

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 SMALL BUSINESS AND COMMUNITY OUTREACH STAFF REPORT**

KE HAO OUYANG
KAREN WATTS-ZAGHA
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

MARION PELEO
Legal Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-2130
Fax: (415) 703-2262
E-mail: map@cpuc.ca.gov

August 6, 2010

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 SMALL BUSINESS AND COMMUNITY OUTREACH STAFF REPORT**

I. INTRODUCTION

In accordance with the July 28, 2010 Administrative Law Judge's Ruling Providing Opportunity for Comments on Staff Report, the Division of Ratepayer Advocates (DRA) offers these opening comments on the "Workshop Report" (Report)¹ regarding the Commission's 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 (IOUs or Utilities).

DRA appreciates the opportunity to participate in the workshop and comment on the Report. DRA commends the Business and Community Outreach Office (BCO) staff for facilitating the workshop and for their meticulous effort to record the stated positions of the active parties in the Report. DRA believes the Report is an accurate summary of the positions parties took in their discussions that occurred during the July 6, 2010

¹ See "Small Business Program Staff Report, Workshop on Back-billing & Deposits, Rulemaking 10-05-005" (Report), Attachment A to Administrative Law Judge's Ruling Providing Opportunity for Comments on Staff Report, Rulemaking 10-05-005, July 28, 2010.

workshop. DRA makes the following recommendations with regard to the BCO staff's recommendations presented in the Report:

- Support the proposed definition of small business customers.
- Support the proposal to reduce the back-bill period from three years to three months and eliminate re-establishment of credit deposit caused in whole or in part from a back-bill for small business customers.
- Clarify the proposal to update tariff language so that in case of an overcharge, residential and commercial customers will receive refunds for up to three years for both billing and metering errors.
- Support the proposal to reduce establishment and re-establishment of credit deposits from twice the maximum monthly bill to twice the average monthly bill.

The Utilities should not incur any additional costs as a result of implementing the above changes because they are within the Utilities' normal scope of operations. As DRA noted in its reply comments on the Rulemaking, if the Utilities identify any such costs, these should be presented in the Utilities' General Rate Case (GRC) applications.² This proceeding should not be diverted from its primary focus on creating appropriate rules for small business customers to utility cost recovery issues.

II. DISCUSSION

A. Define small business customers based on usage level and Government Code section 14837.

One of the objectives of this workshop is to gain consensus on the definition of small business customers. The Report indicates the utilities unanimously agreed that small businesses should be defined as any non-residential electric customer with an annual consumption of 40,000 kilowatt hours or less or with an energy demand of 20 kilowatts or less, any non-residential gas customer with an annual consumption of less

² See Reply 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 (DRA Reply Comments), June 28, 2010, p.2.

than 10,000 therms, or any non-residential customer who meets the definition of “micro-business” in California Government Code (GC) section 14837.

The BCO staff recommends adopting this definition because all parties at the workshop agreed to these terms. DRA supports the BCO staff’s recommendation because it is easy to implement and does not require utilities to collect customer financial data or change their systems. The utilities acknowledge they already possess all the information necessary to identify and qualify small business customers under this definition, so there are no additional costs to implement this new rule. This definition is also the most inclusive because the Report indicates that the usage part of the definition will cover between 95-99% of eligible small businesses. In addition, small business customers with high usage but low revenues and/or a low number of workers who failed to qualify under the usage part of the definition may still qualify under the GC’s definition.

B. Limit back-billing to no more than three months on utility-side errors and eliminate resulting re-establishment of credit deposits.

The Commission acknowledged and addressed the financial burden placed on residential customers from retroactive billing, but did not do the same for small business customers. The financial resources of small businesses are usually limited, so it is highly unlikely that they will have the cash flow to absorb a large unexpected back-bill containing up to three years of past charges. BCO staff indicated many small businesses are barely able to make ends meet and are often too small to be able to afford three years of back-billing, forcing them to shut down and/or declare bankruptcy.³

The BCO staff recommends reducing the back-bill period from three years to three months and eliminating the re-establishment of credit deposits caused in whole or in part from a back-bill due to utility billing and metering errors. All parties at the workshop

³ See 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 (OIR), R.10-05-005, May 6, 2010, pp. 5-7.

unanimously agreed to these changes. DRA supports the BCO staff's recommendation to provide small business customers some relief from large unexpected back-bills. As indicated in DRA's reply comments,⁴ there is widespread agreement among the utilities that small business customers should be treated the same as residential customers with respect to back-billing caused by utility billing and metering errors. Small businesses have no control over utility-side billing and metering errors, thus they should not be responsible for any costs beyond three months. In addition, no small business customers should be assessed a deposit stemming from an unexpected back-bill based on utility errors.

1. Small businesses are the true engine of job creation.

Reducing the back-billing period and eliminating re-establishment of credit deposits caused by back-bills would help fuel what President Obama has called the true engine of job creation.⁵ According to the most current data provided by the Federal Bureau of Labor Statistics (BLS) on Business Employment Dynamics by firm size, small businesses with fewer than 20 employees are responsible for nearly a quarter of the overall private sector job gains from 1992 to 2005.⁶ At the end of the first quarter of 2005, 87.1% of firms in the private sector of the United States economy had fewer than 20 employees. These firms also represented 18.9 % of total private sector employment during this period. Private sector firms with fewer than 20 employees are also responsible for 24.6% of the total net change in employment from the third quarter of 1992 to the first quarter of 2005. These statistics emphasize the significant role small businesses play in our job market.

⁴ See DRA Reply Comments, pp. 2-3.

⁵ See OIR, p.5.

⁶ Firm Size Class Quarterly Data found on <http://www.bls.gov/bdm/> - this initial release of firm size class data includes analysis of data series that begin in 1992.

The U.S. economy is currently recovering from one of the worst recessions since the 1930s. The current recession began in December 2007.⁷ The national unemployment rate surged from 4.7% in November 2007 to 9.5% in June 2010 and the California unemployment rate surged from 5.7% to a preliminary 12.3% during the same period.⁸ Given the high unemployment rates, it is critical to promote an environment where small businesses can flourish, expand and hire more workers to reduce the unemployment rate and stimulate the economy. By reducing the back-bill period and eliminating the re-establishment of credit deposit due to back-bills, the Commission can help to eliminate one of the negative factors causing small business to shut down and/or declare bankruptcy and aid in the economic recovery.

C. Tariff language regarding overcharges should be updated to ensure small business customers receive a refund for up to three years for both billing and metering errors.

Under current utility tariffs, if either a residential or commercial customer is overcharged due to a billing error, the utility will refund the customer for a period up to three years. However, if either a residential or commercial customer is overcharged due to a metering error, the utility will only refund the customer for a period up to six months.⁹ In the Report, the BCO staff recommends updating utility tariffs to address meter error discrepancies highlighted in the OIR. Specifically, utility tariff languages should be updated so that in the case of an overcharge resulting from either utility billing or metering errors, residential and commercial customers will receive a refund for up to three years.¹⁰ DRA recommends that the staff's proposal be clarified. Since the language in the Report refers to "commercial customers", DRA recommends the

⁷ Recession start date determined by the National Bureau of Economic Research (<http://www.nber.org/>).

⁸ Data published on the BLS website at <http://www.bls.gov/bls/unemployment.htm>.

⁹ See OIR, pp.3-4.

¹⁰ See Report, pp. 18-19.

Commission specify that “commercial customers” includes small business customers as defined in the Report.

D. Establishment and re-establishment of credit deposits should be changed from twice the maximum monthly bill to twice the average monthly bill

The BCO staff recommends in the Report to reduce the establishment and re-establishment of credit deposits from twice the maximum monthly bill to twice the average monthly bill because the current deposit requirement is too high for small businesses to manage comfortably. DRA supports this proposal because it will provide meaningful relief to small businesses by cutting the deposit requirements without increasing gross uncollectibles. Due to the interest requirement on holding deposits, this change will not cause significant cost to the utilities. As discussed in detail below, this modification will reduce the utilities’ interest expense and these savings will ultimately be passed onto all ratepayers through lower rates. This modification is also consistent with the deposit policies of Sierra Pacific and Southern California Gas Company, and of utilities in a majority of other states that publish establishment and re-establishment of credit deposit information.¹¹

1. Reducing amount of deposits held will not increase gross uncollectibles.

“Gross uncollectibles” is the total uncollected amount before deposits are applied to offset unpaid debt and “net uncollectibles” is the total uncollected amount after deposits are applied. The amount of the gross uncollectibles is determined by the customer base and the number of payment defaults. Ratepayers are more likely to default if deposit requirements are increased since their limited financial resources will be tied up in deposits. However, ratepayers are less likely to default if deposit requirements are decreased since they will have access to more of their limited financial resources. Even

¹¹ Sierra Pacific and Southern California Gas Company currently require twice the average monthly bill to establish and re-establish credit. See Utility Tariff Rule No. 7 for each California IOU and Report Attachment B for other states.

in the worst case scenario, reducing the deposit requirement will have little or no impact on the default rate or the total gross uncollectibles for California utilities. The most likely outcome from reducing the deposit requirement is relief for small businesses and a reduction in the default rate.

The data request information provided by two of the Sempra Energy Utilities, San Diego Gas & Electric Company (SDG&E), which requires twice the maximum monthly bill, and Southern California Gas Company (SCG), which requires twice the average monthly bill to establish and re-establish credit, show similar deposits held and gross uncollectibles from 2006 to 2010. SDG&E recovered approximately 11.3% of its gross uncollectibles by applying deposits to offset unpaid debt while SCG recovered approximately 27.11% using the same method during this period¹². This suggests requiring more deposits does not increase the recovery rate; therefore, DRA urges the Commission to encourage utilities to identify and share common practices that are successful in recovering uncollectibles instead of requiring more deposits.

2. Holding too much in deposits is costly to utilities and ratepayers due to interest expenses on deposits

Residential and non-residential customers are required to place a deposit to establish and re-establish credit with the utilities. These deposits are held until the customers have established credit by paying bills on time for 12 consecutive months or have met other requirements specified by the utilities.¹³ The deposits are then returned to customers with interest equivalent to the three month commercial paper rate. The interest paid to customers is recorded as interest expense, which is part of each utility's overall operational cost, and is ultimately passed onto ratepayers.

There is a strong positive correlation between the interest rate and interest expense, meaning an increase in the interest rate will lead to an increase in interest expense and vice versa. Changes in the interest rate are measured in basis points, with

¹² For calculations, *see* Table 1 in Appendix A to these opening comments.

¹³ *See* Utility Tariff Rule No. 7 on deposits for each IOU.

one basis point being equivalent to 1/100th of one percent. If a utility holds \$1 million in deposits, every one basis point change in the interest rate will result in a \$100 change in interest expense. As a result of the current economic crisis, the three month commercial paper rate decreased by 484 basis points from the end of 2006 to the end of 2009.¹⁴ The data request information provided by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), SDG&E and SCG showed the utilities' total deposits held exceeded \$100 million a year from 2006 to 2010, so the reduction in interest expense may be up to or possibly exceed \$4.84 million a year during this period.

It is extremely difficult to predict the direction of interest rates due to the cyclical nature of the economy. However, interest rates tend to rise when economic conditions improve and fall when economic conditions deteriorate. As economic conditions improve, the interest rate is expected to rise, driving up the interest expense for utilities. If interest rates were to return to their 2006 levels and utilities continue to hold the same amount of deposits, interest expense would increase by over \$4.84 million a year, which is almost as much as the \$5.5 million total uncollectibles PG&E, SCE and the Sempra utilities recovered by applying deposits to offset unpaid debt from 2006 to 2010.¹⁵ In addition, the total uncollectibles recovered by applying deposits to offset unpaid debt is only 0.88% of total deposits held, suggesting the utilities held more deposits than necessary and paid too much in interest expense.¹⁶

The utilities indicated at the workshop that the maximum monthly bill is approximately twice the average monthly bill. Reducing the establishment and re-establishment of credit deposits from twice the maximum monthly bill to twice the average monthly bill will ease the deposit burden on small business customers and decrease the utilities' interest expense by effectively reducing the amount of deposits the

¹⁴ The 3 Month commercial rate is 5.1% at the end of 2006 and 0.26% at the end of 2009. See Table 6 in Appendix A or visit http://www.federalreserve.gov/releases/Annual/H15_NFCP_M3.txt for more data.

¹⁵ For calculations, see Tables 1 and 3 in Appendix A to these Opening Comments.

¹⁶ For calculations, see Tables 2 and 4 in Appendix A to these Opening Comments.

utilities hold. Using the total deposits provided by PG&E, SCE and the Sempra utilities from 2006 to 2010, this modification will reduce the total interest expense paid from \$14.3 million to \$7.15 million.¹⁷ The \$7.15 million reduction in interest expense is more than the \$5.5 million total uncollectibles these same utilities recovered by applying deposits to offset unpaid debt during this period. If the utilities can increase the amount of uncollectibles recovered and decrease interest expenses at the same time, the overall savings will be much greater. This will benefit utilities through lower costs and ratepayers through lower rates. This will also put more money back in the hands of small businesses so they can create jobs and aid in the recovery efforts.

E. Cost Recovery

DRA reiterates that removing burdens from small business for utility-side metering and billing errors should not result in any new costs to the utilities.¹⁸ The utility should be responsible for utility-side metering or billing errors where the utility is not able to catch such errors within three months and collect the entire amount for energy consumed. The modification to the deposit rules recommended by DRA should not have a material effect on the utilities' bottom line or on other ratepayers due to the savings from interest expense over time. DRA recommends that the Commission direct utilities to include any claims for cost recovery in their GRC applications if they still contend that cost recovery is warranted. In this way, such claims can be properly considered in the context of overall utility operations.

III. CONCLUSION

DRA respectfully requests that the Commission adopt the recommendations of the BCO staff, subject to the clarifications recommended in these comments.

¹⁷ For calculations, *see* Table 5 in Appendix A to these Opening Comments.

¹⁸ *See* DRA Reply Comments, pp. 4-5.

Respectfully submitted,

/s/ MARION PELEO

Marion Peleo

Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-2130
Fax: (415) 703-2262

August 6, 2010

APPENDIX A

Table 1

TOTAL UNCOLLECTIBLES FOR SMALL BUSINESS CUSTOMERS FROM 2006 TO 2010								
Utility	Gross	Net	Deposits Applied	% Recovered	% Not Recovered	Deposits Held	Interest Rate	Interest Expense
PG&E	\$18,200,093.00	\$15,682,890.00	\$2,517,203.00	13.83%	86.17%	\$207,955,213.00	-	\$5,272,132.38
SDG&E	\$3,794,027.31	\$3,365,117.11	\$428,910.20	11.30%	88.70%	\$88,000,000.00	-	\$2,222,880.00
SCE	\$7,603,569.00	\$6,058,174.00	\$1,545,395.00	20.32%	79.68%	\$236,720,662.00	-	\$4,524,847.25
SCG	\$3,567,196.00	\$2,600,167.00	\$967,029.00	27.11%	72.89%	\$90,000,000.00	-	\$2,273,400.00
TOTAL	\$33,164,885.31	\$27,706,348.11	\$5,458,537.20	16.46%	83.54%	\$622,675,875.00	-	\$14,293,259.63

Table 2

UNCOLLECTIBLES AS PERCENTAGE OF TOTAL DEPOSITS HELD FROM 2006 TO 2010				
Utility	Gross	Net	Deposits Applied	Interest Expense
PG&E	8.75%	7.54%	1.21%	2.54%
SDG&E	4.31%	3.82%	0.49%	2.53%
SCE	3.21%	2.56%	0.65%	1.91%
SCG	3.96%	2.89%	1.07%	2.53%
TOTAL	5.33%	4.45%	0.88%	2.30%

Table 3

TOTAL UNCOLLECTIBLES FOR PG&E, SDG&E, SCE AND SCG SMALL BUSINESS CUSTOMERS								
Year	Gross	Net	Deposits Applied	% Recovered	% Not Recovered	Deposits Held	Interest Rate	Interest Expense
2006	\$3,993,346.24	\$3,308,531.71	\$684,814.53	17.15%	82.85%	\$76,282,977.00	5.10%	\$3,890,431.83
2007	\$5,326,757.02	\$4,291,041.45	\$1,035,715.57	19.44%	80.56%	\$137,333,337.00	4.92%	\$6,756,800.18
2008	\$8,568,541.21	\$7,459,309.54	\$1,109,231.67	12.95%	87.05%	\$140,914,921.00	2.13%	\$3,001,487.82
2009	\$10,635,388.65	\$8,775,434.68	\$1,859,953.97	17.49%	82.51%	\$136,553,989.00	0.26%	\$355,040.37
2010	\$4,640,852.19	\$3,872,030.73	\$768,821.46	16.57%	83.43%	\$131,590,651.00	0.22%	\$289,499.43
TOTAL	\$33,164,885.31	\$27,706,348.11	\$5,458,537.20	16.46%	83.54%	\$622,675,875.00	-	\$14,293,259.63

Table 4

UNCOLLECTIBLES AS PERCENTAGE OF TOTAL DEPOSITS				
	Gross	Net	Deposits Applied	Interest Expense
2006	5.23%	4.34%	0.90%	5.10%
2007	3.88%	3.12%	0.75%	4.92%
2008	6.08%	5.29%	0.79%	2.13%
2009	7.79%	6.43%	1.36%	0.26%
2010	3.53%	2.94%	0.58%	0.22%
TOTAL	5.33%	4.45%	0.88%	2.30%

Table 5

DEPOSITS HELD FOR SMALL BUSINESS CUSTOMERS AND INTEREST EXPENSE PAID BY UTILITIES					
Year	Interest Rate	Twice Maximum Monthly Bill		Twice Average Monthly Bill	
		Deposits Held	Interest Expense	Deposits Held	Interest Expense
2006	5.10%	\$76,282,977.00	\$3,890,431.83	\$38,141,488.50	\$1,945,215.91
2007	4.92%	\$137,333,337.00	\$6,756,800.18	\$68,666,668.50	\$3,378,400.09
2008	2.13%	\$140,914,921.00	\$3,001,487.82	\$70,457,460.50	\$1,500,743.91
2009	0.26%	\$136,553,989.00	\$355,040.37	\$68,276,994.50	\$177,520.19
2010	0.22%	\$131,590,651.00	\$289,499.43	\$65,795,325.50	\$144,749.72
TOTAL	-	\$622,675,875.00	\$14,293,259.63	\$311,337,937.50	\$7,146,629.81

SOURCE: Information for Tables 1-5 derived from Business and Community Outreach Office Data Request Due on July 9, 2010. Information is for non-residential electric customers with demand less than 20 kw and non-residential gas customers with annual consumption below 50,000 therms.

Table 6

3 Month Commercial Paper Rate (Annual Data)			
YEAR	RATE	YEAR	RATE
1997	5.49%	2004	1.41%
1998	5.34%	2005	3.42%
1999	5.18%	2006	5.10%
2000	6.31%	2007	4.92%
2001	3.65%	2008	2.13%
2002	1.69%	2009	0.26%
2003	1.11%	2010*	0.22%

SOURCE: http://www.federalreserve.gov/releases/Annual/H15_NFCP_M3.txt.

* Average rate from January through June 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 SMALL BUSINESS PROGRAM STAFF REPORT**” 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.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **August 6, 2010** at San Francisco, California.

/s/ ALBERT HILL

Albert Hill

SERVICE LIST
R.10-05-005

CPUCCASES@pge.com;
DAKing@SempraGeneration.com;
DFC2@pge.com;
KHassan@SempraUtilities.com;
KSwitzer@gswater.com;
Mike@alpinenaturalgas.com;
ROJ3@pge.com;
Ralf1241a@cs.com;
aliciam@greenlining.org;
bkc7@pge.com;
bmd@cpuc.ca.gov;
brooks.congdon@swgas.com;
case.admin@sce.com;
catherine.mazzeo@swgas.com;
cathie.allen@pacificorp.com;
cem@newsdata.com;
ddm@cpuc.ca.gov;
don.soderberg@swgas.com;
fadia.khoury@sce.com;
jeanc@greenlining.org;
joyw@mid.org;
kderemer@semprautilities.com;
kwz@cpuc.ca.gov;
lwt@cpuc.ca.gov;
map@cpuc.ca.gov;
nquan@gswater.com;
nsuetake@turn.org;
regrelcpuccases@pge.com;
rkmoore@gswater.com;
sjg@cpuc.ca.gov;
stephaniec@greenlining.org;
tdillard@sppc.com;
valerie.ontiveroz@swgas.com;
westgas@aol.com;
zaf@cpuc.ca.gov;