

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

Order Instituting Rulemaking on the Commission's Own Motion
to Address the Issue of Customers' Electric and Natural Gas
Service Disconnection.

Rulemaking 10-02-005
(Filed February 4, 2010)

**REPLY COMMENTS OF THE GREENLINING INSTITUTE
ON THE ADMINISTRATIVE LAW JUDGE'S RULING PROVIDING OPPORTUNITY FOR
COMMENTS AND ADDRESSING OTHER PHASE II ISSUES**

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I. INTRODUCTION

The Greenlining Institute ("Greenlining") hereby files the following reply comments as directed by the Administrative Law Judge's Ruling Providing Opportunity for Comments and Addressing Other Phase II Issues (the "Ruling").¹ The first phase of this proceeding culminated with an Interim Decision,² which revised and implemented the various consumer protection measures of the Order Instituting Rulemaking ("OIR")³ and described those issues which would be addressed during the second phase of this proceeding ("Phase II").⁴ In accordance with the Ruling, parties submitted opening comments on the following Phase II issues:

- (a) allowing customers to choose a monthly billing date;
- (b) defining sensitive customers; and
- (c) providing exceptions to deposit rules for certain customers.⁵

Greenlining generally supports the comments and recommendations of the other consumer advocacy groups in this proceeding. Greenlining urges the Commission to take up these recommendations to protect consumers, not just the utilities' bottom line.

¹ Administrative Law Judge's Ruling Providing Opportunity for Comments and Addressing Other Phase II Issues, Rulemaking 10-02-005 (Aug. 26, 2010) (hereinafter "Ruling").

² Interim Decision Implementing Methods to Decrease the Number of Gas and Electric Utility Service Disconnections, Decision 10-07-048 in Rulemaking 10-02-005 (July 30, 2010) (hereinafter "Interim Decision").

³ Order Instituting Rulemaking to Establish Ways to Improve Customer Notification and Education to Decrease the Number of Gas and Electric Utility Service Disconnections, Rulemaking 10.02.005, Filed February 4, 2010 (hereinafter "OIR").

⁴ Interim Decision, *supra* note 2, at 27-28.

⁵ *Id.* at Attachment A.

II. DISCUSSION

As many parties pointed out, Greenlining, along with Disability Rights Advocates, The Division of Ratepayer Advocates, The National Consumer Law Center, and The Utility Reform Network (the “Consumer Groups”) reached a Settlement Agreement with San Diego Gas & Electric Company and the Southern California Gas Company (collectively, the “Sempra Utilities”) and jointly petitioned the Commission to adopt the same.⁶ The Consumer Groups and the Sempra Utilities intended the Settlement Agreement to resolve all issues arising from the OIR.⁷ Greenlining supports the Settlement Agreement and the Sempra Utilities’ position that it “resolves the material issues raised in all two phases of this proceeding.”⁸ The Settlement Agreement is a package which contains numerous important consumer protections, and Greenlining believes it is a commendable example of what can be achieved when utility companies make consumer protections a priority, rather than an afterthought. However, the Settlement Agreement should in no way be seen as a limit on what the Commission can and should expect from the non-settling parties. Hence, to the extent adopted by the Commission, Greenlining expects the terms of the Settlement Agreement will govern the practices of the Sempra Utilities, whereas the recommendations contained herein should apply to Pacific Gas and Electric (“PG&E”) and Southern California Edison (“SCE”) alone.

A. Customers Should be Able to Request Alternate Billing or Payment Dates.

The Ruling sought comment on whether customers should be able to request an alternative billing date and outlined several specific questions in relation thereto.⁹ Greenlining notes the Consumer Groups’ general consensus that customers should be allowed to choose their billing or payment dates. Greenlining supports the recommendation of TURN and NCLC that *all* customers should be allowed to choose their billing dates, and defers to their expertise, which demonstrates that this will in fact reduce

⁶ Joint Motion of San Diego Gas & Electric Company, the Southern California Gas Company, Disability Rights Advocates, the Division of Ratepayer Advocates, the Greenlining Institute, the National Consumer Law Center and The Utility Reform Network For Adoption of the Settlement Agreement, Appendix A (filed Sept. 9, 2010) (“Settlement Agreement”).

⁷ Consequently, the Consumer Groups and the Sempra Utilities jointly filed a Petition for Modification of the Interim Decision to exempt the Sempra Utilities from compliance therewith. Petition of San Diego Gas & Electric Company, the Southern California Gas Company, Disability Rights Advocates, the Division of Ratepayer Advocates, the Greenlining Institute, the National Consumer Law Center and The Utility Reform Network to Modify Decision 10-07-048 (filed Sept. 9, 2010).

⁸ Opening Comments of San Diego Gas & Electric Company (U 902E) and the Southern California Gas Company (U 904G) to the Administrative Law Judge’s Ruling Providing Opportunity for Comments and Addressing Other Phase II Issues 6, R.10.02.005 (Sept. 15, 2010).

⁹ Ruling, *supra* note 1, at att. A ¶ 1.

late and non-payments.¹⁰ In the alternative, Greenlining recommends that the Commission adopt the position advocated by the Division of Ratepayer Advocates that PG&E and SCE should be required, at a minimum, to offer a choice of billing date to: customers at risk of disconnection, customers whose meter is read remotely, and customers that do not receive a paper bill.¹¹ Greenlining also recommends that customers enrolled in automatic payment plans be allowed to choose their billing or payment date. In order to adequately manage their finances, a customer must be permitted to determine when the charge to their account will be processed.¹² Providing these customers the flexibility to determine their billing or payment dates would help to ensure timely payments, which would set-off any associated costs to the utilities.

Greenlining notes with regret that PG&E did not answer the specific questions posed in the Ruling. Rather, PG&E summarily concludes that “no additional change is needed” because allegedly the collection process does not commence until 42 days after the bill is issued.¹³ However, PG&E’s electric tariff rules state that a bill is considered past due if PG&E does not receive payment within 19 days after the bill is issued.¹⁴ In light of the evidence presented by TURN and NCLC, which indicates the feasibility and benefits of allowing customers to choose their billing date,¹⁵ PG&E’s vague and unsubstantiated assertions should be given little weight by the Commission.

In contrast, SCE provided extensive responses to the questions posed in the Ruling, and identified several alleged complications and obstacles related to allowing customers to select their own billing date.¹⁶ Many, if not all of these, will be ameliorated by the transition to paperless billing and/or advanced

¹⁰ Comments of the Utility Reform Network on Certain Phase II issues Identified in the 8/26/2010 Administrative Law Judge’s Ruling 4-9, R.10.02.005 (Sept. 15, 2010) (“TURN Phase II Opening Comments”); Comments of the National Consumer Law Center on Phase II issues Pursuant to ALJ Ruling of August 26, 2010 2-4, R.10.02.005 (Sept. 15, 2010) (“NCLC Phase II Opening Comments”).

¹¹ Opening Comments of the Division of Ratepayer Advocates on Phase II Issues Identified in ALJ Ruling 2-4, R.10.02.005 (Sept. 15, 2010).

¹² As Greenlining has repeatedly argued, without this ability a customer may be charged by the utility prior to their paycheck clearing, resulting either in overdraft fees or non-payment of the utility bill. If a customer has enrolled in automatic payment to avoid a cash deposit, non-payment may trigger deposit requirements. This result negates the efficacy of automatic payment options as an alternative to cash deposits.

¹³ Pacific Gas and Electric Company’s (U 39 M) Opening Comments on Phase II Scoping Memo Issues 7-8, R.10.02.005 (Sept. 15, 2010) (“PG&E Phase II Opening Comments”).

¹⁴ PG&E Electric Rule 8.A.

¹⁵ TURN Phase II Opening Comments, *supra* note 10, at 5; NCLC Phase II Opening Comments, *supra* note 10, at 2-3 (“allowing customer 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 service.”).

¹⁶ Southern California Edison Company’s (U 338-E) Opening Comments on the Administrative Law Judge’s Ruling Providing Opportunity for Comments and Addressing Other Phase II Issues 5-6, R.10.02.005 (Sept. 15, 2010) (“SCE Phase II Opening Comments”).

meter infrastructure developments.¹⁷ Moreover, SCE claims that customized billing dates may have a negative impact on working capital and cash flow.¹⁸ Finally, SCE claims that call center staffing and billing system constraints would not be able to adequately deal with customers concentrating around certain bill dates.¹⁹ It is worth bearing in mind that those customers most likely to choose their payment date, such as those living paycheck-to-paycheck, represent a small percentage of SCE's customer base. Simply put, most customers will either not find it necessary nor make the effort to alter their billing or payment date. As such, it is reasonable to expect SCE to be able to manage any working capital, cash flow, system or staffing impacts adequately.

If the Commission finds these constraints to be sufficiently deleterious to warrant not offering a choice of billing or payment date to all customers, it should mandate that SCE and PG&E offer this flexibility to customers facing disconnection and those enrolled in the California Alternate Rates for Energy or Family Electric Rate Assistance programs. These are the customers who are more likely to be living paycheck to paycheck and struggling to make ends meet. Moreover, customers enrolled in an automatic payment plan must be allowed to set the date the charge will be posted to their account. Allowing this limited class of customers to choose their bill or payment date will impose very few costs yet greatly increase the chances that payment plans are adhered to and reduce the likelihood of default.

B. The Commission Should Clarify When a Customer is Considered to be in “Good Standing” and the Waiver of Deposit Exceptions.

Greenlining has two concerns related to when a customer is considered to be in good standing for the waiver of deposit exceptions. First, the Commission should consider whether customers with returned checks or declined electronic payments should be exempt from the deposit requirements. Second, the Commission should clarify what qualifies as fraud.

With respect to the first issue, PG&E again declined to answer the Commission's specific interrogatories regarding when a customer is considered to be in good standing.²⁰ Without specifics of the sort the Commission sought, it is very difficult to comment on whether PG&E's current practices are predatory or protective in nature. In contrast, SCE explained in detail how it classifies customers.²¹ By and large, Greenlining does not oppose SCE's current practices, but believes that the Commission should

¹⁷ *Id.* (SCE claims that printing customer bills and physically reading meters constrain its ability to offer customers a choice of billing date).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ PG&E Phase II Opening Comments, *supra* note 13, at 8 (PG&E only commented on customers it believes are out to “game the system”).

²¹ SCE Phase II Opening Comments, *supra* note 16, at 8-9.

examine more closely how customers who are enrolled in automated payment options are classified. Currently SCE states that if customers have two or more returned checks during a 12-month period they are not in good standing and are considered cash-only, “during which time he/she is not allowed to make a payment by check, direct pay, or electronic funds transfer.”²² The potential complication here is as follows: if a customer enrolled in an automatic payment program (direct pay or electronic funds transfer) in order to avoid paying a cash deposit, what happens if he/she then becomes considered cash-only? Will a cash deposit be required? This is intrinsically intertwined with the choice of billing or payment date issue discussed above. If a customer’s account is debited the day before their paycheck clears and the payment is declined for insufficient funds, they should have the opportunity to make timely payment and not be penalized further by being put on cash-only status or required to remit cash deposits. Greenlining has already raised this issue and again submits that without effective and in-language customer outreach and education, automatic payment programs are not a complete solution.²³

Second, the Commission should clarify what constitutes fraud. PG&E was quick to point out that it addresses approximately 9,000 fraud cases annually with an estimated financial impact of over \$3M annually,²⁴ but does not discuss what it considers constitutes fraud.²⁵ Some cases are clear, such as unauthorized energy consumption, but others are less so. Is a pattern of late payment considered fraud? What if this pattern is caused by a mismatch between customer paycheck and billing cycles? Bad check activity is presumably not considered fraud, as PG&E advocates that bad check activity should be separate grounds for requiring deposits.²⁶ So what exactly is fraud? Greenlining submits that this should not be left to the discretion of the individual utilities, but rather determined by the Commission to create a consistent statewide standard.

C. “Sensitive Customers” Should be Defined More Broadly.

Greenlining is encouraged that only one utility, PG&E, is unwilling to expand the definition of sensitive customers beyond medical baseline and life support customers.²⁷ SCE explained that they currently identify disabled and elderly customers, in addition to medical baseline and life support

²² *Id.* at 9.

²³ Opening Comments of the Greenlining Institute on the Administrative Law Judge’s Ruling Providing Opportunity for Comments and Addressing Other Phase II Issues 10-11, R.10.02.005 (Sept. 15, 2010).

²⁴ Let’s put this in perspective: PG&E’s financial contributions to the failed Proposition 16 campaign totaled over \$40 million. Mark Glover and Dale Kasler, *Foes say California Voters saw through Props. 16 and 17*, SACRAMENTO BEE, June 10, 2010, at 4A.

²⁵ PG&E Phase II Opening Comments, *supra* note 13, at 8.

²⁶ *Id.*

²⁷ *Id.* at 7 (“adding to the sensitive customer category those customers that are not within the scope of the life support and medical baseline classification is problematic and potentially extremely costly for the IOUs and the ratepayers.”).

customers, and they provide this group with additional health and safety precautions.²⁸ This is commendable, but is still under-inclusive. All the utilities should include within the sensitive customer group any customer who self-identifies as having a serious illness, which is one that would become life threatening if service were disconnected.²⁹ Furthermore, the Commission should consider whether infants and young children should be included within this group. Greenlining acknowledges the concerns raised by SCE and PG&E with respect to gathering and updating age related data. Greenlining proposes that a self-certification process be used for both young children and the elderly, whereby the customer on an annual basis would have to certify that a person over the age of 62 or under the age of 5 resides in the home to qualify for the sensitive customer class.³⁰ Utilizing self certification should reduce some of the administrative costs; however, it does have one drawback: the consumer must be made aware that they may qualify for heightened protections if they self-certify as a sensitive customer. As such, the utilities must inform ratepayers that sensitive customers may receive additional protections and must educate them about how to qualify or self-certify.³¹

With respect to remote disconnections, Greenlining would like to clarify that it opposes remote disconnections for sensitive customers due to a concern that health and safety risks would go unnoticed. If, as SCE suggested, there would be a “representative at the premises prior to and during disconnection to assess and monitor the situation for any risks to health or safety” these concerns are ameliorated.³² Provided a representative is present at the premises and adequately ensures the health and safety of the customer and residents of their household during a disconnection, how that disconnection occurs (either by a field agent or remotely) is of lesser importance. The crucial issue is safeguarding against the risks associated with disconnection, which is *not* the same as the cost savings of remote disconnection.³³

²⁸ SCE Phase II Opening Comments, *supra* note 16, at 11-12.

²⁹ The Settlement Agreement with the Sempra Utilities included this expansive definition and demonstrates that providing additional protections to customers with serious illnesses is not only desirable, but also practicable. Settlement Agreement, *supra* note 6, at 9-10.

³⁰ The Center for Disease Control has found that the elderly and children between the ages of 0-4 are at the highest risk for heat related illnesses. Center for Disease Control and Prevention, Extreme Heat: Frequently Asked Questions, <http://www.bt.cdc.gov/disasters/extremeheat/faq.asp> (last visited Sept. 22, 2010).

³¹ Greenlining supports Disability Rights Advocates proposal that the utilities should engage in customer outreach by inviting new customers to self-certify and sending notices to existing customers regarding expanded protections. Opening Comments of Disability Rights Advocates Regarding ALJ DeBerry’s Ruling 3, R.10.02.005 (Sept. 15, 2010). These notices should be sent in multiple languages and accessible formats. In addition, information regarding the same should be conspicuously posted on the utilities’ websites in multiple accessible languages and formats.

³² SCE Phase II Opening Comments, *supra* note 16, at 11.

³³ PG&E seems to be more concerned about whether adequately protecting customers “would significantly increase costs and erode SmartMeter benefits.” PG&E Phase II Opening Comments, *supra* note 13, at 6. Benefits must not only be discussed in dollar terms. If a customer suffers severe injury because they were remotely disconnected, this is a detriment, no matter how much money PG&E saves. Surely a life is worth at least \$66.50.

Finally, Greenlining notes TURN's suggestion that remote disconnection should be prohibited if the "customer is on an all-electric rate schedule, and the disconnection is occurring in December, January or February."³⁴ Greenlining agrees that this would protect certain customers, however feels that it is not a perfect solution.³⁵ Rather, Greenlining suggests that the utilities adopt an extreme weather policy whereby no disconnections of service would be permitted if the temperature in the customer's climate zone is below 32 degrees or above 100 degrees Fahrenheit.³⁶ This would adequately address TURN's concern but protect customers in myriad climate zones more fully.

III. CONCLUSION

Greenlining urges the Commission to take this opportunity to allow customers to choose their billing date, clarify the deposit exceptions, and provide additional protections for at-risk customers. These represent reasonable steps to further protect customers without imposing undue costs on the utilities. Greenlining commends the Commission for its leadership and recognition that other issues, such as language access, the role of customer service representatives, and rectifying the discrepancies in disconnection rates, remain to be addressed in future phases of this proceeding. Greenlining looks forward to continuing this dialogue and building on the momentum generated by the Commission's success in the first phase of this proceeding.

Respectfully submitted,

Dated: September 24, 2010

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³⁴ TURN Phase II Opening Comments, *supra* note 10, at 12.

³⁵ For example, in Palm Springs a disconnection during these months would present fewer health and safety concerns than a disconnection during June, July and August, when temperatures average well above 100 degrees.

³⁶ This is comparable to the Extreme Weather Policy that the Sempra Utilities agreed to in the Settlement Agreement. Settlement Agreement, *supra* note 6, at 9.

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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

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on all known parties to R.10.02.005 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 September 24, 2010.

/s/ Alicia F. Miller
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