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I. INTRODUCTION

The Public Utilities Commission of the State of California (“Commission”) issued its Order Instituting Rulemaking R.10-02-005 (“OIR”) in this proceeding on February 5, 2010, directing California’s regulated gas and electric utilities to immediately implement interim practices to improve customer notification and education and to decrease customer disconnections from their energy services. The OIR followed (1) a June 19, 2009 Petition by The Utility Reform Network (“TURN”) submitted in another docket requesting the Commission to initiate a rulemaking to address arrearage management and shutoff prevention for residential customers, and (2) a report by the Division of Ratepayer Advocates (“DRA”) on November 19, 2009 showing the number of California’s low-income customers being disconnected without a record of reconnection almost doubling compared to the previous 12 months under review.

On June 17, 2010, Commissioner Dian M. Grueneich issued a Proposed Decision (“PD”) continuing certain requirements of the OIR, and discussing the various recommended practices to reduce customer disconnections submitted by the various parties in comments and reply comments.¹ On July 29, 2010, the Commission issued its Interim Decision (“ID”) in which the Commission ordered changes to the utilities’ disconnection practices, and further identified twelve remaining issues to be addressed in Phase II of this proceeding. By Ruling of August 26, 2010 (“ALJ Ruling”), Administrative Law Judge Bruce DeBerry identified three issues for Comment and Reply Comment: (1) allowing customers to choose a billing date; (2) waiver of deposit exceptions for customers demonstrating continued fraud or bad check activities; and (3) defining “sensitive” customers. Pursuant to that Ruling and the Commission rules and

¹ Comments and Reply Comments were filed by the following utilities: Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company (“SCE”), San Diego Gas & Electric Company (“SDG&E”) jointly with Southern California Gas Company (“SoCalGas”) (or, jointly, “Joint Utilities”). Comments and Reply Comments were filed by the following intervenors and advocates: National Consumer Law Center (“NCLC”), the Commission’s Division of Ratepayer Advocates (“DRA”), The Utility Reform Network (“TURN”), the City and County of San Francisco, and by Greenlining (“Greenlining”) and Disability Rights Advocates (“DisabRA”).

regulations, the National Consumer Law Center (“NCLC”) submits the following Comments.²

II. COMMENTS

A. **Customers should be allowed to choose a regular billing date for when their payments are due.**

The Commission in its Interim Decision of July 29, 2010 (“ID”) identified as an issue for Phase II of this proceeding the question of whether customers should be allowed to choose a monthly billing date for their payments. ID at 28. The ALJ Ruling requests comment on whether there are known advantages to allowing customers to select their own billing date, and the effect on late payments. NCLC supports the Commission’s examination of this issue and previous comments submitted by various intervenors recommending the adoption of customer choice for billing due dates.³ As previously noted in this proceeding by TURN, utility customers in focus groups have stated that the mismatch between income cycles and utility billing cycles puts them at risk of disconnections, and late payments are caused in part because consumers living from paycheck to paycheck cannot make timely payments under inflexible utility bill due dates.⁴ Additionally, Entergy New Orleans and Entergy Louisiana, companies with years of experience implementing the “Pick-A-Date” program, recently stated publicly that “[o]nly customers know the best time to pay their monthly bill. With Pick-A-Date, they

² The Interim Decision identifies as an issue for Phase II the question of whether there should be exceptions to demands for deposits from customers demonstrating continued fraud or bad check activities. ID at 28. While NCLC is not providing Comment on this issue at this time, it reserves the right to respond to the comments of other parties as may be necessary in Reply Comments.

³ *See, e.g.*, Comments of the City and County of San Francisco on the Proposed Decision (July 7, 2010) at 3-4 (Payment Arrangements subsection); Comments of the City and County of San Francisco on the Order Instituting Rulemaking (Mar. 12, 2010) at 4; Reply Comments of Greenlining on the Commission’s Own Motion (Apr. 12, 2010) at 15; Opening Comments of The Utility Reform Network (Mar. 12, 2010) at 32. *Cf.* Opening Comments of the Greenlining Institute on the Proposed Decision (Jul. 7, 2010) at 6 (regarding automated payments, there must be flexibility for determining when a debit on an automated payment plan is placed).

⁴ Opening Comments of The Utility Reform Network (Mar. 12, 2010) at 32.

may be able to select the date each month when their electric bill is due.”⁵ While Entergy highlights its shareholders’ annual contributions of \$500,000 to one Entergy low-income program, Entergy makes no such indication of additional costs incurred to implement its Pick-A-Date program.⁶

The above evidence indicates that allowing customers to select their own billing date can be done at a reasonable cost to the utility while allowing customers to exert more control over their financial obligations, thereby reducing their own risk of being disconnected from their utility services. Customer choice in selecting a billing date should aid customers with better ability to timely make payments. In Oregon, for example, if late penalties are allowed at all, they may only be imposed after certain conditions, one of which is that the customer has had opportunity to establish preferred billing options, i.e., the customer is given the chance to choose his or her monthly due date. *See* Or. Admin. R. 860-021-0126.⁷ In other words, Oregon’s policy attempts to maximize the customer’s ability to pay, before it imposes upon the utility customer any penalties for missing a payment. The advantages to a policy that is centered about maximizing the customer’s ability to pay, rather than focused on disconnecting the services of customers who become payment-troubled, are that: (1) the utility avoids taking the premature action of cutting off a stream of revenue; and (2) customers who are

⁵ Press Release, Entergy, Local Entergy Companies Reach out to Customers Facing Tough Financial Situations (Jan. 8, 2010), available at http://www.entergy.com/news_room/newsrelease.aspx?NR_ID=1652.

⁶ *See id.*

⁷ The Oregon regulation states in relevant part:

(2) An energy utility shall not impose late-payment charges on residential customers unless:

(a) The energy utility offers residential customers a preferred billing date option under which the customer can select or change a bill date. Utilities shall not be required to change a customer's bill date more than once in any 12-month period;

...

Or. Admin. R. 860-021-0126 (2)(a).

willing and able to pay are protected from being prematurely disconnected. Some customers may have the ability to pay but may require the right opportunity to demonstrate that ability.

In addition to supporting a monthly billing date of the customer's preference, NCLC supports an investigation into the question of whether signing up customers for an auto-pay option on the date of their choice would further reduce risk of nonpayment and reduce billing and collection costs.⁸

B. The definition of “Sensitive Customers” should include the low-income participants of CARE and FERA, along with the elderly, disabled, and customers in households where a full-time resident has a serious illness.

The Interim Decision and ALJ Ruling request comment on how sensitive customers can be defined, and how utilities can identify such customers. ID at 28; Ruling at Attachment A. In the interim, the Commission has defined sensitive customers “as those who are on medical baseline or life support as these customers are currently identified on utilities’ billing systems.” ID at n. 40. While the Commission did not explicitly include disabled individuals in its definition of sensitive customers, it does note that the category of sensitive customers does include customers who have disabilities. ID at 20 (“Communicating with sensitive customers who have disabilities is a challenge for all utilities.”).

For the reasons stated here, NCLC submits that disabled customers should be more clearly incorporated into the definition of sensitive customers, along with the elderly, households with one or more children, and customers such as the seriously ill who are vulnerable to health and safety risks of disconnection.

The Centers for Disease Control and Prevention (“CDC”) indicates that for hyperthermia (high core body temperature), primary risk factors include increasing age, children under five years of age, chronic disease including mental illness, and low-

⁸ See Comments of the City and County of San Francisco on the Proposed Decision (Jul. 7, 2010) at 3-4 (noting that utilities earlier declined to respond this part of the ALJ’s prior question regarding customer choice of bill date).

income living conditions.⁹ Because “spending time in an air conditioned area is the most important factor in preventing heat-related deaths,” CDC has stated that support of low-income populations with their energy costs may be necessary during the summer.¹⁰ Well-defined heat responses plans that target high risk populations are also recommended.¹¹

For hypothermia (low core body temperature), primary risk factors include advanced age and serious medical conditions; seniors and chronically ill persons are disproportionately affected.¹² CDC advises that especially for elders who may not perceive the cold or compensate for cold as well as younger persons, strategies should be implemented to provide them with protection during cold periods.¹³

Numerous states have adopted rules identifying these groups of vulnerable customers for special protection against disconnection. A few of those state provisions that protect the disabled, elderly, infants, and seriously ill are described here:

-- For gas and electric utilities in Hawaii, termination of service to an elderly or “handicapped” customer cannot be undertaken until a written report and investigation is submitted by the utility to the commission, at least five days prior to the scheduled termination date.¹⁴ Haw. Code R. § 6-60-8.

⁹ Heat-Related Deaths – Los Angeles County, California, 1999-2000, and United States, 1979-1998, MMWR Weekly (Centers for Disease Control and Prevention), July 27, 2001, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5029a3.htm>.

¹⁰ Id.

¹¹ Id.

¹² In addition, CDC notes that infants should be monitored and that rising energy costs may mean increased attention should be paid to prevent cases of indoor hypothermia. *See* Hypothermia-Related Deaths – United States, 1999-2002 and 2005, MMWR Weekly (Centers for Disease Control and Prevention), Mar. 17, 2006, available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5510a5.htm>

¹³ Hypothermia-Related Deaths – United States, 2003-2004, MMWR Weekly (Centers for Disease Control), Feb. 25, 2005, available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5407a4.htm>

¹⁴ In relevant part, Hawaii’s procedures for termination of service states as follows:

(c) The utility shall provide special consideration in the handling of termination of service in the case of the elderly and handicapped customers.

-- In Massachusetts, utilities are prohibited from terminating service or refusing to restore service to a residential customer who is financially unable to pay an overdue bill, so long as it is also certified that someone living in the customer's home is seriously ill, or that a child under 12 months of age resides in the customer's home, or that all adults in the home are 65 or older and a minor resides in the home. *See* 220 Code Mass. Regs. § 25.03. Additionally, where service is to a household in which all residents are 65 years old or more, service can only be terminated only after written approval of the Department of Public Utilities.¹⁵ 220 CMR 25.05.

-- Electric and gas utilities in Arizona cannot terminate service where a customer is unable to pay and can provide medical documentation to show that termination would be especially dangerous to the health of customer or a permanent resident of the

(1) Elderly customers must show proof of age that they are sixty-two years or older by either appearing in person at the utility office or by verifying the date of birth in writing by a personal statement;

(2) Handicapped customers can be qualified by certification of their physical condition by a registered physician or by an appropriate state agency; and

(3) In no event shall termination of service to an elderly or handicapped customer commence without a written report and investigation by the utility to the commission. The report and investigation must be submitted by the utility not less than five days prior to the planned date for termination of service.

Haw. Code R. § 6-60-8(c).

¹⁵ The Massachusetts Code states in relevant part:

(3) Termination Notice. A company may terminate service to a household in which all residents are 65 years of age or older only after such company first secures the written approval of the Department. In addition to the application for such approval filed with the Department, the company shall concurrently give written notice to the Executive Office of Elder Affairs (or any agency designated by the Executive Office of Elder Affairs for such purposes), any third person to be notified pursuant to 220 CMR 25.05(2) and the residents of such household. Such written notice shall state that an application to terminate has been filed with the Department and shall set forth the rights of the residents of the affected household to a hearing before the Department pursuant to 220 CMR 25.05(4). Prior to approval by the Department of such application, no company may send notices threatening termination of service to any household which has notified the company that all residents of the household are 65 years of age or older.

The notices required by 220 CMR 25.05 shall contain language in accordance with 220 CMR 25.05(5) and shall be in such form as shall be approved by the Department prior to its use.

220 CMR 25.05(3).

household.¹⁶ Ariz. Admin. Code §§ R14-2-211(A)(5) (electric), R14-2-311(A)(5) (gas). Further, Arizona provides that termination cannot occur to the ill, elderly, or disabled who are unable to pay their bills until the customer has been informed of the availability of funds from various government and social assistance agencies, and any existing third party designee has been notified and has not made arrangements to pay.¹⁷ Ariz. Admin. Code §§ 14-2-211(A)(6)(electric), 14-2-311(A)(6)(gas).

Lastly, San Diego Gas & Electric Company and Southern California Gas Company (collectively, “Joint Utilities”) have demonstrated that it is possible for a California utility to create a customer database capable of allowing the utility to identify CARE, FERA, disabled, elderly and seriously ill customers for special protection, and in a way that is not cost-prohibitive to the utility.¹⁸ The Joint Utilities have agreed with

¹⁶ The Arizona Administrative Code provides in relevant part:

5. A utility shall not terminate residential service where the customer has an inability to pay and:
 - a. The customer can establish through medical documentation that, in the opinion of a licensed medical physician, termination would be especially dangerous to the health of a customer or a permanent resident residing on the customer's premises, or
 - b. Life supporting equipment used in the home that is dependent on utility service for operation of such apparatus, or
 - c. Where weather will be especially dangerous to health as defined or as determined by the Commission.
6. Residential service to ill, elderly, or handicapped persons who have an inability to pay will not be terminated until all of the following have been attempted:
 - a. The customer has been informed of the availability of funds from various government and social assistance agencies of which the utility is aware.
 - b. A third party previously designated by the customer has been notified and has not made arrangements to pay the outstanding utility bill.

Ariz. Admin. Code § R14-2-211(A)(5) to § R14-2-211(A)(6). *See also* Ariz. Admin. Code § R14-2-311(A).

¹⁷ *Id.*

¹⁸ *See generally* Joint Motion of San Diego Gas & Electric Company (U902E), The Southern California Gas Company (U 904D), Disability Rights Advocates, the Division of Ratepayer Advocates, the Greenlining Institute, the National Consumer Law Center, and the Utility Reform Network for Adoption of

consumer advocates and intervenors in this proceeding that, upon Commission approval of their Settlement Agreement, the Joint Utilities will apply a special structure of payment arrangements and exceptions from credit deposit demands that will be applicable to CARE, FERA, Medical Baseline and disabled customers. *See* Settlement Agreement at 6-8. For the elderly, seriously ill, and disabled customers, the Joint Utilities have agreed that remote disconnection will not be used. *See* Settlement Agreement at 12-13. These provisions demonstrate that the utilities are capable of identifying specific groups of vulnerable customers to target for additional protection, and are able to distinguish them from all other customers for whom these special protections would not necessarily apply.

the Settlement Agreement, Docket R. 10-02-005 (Cal. Pub. Util. Comm'n Sept. 9, 2010) ("Settlement Agreement").

III. CONCLUSION

NCLC respectfully requests that the Commission consider NCLC's Comments on Phase II issues, submitted to help resolve the issues raised in the Commission's Interim Decision. The Commission can implement the above recommendations as cost-effective methods to help reduce the number of customer utility service disconnections by (1) providing customers greater opportunity to timely make utility payments through a choice of billing date and (2) ensuring that the state's most vulnerable customers are not left out of any protection afforded to "sensitive customers."

Respectfully Submitted,

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DATED: September 15, 2010, in Boston, Massachusetts

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA**

**RE: Order Instituting Rulemaking on the)
Commission's Own Notion to address the) R.10-02-005
Issue of customers' electric and natural gas)
service disconnection.)**

CERTIFICATE OF SERVICE

I certify that on September 15, 2010, I served the Comments of the National Consumer Law Center on Phase II Issues Pursuant to ALJ Ruling of August 26, 2010, by email and in accordance with 20 CCR §§ 1.9 and 1.10, upon the following persons appearing on the official Service List.

CALIFORNIA PUBLIC UTILITIES COMMISSION

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Proceeding: R1002005 - CPUC - OIR TO ADDRES

Filer: CPUC

List Name: LIST

Last changed: August 31, 2010

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/S/

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