

**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 ON THE  
SMALL BUSINESS AND COMMUNITY OUTREACH STAFF REPORT**

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August 6, 2010

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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 Administrative Law Judge’s Ruling, filed July 28, 2010, in the above captioned proceeding.<sup>1</sup> The Order Instituting Rulemaking requires the Commission to 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>2</sup> Pursuant to the OIR’s terms, a workshop with all parties was held on July 6, 2010 and on July 28, 2010 the Small Business and Community Outreach Staff issued a Report (the “Staff Report”) summarizing the consensus reached and outlining the Staff’s recommendations.<sup>3</sup>

Throughout this rulemaking the Commission has laudably recognized the unique needs of small businesses in the current economic crisis. Small businesses drive economic growth, higher levels of employment and ensure community stability. However, many are still facing liquidity

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<sup>1</sup> Administrative Law Judge’s Ruling Providing Opportunity for Comments on Staff Report, R.10.05.005 (July 28, 2010).

<sup>2</sup> 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 1, 6 (May 6, 2010) (hereinafter “OIR”).

<sup>3</sup> Administrative Law Judge’s Ruling, *supra* note 1, Attachment A (hereinafter “Staff Report”).

crises.<sup>4</sup> Extensive back billing and onerous deposit rules have only exacerbated this cash crunch. As the Commission recognized, small businesses “are the backbone of our economy and especially in these tough economic times are trying their best to stay afloat.”<sup>5</sup> This is of particular importance to Greenlining because small businesses in California are often minority owned and are the predominant employer in communities of color.<sup>6</sup> Greenlining notes with pleasure that all parties at the Workshop, from small business advocates to the utilities themselves, agreed that the importance of small businesses justified affording them additional protections.

## II. THE DEFINITION OF ‘SMALL BUSINESS’S HOULD NOT BE LIMITED TO USAGE.

A primary inquiry during the workshop was whether small business customers, defined as a “micro-businesses” under the Government Code,<sup>7</sup> should be treated the same as residential customers. In their opening comments, a number of the regulated investor owned utilities (“IOUs”) argued that this definition was unworkable and proposed defining small business customers based on energy usage.<sup>8</sup> While Greenlining was not *per se* opposed to defining small businesses based on energy usage, as noted in its reply comments, a definition based on energy usage alone raises concerns.<sup>9</sup> Specifically, a usage definition might be underinclusive because it would exclude an organization with disproportionately high energy usage that otherwise qualifies as a small business under the government definition (e.g. a small manufacturer).

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<sup>4</sup> Sharon Bernstein, *Desperate for Capital, Small Businesses Turn to Private Lenders*, LA Times, July 31, 2010, available at <<http://www.latimes.com/business/la-fi-0731-smallbiz-hardmoney-20100731,0,7217111,full.story>>.

<sup>5</sup> OIR, *supra* note 2, at 5.

<sup>6</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>7</sup> CAL.GOV'T CODE § 14837 (Deering 2010).

<sup>8</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) 4-7 (June 14, 2010) (specifying a level of 40,000 kWh/year or 10,000 therms/year) (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 5-8 (June 14, 2010) (specifying customers in the GS-1 rate group with actual or expected demands of 20kW or less) (hereinafter *SCE Opening Comments*).

<sup>9</sup> The Greenlining Institute's Reply Comments 1-3 (June 28, 2010).

Greenlining commends the utilities for their willingness to consider a hybrid definition, such as the one proposed in its reply comments.<sup>10</sup>

The Staff Report reflects that the IOUs unanimously agreed that small businesses should be defined as a non-residential customer falling below the relevant energy usage parameters *or* a customer who meets the definition of “micro-business” under the Government Code.<sup>11</sup>

Greenlining would like to clarify that it agrees with the IOUs that it would be unduly burdensome to require the IOUs to collect the data required to determine whether a business meets the government code definition. Thus, Greenlining proposes that a business would be deemed to have met the government definition if either: (i) it is included on the Department of General Services certification list or (ii) self-certifies, either via affidavit or by providing tax returns verifying its annual revenues. This shifts the burden of determining which businesses meet the definition from the IOU to the customer. However, in order for a high-usage small business customer to take advantage of these protections, it must be made aware of them. Thus, Greenlining urges the Commission to require the IOUs to inform non-residential customers that they may qualify for heightened protections if they meet either the energy usage or government code definition.

### **III. GREENLINING SUPPORTS THE STAFF’S RECOMMENDATIONS REGARDING BACK-BILLING.**

As the Commission noted, under the current tariff 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>12</sup> Greenlining commends the IOUs for their willingness to amend these tariff rules to ease the burden on small business customers. Greenlining supports the staff recommendation that small businesses should only be back-billed for a period of three months, and not three years.<sup>13</sup> In addition, Greenlining supports the proposition that small businesses should not “be required to re-establish credit resulting from a slow payment of any back-billing amount.”<sup>14</sup> In conjunction these two recommendations should substantially assist small business customers and

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<sup>10</sup> “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.” *Id.* at 3.

<sup>11</sup> Staff Report, *supra* note 3, at 13.

<sup>12</sup> OIR, *supra* note 2, at 5.

<sup>13</sup> Staff Report, *supra* note 3, at 18.

<sup>14</sup> *Id.*

reduce defaults and disconnections. In light of the consensus reached at the Workshop, the Commission should adopt the staff's recommendation and mandate that a small business customer: (i) may only be back-billed for a period of three months; and (ii) will not be required to reestablish credit due to slow payment of a back-bill.

Moreover, under the current tariff rules a customer may receive a refund of up to three years for a billing error but only six months for a metering error.<sup>15</sup> This discrepancy gave rise to Greenlining's concerns regarding classification of Smart Meter errors.<sup>16</sup> The Staff Report recommends that "in the case of an overcharge, residential or commercial customers will receive a three year refund for both metering and billing errors."<sup>17</sup> Greenlining supports this recommendation and urges the Commission to update the tariff language accordingly.

#### **IV. THE RULES REGARDING DEPOSITS MUST BE AMENDED.**

As discussed above, all parties agreed that deposits due to back-billing should be waived.<sup>18</sup> Unfortunately, as the Staff Report noted, the consensus reached with respect to back-billing issues did not extend to the general issue of revision to deposit rules.<sup>19</sup> In their comments, the IOUs argued there should be no revisions to the deposit rules because they protect other ratepayers as well as mitigating the IOUs' exposure to default risk.<sup>20</sup> They reiterated this sentiment during the Workshop and highlighted alternative payment policies to help small business customers.<sup>21</sup> These alternative policies may provide an effective way to help small business customers; however, the Commission should more fully explore these alternatives and their efficacy before leaving the welfare of small businesses to the sole discretion of the IOUs.

##### **A. Deposit Amounts Should Be Limited To Twice the Average Monthly Bill.**

Greenlining supports the staff recommendation that the deposit amount for both establishment and re-establishment of credit be twice the average monthly bill.<sup>22</sup> This is a reasonable balance between the interests of the IOUs and those of small businesses as it allows

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<sup>15</sup> OIR, *supra* note 2, at 7.

<sup>16</sup> The Greenlining Institute's Opening Comments 5, 7 (June 14, 2010); Greenlining Reply Comments, *supra* note 9, at 4-5.

<sup>17</sup> Staff Report, *supra* note 3, at 19.

<sup>18</sup> *Id.* at 17.

<sup>19</sup> *Id.* at 19.

<sup>20</sup> *SCE Opening Comments* at 11-13; *Sempra Opening Comments* at 8; *PG&E Opening Comments* at 5-6.

<sup>21</sup> Staff Report, *supra* note 3, at 14-17.

<sup>22</sup> *Id.* at 20.

the utility to require a deposit that the small business will more easily be able to afford. Moreover, requiring a deposit based upon average bills is justifiable for small business customers. The deposit is typically held for one year and thus should be based on the average annual billing rate. Basing it upon a maximum monthly usage may not accurately represent usage, as many small businesses may have seasonal spikes in usage. Therefore, Greenlining concurs with staff that deposits for small businesses should be based on the average, not maximum bill.

**B. The Commission Should Ensure Payment Transparency for Customer and IOU Benefit.**

Greenlining also concurs with the staff recommendation that utilities actively pursue creative credit and payment policies.<sup>23</sup> Allowing an IOU to tailor a payment plan to a specific customer's needs is desirable; however, unfettered discretion raises its own host of risks. In order to craft the appropriate remedy, the Commission must be aware of the full range of options the IOUs offer to their customers, such as payment plans, notice procedures, automated payment systems, and deposit alternatives. The Staff Report neglects to mention that some IOUs expressed concerns regarding public disclosure of their specific notice and collection policies as this may allow the unscrupulous to game the system.<sup>24</sup> While Greenlining typically takes a more optimistic view of the customer base, it also recognizes these concerns may be valid. If the Commission determines that the IOUs should have heightened protections in this area, then perhaps confidential or limited disclosure of internal collection practices would create the transparency required to fully evaluate these practices without public disclosure or formalization in tariff rules.

**C. Additional Deposits Following Disconnections Should Be Waived.**

Finally, Greenlining notes that an issue raised in the OIR, whether to waive any additional re-establishment of credit deposits “for either slow-payment/no-payment of bills or following a disconnection,” was not specifically addressed in the Workshop or the Staff Report.<sup>25</sup> Greenlining's Opening and Reply Comments urged the Commission to waive

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<sup>23</sup> *Id.*

<sup>24</sup> Southern California Edison specifically raised this concern. They argued that if a customer knew how many notices and the time frames for disconnection they could wait until the last possible moment to pay and thus waste utility time and resources, which would be a drain on other ratepayers.

<sup>25</sup> OIR, *supra* note 2, at 5, 6.

reestablishment of credit deposits for slow payment of bills and that request is reiterated here.<sup>26</sup> It is unclear how forcing a small business that is struggling to pay its bills to pay additional deposits is beneficial to anyone other than the IOU. In the case of slow payment, the customer is not trying to avoid its obligations. At a minimum, the Commission should adopt this practice as an interim measure, as it did in the residential disconnection proceeding.<sup>27</sup>

#### IV. CONCLUSION

As the Workshop highlighted, there is no substantive dispute that more can and should be done to assist small businesses who are suffering in this economic recession. As such, Greenlining commends the Commission's initiative in opening this Rulemaking and the IOUs' willingness to come to the table to discuss how to alleviate the burden of excessive and unanticipated back bills and credit deposits. Greenlining reiterates that the focus should be on the value of small businesses to California and the loss sustained when they are forced out of business. In most respects the Staff Report strikes an appropriate balance between this crucial consideration and allowing the IOUs to mitigate their uncollectible risk. However, the issue of deposit and credit collection practices remains unresolved. Greenlining urges the Commission to take advantage of this opportunity to build on the consensus and spirit of collaboration that has arisen in this proceeding to ensure that small businesses are adequately safeguarded during this and future economic downturns.

Dated: August 6, 2010

Respectfully submitted,

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<sup>26</sup> Greenlining Opening Comments, *supra* note 16, at 8-9; Greenlining Reply Comments, *supra* note 9, at 6.

<sup>27</sup> Interim Decision Implementing Methods to Decrease the Number of Gas and Electric Utility Service Disconnections 32, Decision 10-07-048 in R.10.02.005 (July 29, 2010).

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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 "OPENING COMMENTS OF THE GREENLINING INSTITUTE ON THE SMALL BUSINESS AND COMMUNITY OUTREACH STAFF REPORT" on all known parties to R.10-05-005 by 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 August 17, 2010

/s/ Alicia Miller  
Alicia Miller



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