

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

**RE: Order Instituting Rulemaking on the                    )**  
**Commission's Own Motion to address the                )** **R.10-02-005**  
**Issue of customers' electric and natural gas         )** **(Filed February 4, 2010)**  
**service disconnection                                        )**

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**REPLY COMMENTS OF THE NATIONAL CONSUMER LAW CENTER  
ON PHASE II ISSUES  
PURSUANT TO ALJ RULING OF AUGUST 26, 2010**

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## I. INTRODUCTION

On September 15, 2010, the parties submitted Comments on three Phase II Issues of this Proceeding: (1) allowing customers to choose a billing date; (2) waiver of deposit exceptions; and (3) defining “sensitive customers.” Pursuant to the Ruling of August 26, 2010, the National Consumer Law Center (“NCLC”) now submits its Reply Comments.

## II. REPLY COMMENTS

### A. **The Commission should reject the utilities’ arguments that allowing customers to choose a monthly billing date offers no significant benefit because the facts do not support those claims.**

There currently exists a need for customer choice in billing date, and there exists a system in California to address this need, but the system has not been put into place to meet the scope of the customer need. Utility customers have stated that the mismatch in income and billing cycles creates an obstacle to timely payment.<sup>1</sup> Pacific Gas and Electric Company (“PG&E”) notes that “PG&E *presently* accommodates a customer’s request for a different monthly billing date.”<sup>2</sup> PG&E would not have offered this accommodation if there were no value to it.<sup>3</sup> Further, “PG&E is not opposed to providing customers this flexibility provided that the levels of requests remain within the capacity of PG&E’s operations group.”<sup>4</sup> There is ability and some willingness from the utilities to implement customer choice in billing, but a Commission order is needed for more to be done.

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<sup>1</sup> Comments of the National Consumer Law Center on Phase II Issues Pursuant to ALJ Ruling of August 26, 2010 (“NCLC Phase II Comments”) at 2 (citing Opening Comments of The Utility Reform Network (Mar. 12, 2010) at 32).

<sup>2</sup> Pacific Gas and Electric Company’s Opening Comments on Phase II Scoping Memo Issues (“PG&E Phase II Comments”) at 7 (emphasis added).

<sup>3</sup> In describing its choice of billing date program, another utility has stated, “[o]nly customers know the best time to pay their monthly bill.” NCLC Phase II Comments at 2-3 (referencing Entergy New Orleans and Entergy Louisiana). A payment policy that maximizes customers’ ability to pay can be advantageous in preserving revenue streams and avoiding disconnections. *Id.* at 3-4.

<sup>4</sup> PG&E Phase II Comments at 7.

While Southern California Edison Company (“SCE”) points to “obstacles” in implementing a choice of billing date, i.e., “meter reading, call center and bill calculation capacity, bill printing and insertion restrictions and impacts on working capital and cash flow,”<sup>5</sup> this laundry list is unexceptional, simply relating to aspects of daily business. Even if SCE can only process a limited number of customer bills on a given day, the utility can offer a particular day of month as a choice of billing date, until capacity for that day is reached. Further, SCE could offer a limited selection of billing dates from the beginning, middle, and end of the month, shortly following typical pay dates. This could allow customers to match their bill payment schedules with income, while allowing utilities to plan and allocate resources for peaks and valleys in billing volume.

SCE states that it is unaware of analyses that either confirm or refute the benefit of customer choice in billing date.<sup>6</sup> NCLC submits that the Commission could order a pilot program for a portion(s) of each utility’s service territory, as selected by the Commission. A pilot using a representative customer sample, including customers at-risk of disconnection and/or accumulating arrearages, could identify peaks and valleys in billing volume and identify which billing dates that are best matched to typical pay dates.

Additionally, the utilities’ arguments that customer choice in billing date is cost-prohibitive should be rejected. While PG&E is the only utility that has attached a dollar amount to its implementation, PG&E’s dollar amount relates to when capacity is *exceeded*, not when capacity is sufficient.<sup>7</sup> None of the utilities have provided cost offsets. San Diego Gas & Electric Company and the Southern California Gas Company (collectively, “Joint Utilities”) acknowledge that automated meter reading should

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<sup>5</sup> Southern California Edison Company’s Opening Comments on the Administrative Law Judge’s Ruling Providing Opportunity for Comments and Addressing other Phase II Issues at 3.

<sup>6</sup> SCE Phase II Comments at 4.

decrease a utility's overall costs, although they do not provide any cost savings estimate.<sup>8</sup> Nor have the utilities addressed the decrease in credit and collection costs and added revenue associated with implementing customer choice of billing date, where customers have enhanced ability to make a greater number of payments, and timely payments over time.

The "obstacles" to implementing a program of customer choice in billing date can be overcome. PG&E currently offers a choice in billing date option, albeit in limited scope. The Commission should allow each utility's customers the opportunity to benefit from a choice in billing date offering, even if in pilot form.

**B. A policy that allows deposits to be collected from customers in bankruptcy should not discriminate against bankruptcy customers.**

The utilities have asserted a general ability to collect post-petition bankruptcy deposits; however, it must be clarified that there is no requirement in the U.S. Bankruptcy Code that the "adequate assurance of payment" must be a cash deposit. A consumer in bankruptcy can satisfy the requirement for adequate assurance of payment through a letter of credit, a certificate of deposit, a surety bond, a prepayment of utility consumption, or another form of security to which the consumer or trustee in bankruptcy agrees. 11 U.S.C. § 366(c) (defining "assurance of payment").

While a deposit may be required of customers in bankruptcy under the Bankruptcy Code, 11 U.S.C. § 366, United States Bankruptcy Courts have applied a

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<sup>7</sup> PG&E Phase II Comments at 7. PG&E does not oppose providing customers the flexibility of choosing a monthly billing date if capacity is not exceeded. *Id.*

<sup>8</sup> Opening Comments of San Diego Gas & Electric Company and the Southern California Gas Company to the Administrative Law Judge's Ruling Providing Opportunity for Comments and Addressing Other Phase II Issues ("Joint Utilities Phase II Comments") at 7. However, if the Commission approves the Settlement Agreement filed by Joint Utilities and Intervenors on September 9, 2010, the Settlement resolves all issues as relates to Joint Utilities, and Joint Utilities would not be a party affected by the Commission's Order on Phase II of this proceeding. The Commission should weigh Joint Utilities' Comments that object to customer choice in billing date, accordingly.

narrower interpretation to Section 366 than what the utilities assert. *See, e.g., In re Steinebach*, 303 B.R. 634 (Bkrcty. D. Ariz. 2004) (in order for utility to be entitled to “adequate assurance,” the debtor must have a history of nonpayment with the utility, an unusually large amount of pre-petition debt, or a history of difficult dealings with the utility); *In re Demp*, 22 B.R. 331 (Bkrcty. Pa., 1982) (holding that a utility is not entitled to a security deposit or to terminate debtor’s electrical service for failure to pay such deposit, when debtor had history of prompt and complete payment, and was completely current in pre-petition utility payments); *Coury*, 22 B.R. 766 (Bkrcty. Pa. 1982) (finding that utility has no right to payment of security by customer based on mere fact of customer filing for bankruptcy). These cases stand for the idea that a utility cannot demand a deposit from a bankruptcy customer for sole reason of bankruptcy; more is required, such as history of non-payment of utility bills.<sup>9</sup>

PG&E broadly asserts that bankruptcy customers should be subject to deposit requirements, alongside customers involved in fraud or bad check writing,<sup>10</sup> However, bankruptcy customers are engaging in a legal process to resolve their debts. Perpetrators of fraud, and bad-check writers, are not engaging in legitimate activities. NCLC submits that any Commission Order that specifically addresses consumers in bankruptcy must carefully adhere to the provisions of the U.S. Bankruptcy Code, bankruptcy case law, and the protections against discriminatory treatment that are provided for consumers in bankruptcy. *See, e.g.,* 11 U.S.C. § 525(a) (government unit may not discriminate against consumers in bankruptcy).

**C. The Commission should reject arguments that adding vulnerable customers to the Commission’s definition of “sensitive customers” will unreasonably increase costs.**

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<sup>9</sup> *See id. But see In re 499 W. Warren Street Associates Ltd. Partnership*, 138 B.R. 363 (Bkrcty. N.D.N.Y. 1991).

<sup>10</sup> PG&E Phase II Comments at 8-9.

The utilities have admitted the ability to identify specific groups of customers that Intervenor seek to protect,<sup>11</sup> but argue that costs of field visits to sensitive customers are significant. However, while PG&E notes that a field visit “*in the past*” has been estimated at \$66.50,<sup>12</sup> it fails to note that each remote disconnection of PG&E’s non-sensitive customers saves PG&E some unspecified amount, up to \$66.50. Likewise, each remote reconnection should similarly save PG&E in expenses. Partly due to size of customer base, the overall savings to PG&E is likely much greater than is the cost of protecting even an enlarged group of sensitive customers with a precautionary premise visit before disconnection.<sup>13</sup>

### III. CONCLUSION

NCLC respectfully requests that the Commission consider NCLC’s Reply Comments on Phase II issues.

Respectfully Submitted,

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<sup>11</sup> NCLC and other Intervenor have submitted that customer households with CARE, FERA, the elderly and/or disabled should be protected under the Commission’s definition of “sensitive customers,” which is currently limited to those on life support or Medical Baseline. *See* Interim Decision (July 29, 2010) at 20 (disabilities included in sensitive customer group) and n. 40 (Medical Baseline and life support); NCLC Phase II Comments at 4-8; Opening Comments of the Greenling Institute on the Administrative Law Judge’s Ruling Providing Opportunity for Comments and Addressing Other Phase II Issues at 11; Opening Comments of the Division of Ratepayer Advocates on Phase II Issues Identified in ALJ Ruling at 5-6; Comments of The Utility Reform Network on Certain Phase II Issues Identified in the 8/26/2010 Administrative Law Judge’s Ruling at 11-21; *cf.* Opening Comments of Disability Rights Advocates Regarding ALJ DeBerry’s Ruling at 3-4.

<sup>12</sup> PG&E Phase II Comments at 6 (emphasis added). This appears to refer to manual disconnection costs.

<sup>13</sup> *See* Joint Motion of Joint Utilities, Disability Rights Advocates, the Division of Ratepayer Advocates, the Greenling Institute, NCLC, and The Utility Reform Network for Adoption of Settlement, R.10-02-005 (Sept. 9, 2010) (demonstrating feasibility of singling out CARE, FERA, disabled, elderly and seriously ill customers for heightened protections).

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CERTIFICATE OF SERVICE

I certify that on September 24, 2010, I served the Reply 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.

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Executed on September 24, 2010, in Boston, Massachusetts.

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