governing small business customer deposits

² D.86-06-035, Appendix A.

³ 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, issued May 12, 2010, p. 6.

and billing adjustments. TURN agrees with the Commission’s premise that 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. In this Rulemaking the Commission is also considering applying the rules for residential customer deposits it has proposed in Rulemaking 10-02-005 to small business customers. This new rule would prohibit utilities from requiring reestablishment of credit deposits for late or non-payment from customers.

In D.86-06-03, the Commission found that one of the reasons to set the three-month limit on retroactive billing of residential customers for billing and meter errors was to prevent customers from “suddenly be[ing] confronted with a large backbill.”⁴ The harm from receiving a large backbill takes several forms, which were further articulated in Decision 07-09-041. First, the customer has lost the ability to properly budget for utility expenses and may be completely unable to afford to pay the retroactive bill.⁵ Second, the customer has missed the opportunity to conserve or invest in energy efficiency in response to previous billed amounts, so as to lower subsequent bills to a more affordable level.⁶

Thus far, the Commission has only considered the heightened burden placed on residential customers from retroactive billing, but small commercial customers are similarly sensitive to being confronted with a large backbill. TURN has been contacted by small commercial customers over the past several years who were shocked to receive a three-year backbill – or at least a backbill covering many months if not years – and

⁴ D.86-06-035, 1986 Cal. PUC LEXIS 888, *7-9.

⁵ D.07-09-041, p. 8.

⁶ *Id.* at 9.

were facing the terrible challenge of deciding whether they could stay in business and pay the retroactive utility charges. Like residential customers, small business customers may lack the cash flow to absorb large, unexpected costs. Small businesses may be able to cut costs or raise prices to anticipate future increases in certain operating costs, but they simply have no opportunity to retroactively adjust their business operations to cover retroactive utility billing. Moreover, small businesses, which might have invested in energy efficiency or increased conservation to lower bills had they known the full cost of their actual usage, miss the opportunity to benefit their bottom lines and the environment when they have been sent months or even years of incorrect or estimated bills. TURN therefore agrees with and wholeheartedly supports the Commission's premise that small businesses should be treated the same as residential customers for billing purposes and that utilities should only be able to back-bill micro-business customers for three months rather than three years.

In R.10-02-005, the Commission proposed to prohibit reestablishment of credit deposits from residential customers for late or non-payment or following a disconnection.⁷ In that Rulemaking, TURN supported the permanent prohibition of the collection of reestablishment of credit deposits for both residential and small business customers because of the enormous burden such deposits place on these customers.⁸ In its opening comments, TURN explained that if a customer is struggling financially to manage an arrearage and avoid shutoff, being required to pay a reestablishment of credit

⁷ Order Instituting Rulemaking on the Commission's Own Motion to address the issue of customers' electric and natural gas service disconnection, filed February 4, 2010, issued February 5, 2010, p. 2.

⁸ Opening Comments of The Utility Reform Network, filed March 12, 2010, pp. 25-29.

deposit would only increase the financial strain on that customer.⁹ TURN showed that the burden of such deposits could force some small businesses to layoff employees or go out of business,¹⁰ and neither outcome will help California during these tough economic times. TURN, therefore, urges the Commission to prohibit the utilities from requiring reestablishment of credit deposits from small business customers.

III. CONCLUSION

The Commission last considered the appropriate retroactive billing time limits in 1986, nearly 25 years ago. Today we know that small businesses are an essential part of the California economy. Modifying the utility retroactive billing rules to protect small businesses from large backbills associated with billing error or meter error and prohibiting reestablishment of credit deposits are important and necessary ways to support their economic viability. TURN appreciates this opportunity to comment on these issues.

Date: June 14, 2010

Respectfully submitted,

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⁹ *Id.* at 27.

¹⁰ *Id.* at 26.